

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Jolene Irons

Sidney B. Simons
Simons McKenzie Law Corp.

v. (26968)

Her Majesty the Queen (B.C.)

Peter W. Hogg
Dept. of Justice

FILING DATE 25.11.1998

Paul Fausto Spanevello

Harry G. Stevenson

v. (26959)

Her Majesty the Queen (B.C.)

Bruce Johnstone
Min. of the A.G.

FILING DATE 12.11.1998

Anil Joshi

Lawrence Corriveau
Corriveau, Corriveau

c. (26953)

Sa Majesté la Reine (Qué.)

Sabin Ouellet
Subs. procureur général

DATE DE PRODUCTION 9.11.1998

Pamela Khan

Pamela Khan

v. (26965)

**Charles Harnick, Attorney General of Ontario
(Ont.)**

Rosalyn Train
A.G. of Ontario

FILING DATE 7.10.1998

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

Robert Lindsay

Kevin A. Clarke
Merchant Law Group

v. (26954)

The Worker's Compensation Board et al. (Sask.)

Robert G. Richards
MacPherson, Leslie & Tyerman

FILING DATE 9.11.1998

The Succession of Clifford Burton et al.

Julius H. Grey
Grey Casgrain

v. (26955)

The City of Verdun (Que.)

Patrice Guay
Hébert Comeau Dufresne Hébert

FILING DATE 13.11.1998

Friedmann Equity Developments Inc.

Benjamin Zarnett
Goodman, Phillips & Vineberg

v. (26971)

**Dr. Almas Adatia, also known as Almas Adatia,
et al. (Ont.)**

Carl Orbach, Q.C.
Orbach, Katzman & Herschorn

FILING DATE 9.11.1998

George McCauley et al.

Alan Whiteley
Meighen Demers

v. (26972)

Mark Fitzsimmons et al. (Ont.)

James K. McDonald
Sack, Goldblatt, Mitchell

FILING DATE 12.11.1998

NOVEMBER 23, 1998 / LE 23 NOVEMBRE 1998

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

H.A.

v. (26716)

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

NATURE OF THE CASE

Criminal Law - Evidence - Expert testimony - Did the Court of Appeal for Quebec err in law in dismissing the Applicant's appeal when the trial judge had erroneously admitted opinion evidence that the child complainant had indeed been sexually abused, thereby improperly permitting the Crown to adduce evidence relating to the ultimate credibility of the child complainant? -Did the Court of Appeal for Quebec err in law in dismissing the Appellant's appeal when the trial judge had erroneously admitted numerous repetitive hearsay utterances which had the overwhelming effect of impermissible oath-helping?

PROCEDURAL HISTORY

May 18, 1993 Superior Court of Quebec (Plouffe J.C.S.)	Conviction: one count of sexual assault and one count of sexual interference
May 27, 1997 Court of Appeal for Quebec (Proulx and Rousseau-Houle JJ.A. and Zerbisias J.A. (<i>ad hoc</i>))	Appeal dismissed
June 18, 1998 Supreme Court of Canada	Application for extension of time and for leave to appeal filed

**New Investors Committee of
Mater's Mortgages (NIC) Inc.**

v. (26826)

**Morgan Trust Company of Canada
Peat Marwick Thorne Inc., as Receiver and Manager
of the assets and property of each of the corporate
Defendants, save and except Falloncrest Financial
Corporate and 748749 Ontario Limited**

- and -

**Kilgrimol Developments Limited,
Town of Ajax, Independent Advisory Counsel for
some of the Investors, Investors (Ont.)**

NATURE OF THE CASE

Commercial law - Company law - Receivership - Court approval of a receiver's proposal to sell a specific asset - Whether the Court of Appeal erred in dismissing the appeal - Whether the Court of Appeal erred in disregarding the Stewart appraisal - Whether the receiver's efforts to sell the Verona property were reasonable or not.

PROCEDURAL HISTORY

March 6, 1998 Ontario Court of Justice (General Division) (Cumming J.)	Order authorizing the sale by Receiver of the Verona property
March 6, 1998 Ontario Court of Justice (General Division) (Cumming J.)	Town of Ajax's motion for tax sale proceedings granted on terms as outlined in the Order
May 19, 1998 Court of Appeal for Ontario (Finlayson and Carthy JJ.A. and Then J.)	Appeal of the approval of the sale of the Verona property dismissed
August 18, 1998 Supreme Court of Canada	Application for leave to appeal filed

Bastion Development Corporation

v. (26796)

**Barnes & Kissack Inc., Trustee of the Estate of
Modatech Systems Inc., a Bankrupt (B.C.)**

NATURE OF THE CASE

Commercial law - Bankruptcy - Statutes - Interpretation - *Bankruptcy and Insolvency Act*, R.S.C. 1992, c. 27, s. 136 (1)(f) (preferred claim for landlord for arrears of rent) - Whether the limitation on a landlord's preferred claim for arrears of rent contained in s. 136(1)(f) of the *Bankruptcy and Insolvency Act* applied to nullify the landlord's claim - Calculation of the trustee's "realization from the property on the premises under lease" - Whether "property" was limited to physical assets or rather included intangible assets such as copyright in software, a source code and accounts receivable - Whether trustee was justified in deducting an allowance for a security holder's interest in the assets in determining the realization upon their sale.

PROCEDURAL HISTORY

December 5, 1996 Supreme Court of British Columbia (Meredith J., in chambers)	Appeal from Trustee's disallowance of claim allowed
June 17, 1998 Court of Appeal for British Columbia (Rowles, Prowse and Huddart JJ.A.)	Trustee's appeal allowed; order set aside and matter remitted to the Supreme Court of British Columbia for determination of the value of the bankrupt's property on the leased premises

August 17, 1998
Supreme Court of Canada

Application for leave to appeal filed

Noel Francis Chantiam

v. (26776)

**Packall Packaging Inc. and
the Canada Life Assurance Company (Ont.)**

NATURE OF THE CASE

Commercial law - Insurance - Statutes - Interpretation - Applicant consenting to “key man” policy of life insurance being placed on his life by Respondent former employer - Applicant ceasing to be employed by Respondent - Respondent continuing policy on Applicant’s life despite Applicant’s objection - Whether any remedy exists for life insured who objects to the policy being held by the insured party after the insurable interest has disappeared - Sections 178 and 179 of the *Insurance Act*, R.S.O. 1990, c. I-8.

PROCEDURAL HISTORY

February 13, 1997
Ontario Court (General Division) (Pitt J.)

Order cancelling Respondent’s policy of insurance on Applicant’s life

April 3, 1998
Court of Appeal for Ontario
(Robins, Catzman JJ.A. and Lederman (*ad hoc*))

Appeal allowed

July 17, 1998
Supreme Court of Canada

Application for leave to appeal filed

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

Tammy Lynn Ferris

v. (26837)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Arbitrary detention - Investigative detention - Unreasonable search and seizure - Search incident upon detention - “Stop and frisk” - Police powers - Whether the Court of Appeal erred in deciding that the police had the power to detain the Applicant with only articulable cause - Whether the Court of Appeal erred in deciding that the police had the power to search the Applicant upon detention.

PROCEDURAL HISTORY

May 10, 1996
Provincial Court of British Columbia (Baird-Ellan J.)

Acquittal: possession of cocaine for the purpose of trafficking

June 15, 1998
Court of Appeal for British Columbia
(Finch, Ryan and Newbury JJ.A.)

Appeal from acquittal allowed; acquittal set aside and
new trial ordered

September 11, 1998
Supreme Court of Canada

Application for leave to appeal filed

B.M.

v. (26742)

S.L. (Qué.)

NATURE OF THE CASE

Family law - Divorce - Support - Variation - Applicant seeking to modify the terms of separation agreement incorporated in divorce judgment providing for payment of support to Respondent - Whether change sufficient to justify varying support - Whether Court of Appeal erred in interpreting separation agreement to provide that Applicant's spousal support objection may terminate only on the death of either party - Whether Court of Appeal justified in arbitrarily deciding the amount of the lump sum and in granting a provision for costs.

PROCEDURAL HISTORY

April 24, 1996
Superior Court of Quebec
(Flynn J.C.S.)

Motion by Applicant to modify accessory measures
granted in part; application by Respondent for lump
sum payment and provisions for costs dismissed

April 30, 1998
Court of Appeal of Quebec
(Vallerand, Rousseau-Houle and Delisle JJ.C.A.)

Respondent's appeal granted; order made for payment
of lump sum as alimony and for legal costs

June 29, 1998
Supreme Court of Canada

Application for leave to appeal filed

The City of Saskatoon

v. (26810)

Public Service Alliance of Canada

and

International Association of Firefighters', Local No. 80 (F.C.A.)(Sask.)

NATURE OF THE CASE

Labour Law - Certification - For the purposes of an application to be certified as a bargaining agent, whether federally employed firefighters transferred to a municipality but dedicated to providing emergency rescue services at an airport are employed in the operation of a federal work, undertaking or business within the meaning of s. 4 of the *Canada Labour Code*, R.S.C. 1985, L.2, and whether the transfer was a transfer to a business invoking s. 47 of the Code.

PROCEDURAL HISTORY

December 23, 1997 Canada Labour Relations Board (Hornung, Vice-Chair)	Certification as bargaining agent granted
June 16, 1998 Federal Court of Appeal of Ontario (Stone, Létourneau and Robertson JJ.A.)	Application to set aside judgment dismissed
August 19, 1998 Supreme Court of Canada	Application for leave to appeal filed

Robert Lavigne

v. (26774)

Human Resources Development and Her Majesty The Queen (F.C.A.)(Que.)

NATURE OF THE CASE

Administrative law - Remedies - Labour law - Civil rights - Applicant awarded damages for Respondent's failure to respect his rights under the *Official Languages Act* - Federal Court declining to order Applicant be reinstated in position - Burden of proof - Whether Pinard J. erred in finding that re-evaluation of employee performance complied with the recommendation of the Office Commissioner of Official Language (OCOL) - Deference to OCOL's opinion - Must Applicant prove that the Respondents' conduct was harsh, vindictive, reprehensible or malicious in nature.

PROCEDURAL HISTORY

October 30, 1996 Federal Court of Canada, Trial Division (Pinard J.)	Applicant's action allowed in part; Applicant awarded damages in amount of \$3,000
May 11, 1998 Federal Court of Appeal (Décary, Denault, and Desjardins JJ.A.)	Applicant's appeal denied
August 4, 1998 Supreme Court of Canada	Application for leave to appeal filed

**CORAM: Cory, Major and Binnie JJ. /
Les juges Cory, Major et Binnie**

**Stephen Posen, Executor and Trustee
of the Last Will Testament of Glenn Gould,
deceased, and Glenn Gould Limited**

v. (26782)

**Stoddart Publishing Co. Limited,
The Canada Trust Company, Executor and Trustee of
the Last Will and Testament of Jock Carroll,**

deceased, and Angus Carroll (Ont.)

NATURE OF THE CASE

Property law - Copyright - Appropriation of personality - Whether a person who consents to allowing his photograph to be taken for the purposes of a magazine article grants to the photographer the right to use the photographs subsequently for any and all purposes for the financial gain of the photographer - Whether the holder of copyright in photographs may use the photographs without regard to the rights of privacy and rights of publicity of the celebrity - Whether and to what extent the appropriation of personality is permitted in the context of the celebrity as the subject of the work - What is the scope of protection afforded to individuals whose image is used by others for commercial gain.

PROCEDURAL HISTORY

September 26, 1996 Ontario Court of Justice (General Division) (Lederman J.)	Applicants' actions dismissed
May 6, 1998 Court of Appeal for Ontario (Finlayson, Krever and Weiler JJ.A.)	Appeal dismissed
August 5, 1998 Supreme Court of Canada	Application for leave to appeal filed

Boris Orlov

v. (26825)

**Metro Toronto Police (O.P.P.), Solicitor General of Canada
and U.C.I. as a part of the security system (Ont.)**

NATURE OF THE CASE

Procedural law - Statement of claim struck out - Can Canadian legislation or Supreme Court of Canada stop conspiracy against the Applicant? - Can above mentioned legislation give or provide Applicant judicial protection or freedom for him, because he is now a prisoner in Canada?

PROCEDURAL HISTORY

March 13, 1997 Ontario Court of Justice (General Division) (Sheard J.)	Motion by Respondents for an order striking out the Statement of Claimed and dismissing the Applicant's action allowed; Applicant's action dismissed
August 14, 1998 Court of Appeal for Ontario (Finlayson, Goudge, and Feldman, JJ.A.)	Applicant's appeal dismissed
September 2, 1998 Supreme Court of Canada	Application for leave to appeal filed

Guardian Insurance Company

v. (26773)

Ontario Tree Fruits Limited (Ont.)

NATURE OF THE CASE

Commercial Law - Insurance - Contracts - Interpretation of an exclusion clause in an insurance contract - Meaning of "seized" in a clause excluding loss or damage to property seized for breach of any law or by order of any public authority.

PROCEDURAL HISTORY

October 27, 1993 Ontario Court (General Division) (Potts J.)	Action for damages dismissed
May 11, 1998 Court of Appeal for Ontario (McMurtry C.J., Laskin and Rosenberg JJ.A.)	Appeal allowed
August 7, 1998 Supreme Court of Canada	Application for leave to appeal filed

**Her Majesty the Queen in right of the Province of Ontario as represented by
the Ministry of Community and Social Services**

v. (26797)

**Michael Hugh Mason, by his Litigation Guardian Patricia Lynn Mason,
Patricia Lynn Mason personally, Allan Mitchell Mason,
Anne Marie Bradstreet and Mary Margaret Mason (Ont.)**

NATURE OF THE CASE

Statutes - Interpretation - *Health Insurance Act*, R.S.O. 1990, c.H.6 - Ontario Health Insurance Plan- Torts - Respondent insured by OHIP injured in facility operated by Crown - Respondents maintaining subrogated claim for services rendered to injured Respondent and paid for by OHIP - Where a right of subrogation exists, can an insurer maintain a claim on behalf of a named insured who cannot assert such a right on its own behalf - Can an insurer maintain a subrogated claim in the name of the insured against a defendant who has already paid the insured for such claim - Is OHIP a real plaintiff in this action and, as such, being the provincial Crown, can it maintain a subrogated action against itself - Can the Court enforce a claim which is not maintainable at law, because the Court believes that doing so would promote a "desirable objective"?

PROCEDURAL HISTORY

May 30, 1996 Ontario Court of Justice (General Division) (Boland J.)	Declaration that OHIP is entitled in law to advance a subrogated claim against the Applicant through Michael Hugh Mason
--	---

May 5, 1998
Court of Appeal for Ontario
(Krever, Doherty and Laskin JJ.A.)

Appeal dismissed

July 28, 1998
Supreme Court of Canada

Application for leave to appeal filed

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

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

Anderson T. Walcott v. Her Majesty the Queen in Right of Ontario, et al. (Ont.)(26567)

NOVEMBER 30, 1998 / LE 30 NOVEMBRE 1998

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

Stephen Michael Stark

v. (26792)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Right to counsel - Whether the Court of Appeal erred in ruling admissible the Applicant's videotaped statement to police - Whether the right to counsel is limited to an initial consultation with duty counsel even where duty counsel also advises a co-accused - Evidence - Fresh evidence - Whether the Court of Appeal erred in denying the Applicant's motion to adduce fresh evidence - Whether the *actus reus* of the offence coincided with the *mens rea* - *R. v. Cooper*, [1993] 1 S.C.R. 146.

PROCEDURAL HISTORY

March 2, 1995
Supreme Court of British Columbia (Lander J.)

Conviction: second degree murder

March 13, 1998
Court of Appeal for British Columbia
(Ryan, Braidwood and Hall JJ.A.)

Appeal dismissed

August 17, 1998
Supreme Court of Canada

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

Michael Khanna

v. (26754)

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

NATURE OF THE CASE

Criminal law - Whether the Court of Appeal erred in holding that evidence with respect to the defence of self defence was inadmissible - Whether the Court of Appeal erred in holding that it was not necessary for the trial judge to have reviewed the defence evidence in his charge to the jury - Whether the Court of Appeal erred in holding that the assault conviction was not unreasonable - Whether the Court of Appeal erred in holding that a stay of proceedings was not warranted.

PROCEDURAL HISTORY

April 30, 1996 Ontario Court (General Division) (Locke J.)	Motion to stay proceedings dismissed
October 29, 1996 Ontario Court (General Division) (Locke J.)	Conviction: assault
May 28, 1998 Court of Appeal for Ontario (Krever, Osborne and Doherty JJ.A.)	Conviction appeal dismissed; sentence appeal allowed; absolute discharge substituted
July 23, 1998 Supreme Court of Canada	Application for leave to appeal filed

Manac Inc. Corp.

v. (26744)

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

NATURE OF THE CASE

Taxation - Statutes - Interpretation - Meaning of “similar properties” under s. 111(5)(a)(ii) of the *Income Tax Act*, R.S.C. 1985, c. 2 (5th Suppl.) - Does the integration of the activities of a manufacturer and one of its suppliers necessarily result, for tax purposes, in a business different from that of the supplier - For the purposes of s. 111(5)(a)(ii), are the particular panels used in the manufacturing of trailers properties “similar” either to the trailers, because of their common functionality, or to the other types of panels manufactured by the Applicant, which are also employed in the manufacturing of trailers - Is s. 111(5)(a)(ii) rendered inoperable where a corporation, which develops and sells panels used strictly in the manufacturing of trailers, is amalgamated with a corporation which develops and sells trailers and continues to carry on precisely the same development activity, but with no internal notional “sale” of the panels - What meaning should be given to the expression “substantially all” the income in s. 111(5)(a)(ii).

PROCEDURAL HISTORY

November 30, 1995 Tax Court of Canada (St-Onge J.T.C.C.)	Appeals from assessments dismissed
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May 1, 1998
Federal Court of Appeal
(Denault, Décary and Létourneau JJ.A.)

Appeal dismissed

June 30, 1998
Supreme Court of Canada

Application for leave to appeal filed

Erin Dancer Holding Corp., as trustee for Erin Dancer Holdings Joint Venture, a co-tenancy, Kenley Estates Inc. as trustee for Kenley Estates Joint Venture, a co-tenancy, Wildfur Investments Inc. as trustee for Bayview Hill Phase II Co-Tenancy, a co-tenancy, Cupola Properties Ltd., a co-tenancy, Kingsglenn Developments Inc. as trustee for Developments Joint Venture, a co-tenancy, and Avongreen Estates Inc. as trustee for Avongreen Estates Joint Venture, a co-tenancy

v. (26788)

The Corporation of the Town of Richmond Hill and the Chief Building Official for the Corporation of the town of Richmond Hill (Ont.)

NATURE OF THE CASE

Statutes - Interpretation - Interpretation of a repealed by-law provision that allowed partial refunds of building permit fees if actual costs of construction proved to be less than the prescribed values used to assess fees - Whether the words "if the applicant disagrees with such prescribed value" and "prescribed value" referred to only proposed buildings and not completed buildings - Whether the Court of Appeal erred in interpreting the by-law such that builders had to have provided notices of objection to prescribed values when paying their permit fees in order to have retained their rights to reimbursements after construction.

PROCEDURAL HISTORY

March 22, 1996
Ontario Court (General Division), Divisional Court
McRae, Howden and MacPherson JJ.

Application for judicial review granted

May 15, 1998
Court of Appeal for Ontario
Doherty, Weiler and Goudge JJ.A.

Appeal allowed, application for judicial review dismissed, cross-appeal dismissed

August 13, 1998
Supreme Court of Canada

Application for leave to appeal filed

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

Vuntut Gwitchin First Nation

v. (26808)

Attorney General of Canada, representing the Minister of Indian and Northern Affairs and Northern Cross (Yukon) Ltd. (F.C.A.)(Yuk.)

NATURE OF THE CASE

Constitutional Law - Environmental Law - Environmental assessment measures to be applied to a Land Use Permit Application affecting the traditional territory of the Vuntut Gwitchin First Nation in the range of the Porcupine Caribou Herd - Whether discretion of Land Use Engineer responsible for environmental assessment was fettered - Whether documents should have been admitted as evidence - Whether Government of Canada breached the Vuntut Gwitchin First Nation Final Agreement.

PROCEDURAL HISTORY

October 29, 1997 Federal Court of Canada, Trial Division (Rouleau J.)	Application for judicial review dismissed
May 6, 1998 Federal Court of Appeal (Denault J.A.)	Motion to introduce fresh evidence dismissed
May 25, 1998 Federal Court of Appeal (Stone, Denault and Decary JJ.A.)	Appeal dismissed
August 18, 1998 Supreme Court of Canada	Application for leave to appeal filed

The Wellcome Foundation and Glaxo Wellcome Inc.

v. (26902)

Apotex Inc. and Novopharm Inc. (F.C.A.)(Ont.)

NATURE OF THE CASE

Administrative law - Injunction - Property law - Patents - Patented medicines - Interim stay pending disposition of appeal on merits of permanent injunction issued after a full trial on the merits in which a patent was found to be valid and infringed - Whether the line of cases beginning with *Laboratoire Pentagone* or *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 and *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 applies - Whether the Federal Court of Appeal erred in granting a stay by applying an incorrect legal standard, specifically, that set out in *RJR* and *Metropolitan Stores*.

PROCEDURAL HISTORY

March 25, 1998 Federal Court of Canada (Trial Division) (Wetson J.)	Canadian Patent No. 1,238,277 valid; permanent injunction against Respondents and Interpharm Inc.; Respondents and Interpharm Inc. to deliver up inventory of zidovudine; Respondents ordered to pay damages
March 27, 1998 Federal Court of Canada (Trial Division) (Wetson J.)	Motion for interim stay pending determination of Respondents' application to stay March 25, 1998 order pending appeal on merits dismissed on certain conditions

April 3, 1998
Federal Court of Canada (Trial Division)
(Wetson J.)

Motion for interim stay of March 25, 1998 order dismissed; application for stay pending appeal to be heard April 20, 1998; parties to expedite hearing of appeal on merits

April 24, 1998
Federal Court of Canada (Trial Division)
(Campbell J.)

Application for stay pending appeal on merits dismissed

July 24, 1998
Federal Court of Appeal
(Marceau, Linden and Robertson JJ.A.)

Appeal allowed; order of March 25, 1998 stayed pending disposition of appeal on merits; Applicants to return medicine seized from Respondents

September 29, 1998
Supreme Court of Canada

Application for leave to appeal filed

Sylvie Renaud

c. (26677)

La Commission des affaires sociales et la Société de l'assurance automobile du Québec (Qué.)

NATURE DE LA CAUSE

Droit administratif - Contrôle judiciaire - La Commission des affaires sociales a-t-elle commis des erreurs manifestes et déraisonnables en ignorant un élément de preuve essentiel et en ne tenant pas compte de deux autres décisions contradictoires rendues par des instances administratives différentes qui portaient également sur la question de savoir si la demanderesse cohabitait avec feu Michel Bouvier? - La décision de la Commission des affaires sociales portant sur la requête en révision devrait-elle être cassée en raison d'une apparence de partialité?

HISTORIQUE PROCÉDURAL

Le 16 février 1993
Commission des affaires sociales
(Gratton-Amyot et Ricard)

Appel à l'encontre de la décision du Bureau de révision de la SAAQ refusant de considérer la demanderesse comme conjointe rejeté

Le 14 février 1996
Commission des affaires sociales (Leblanc et Cohen)

Requête en révision de la décision du 16 février 1993 rejetée

Le 9 janvier 1997
Cour supérieure du Québec (Léger j.c.s.)

Requête en évocation rejetée

Le 6 avril 1998
Cour d'appel du Québec
(Mailhot, Deschamps et Chamberland [dissident]
jj.c.a.)

Pourvoi rejeté

Le 28 mai 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Fouzia Saeed Khan and Saeed Khan

v. (26839)

Farida Timakis (Ont.)

NATURE OF THE CASE

Commercial Law - Contracts - Duress - Procedural Law - Appeal - A party to a series of transactions complains to community and community intervenes to resolve those complaints - Whether complaints and intervention brought duress or undue influence on the Applicants and coerced them to enter into agreements against their wills - Whether one Applicant was the agent of the Respondent - Whether procedures before Court of Appeal denied rights of the Applicants.

PROCEDURAL HISTORY

May 7, 1997 Ontario Court (General Division) (Hockin J.)	Action dismissed, two related but separate actions granted in separate judgments
August 10, 1998 Court of Appeal for Ontario (Finlayson, Goudge and Feldman JJ.A.)	Appeals dismissed
October 7, 1998 Supreme Court of Canada	Application for leave to appeal filed

**CORAM: Cory, Major and Binnie JJ. /
Les juges Cory, Major et Binnie**

Her Majesty the Queen

v. (26614)

Elizabeth Robertson (Crim.)(Nfld.)

NATURE OF THE CASE

Criminal law - Procedure - Sentencing - Whether the Court of Appeal erred in holding that two previous convictions against the Respondent entered on the same day should be counted as one conviction for the purposes of imposing a severer sentence - Coke principle - *R. v. Skolnick*, [1982] 2 S.C.R. 47.

PROCEDURAL HISTORY

June 6, 1995 Provincial Court of Newfoundland (Baker P.C.J.)	Conviction: refusal to provide a breath sample; Sentence: sixty days imprisonment
April 6, 1998 Supreme Court of Newfoundland - Court of Appeal (Gushue C.J.N., O'Neill, Marshall JJ.A.)	Applicant's appeal dismissed
April 28, 1998 Supreme Court of Canada	Application for leave to appeal filed

Husmann Canada Inc.

v. (26759)

Alfred Leonetti and John Halsey (Ont.)

NATURE OF THE CASE

Labour law - Master/Servant - Wrongful dismissal - Employment contract - Members of bargaining unit accepting offer of promotion to supervisory positions on strength of employer's assurances that they could return to bargaining if new positions did not "work out" - Employer downsizing Canadian operation - Respondents terminated without opportunity to return to bargaining unit - Employer paying Respondents nine months' salary in lieu of notice - Whether Court of Appeal erred in finding that the promise made by the employer to Respondents was applicable for remaining working lives of Respondents instead of in accordance with principle that terms of employment contract may be terminated by either party on reasonable notice.

PROCEDURAL HISTORY

May 24, 1995 Ontario Court (General Division) (Kent J.)	Respondents' action in damages dismissed
May 8, 1998 Court of Appeal for Ontario (McMurtry C.J., Doherty and Laskin JJ.A.)	Appeal dismissed and Respondent's cross-appeal allowed
July 10, 1998 Supreme Court of Canada	Application for leave to appeal filed

J.B.B.

v. (26931)

Director of Child Welfare for the Province of Newfoundland

- and -

**J.A.B., an infant by his counsel,
Timothy J. Chalker, Q.C. (Nfld.)**

NATURE OF THE CASE

Family law - Children - Evidence - Whether lower courts erred in assessment of credibility of witnesses - Whether Court of Appeal erred in determining child was injured by ingestion of a caustic substance - Whether Supreme Court of Newfoundland permitted under the law to delegate to the Director of Child Welfare the decision to re-integrate J. to the Appellant - Was order of Barry J. "res judicata" - Whether lower courts erred in determining J.B. is a child in need of protection from the Appellant.

PROCEDURAL HISTORY

October 23, 1996 Supreme Court of Newfoundland (Barry J.)	Order that Respondent J.A.B. is a child in need of protection under subs.2(b)(iv) and (vi) of the <i>Child Welfare Act</i> ; temporary wardship order issued
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July 17, 1998
Court of Appeal of Newfoundland
(Cameron, Green, and Gushue JJ.A.)

Appeal dismissed

October 19, 1998
Supreme Court of Canada

Application for leave to appeal filed

Philip Muise

v. (26804)

Workers' Compensation Board of Nova Scotia (N.S.)

NATURE OF THE CASE

Statutes - Interpretation - Interpretation Act - Labour law - Workers' Compensation - *Workers' Compensation Act*, R.S.N.S. 1989, c. 508 - *Workers' Compensation Act*, S.N.S. 1994-95, c. 10 - Natural justice - Common law presumptions - Non-interference with vested rights - Retroactivity - Retrospectivity - Whether the Court of Appeal erred in its consideration and application of the common law presumptions against retroactivity and retrospectivity and the presumption of non-interference with vested rights - Whether the Court of Appeal erred in its consideration of background information and in the conclusions drawn therefrom, and whether the principles of natural justice have been breached - Whether the Court of Appeal erred in its conclusion regarding the Tribunal erring in a patently unreasonable manner.

PROCEDURAL HISTORY

August 25, 1997
Nova Scotia Workers' Compensation
Tribunal (Smillie, Appeal Commissioner)

Appeals

Applicant's appeal seeking payment of temporary total disability benefits allowed

May 12, 1998
Nova Scotia Court of Appeal
(Bateman, Chipman and Roscoe JJ.A.)

Respondent's appeal allowed; matter remitted to the Tribunal for a rehearing

August 10, 1998
Supreme Court of Canada

Application for leave to appeal filed

September 22, 1998
Supreme Court of Canada

Motion for an extension of time to file reply filed

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

DECEMBER 3, 1998 / LE 3 DÉCEMBRE 1998

26886 **M.S. - v. - HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

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

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

NATURE OF THE CASE

Criminal law - Whether motions judge erred in precluding the Applicant from returning anew to the court on *habeas corpus* with new grounds with fresh evidence - Whether Correctional Service and National Parole Board lost jurisdiction to continue to detain Applicant based on their failure to act within the 30-day time limitation prescribed by law and/or to notify the Applicant of the referral of his case to the National Parole Board - Whether courts below erred in disallowing the Applicant's constitutional attack on the validity of s. 135(1) of the *Corrections and Conditional Release Act* for overbreadth and vagueness as it relates to the detention criterion "for the protection of society".

PROCEDURAL HISTORY

January 16, 1998
Supreme Court of British Columbia
(Henderson J.)

Application for order quashing the suspension of the Applicant's statutory release dismissed; application re constitutional questions dismissed

June 1, 1998
British Columbia Court of Appeal
(Ryan, Huddart and Braidwood JJ.A.)

Appeal dismissed

September 23, 1998
Supreme Court of Canada

Application for leave to appeal filed

26772 **HER MAJESTY THE QUEEN - v. - ANTHONY JAMES GILLIES** (Crim.)(B.C.)

CORAM: The Chief Justice and McLachlin 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 - Sentencing - Whether the Court of Appeal erred in holding that the effective sentence for second degree murder is ten years, and that therefore the range for manslaughter must usually be below ten years - Whether the Court of Appeal erred in holding that the range of sentence for manslaughter is four to six years, and that a sentence of eight years or more could not be imposed in the absence of special circumstances - Whether the Court of Appeal erred by substituting its view of the facts for that of the trial judge - Whether the Court of Appeal erred by treating as a mitigating circumstance the fact the Respondent was part of a mob when he killed the deceased.

PROCEDURAL HISTORY

March 13, 1997 Supreme Court of British Columbia (Koenigsberg J.)	Conviction: manslaughter
June 23, 1997 Supreme Court of British Columbia (Koenigsberg J.)	Sentence: six years imprisonment
May 15, 1998 Court of Appeal for British Columbia (McEachern C.J.B.C., Rowles and Finch JJ.A.)	Sentence appeal allowed and term of imprisonment reduced to three years
August 4, 1998 Supreme Court of Canada	Application for leave to appeal filed

26778 **ESTHER NEUMAN - v. - HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM: The Chief Justice and McLachlin 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 - Constitutional law - Division of powers - Whether the *Animal Pedigree Act* is *intra vires* the Parliament of Canada - Whether the Canadian Kennel Club was a properly authorized association under the *Livestock Pedigree Act* and was therefore properly authorized under the *Animal Pedigree Act* through the latter's transitional provisions - Whether the precedent set by the Court of Appeal permits Parliament to legislate in respect of matters outside the jurisdiction conferred on it by the *Constitution Act, 1867* provided that such legislation is "tacked onto" validly enacted federal legislation rather than enacted in a separate piece of legislation.

PROCEDURAL HISTORY

March 27, 1996 Provincial Court of Alberta (Stevens-Guille J.)	Conviction: unlawfully and knowingly offering to sell or selling a dog in a manner that was likely to create an erroneous impression that the dog was registered or eligible to be registered (4 counts)
April 23, 1997 Court of Queen's Bench of Alberta (Clarke J.)	Summary conviction appeal dismissed
May 8, 1998 Court of Appeal of Alberta (McFadyen, Hunt and Binder JJ.A.)	Appeal dismissed
August 7, 1998 Supreme Court of Canada	Application for leave to appeal filed

26764 **N.V. REYKDAL & ASSOCIATES LTD. - v. - K. & FUNG CANADA LIMITED** (Alta.)

CORAM: The Chief Justice and McLachlin 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 - Lease and hire of work - Property law - Landlord tenant - Mechanics' liens - Tenant contracting with builder to perform leasehold improvements - Builder completing renovations - Tenant defaulting on lease and abandoning premises - Builder registering lien against property - Whether landlord is an "owner" within meaning of *Builders' Lien Act*, R.S.A. 1980, c. B-12 so that builder can claim under lien - Whether landlord made express or implied request for work to be done and materials to be furnished within meaning of s. 12(1) of the *Act*.

PROCEDURAL HISTORY

March 27, 1997 Court of Queen's Bench of Alberta (Master Laycock)	Order striking builders' liens filed by the Applicant from title to land owned by the Respondent
July 15, 1997 Court of Queen's Bench of Alberta (Prowse J.)	Order removing Applicant's liens filed against Respondent's land
May 12, 1998 Court of Appeal of Alberta (Bracco, Hunt and Berger JJ.A.)	Appeal dismissed
July 30, 1998 Supreme Court of Canada	Application for leave to appeal filed

26632 **ROY MORENCY c. LA COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL DU QUÉBEC** (Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Procédure - Procédure civile - Cour d'appel refusant au demandeur la permission d'en appeler de la décision de la Cour supérieure qui rejette sa demande d'autorisation d'intenter un recours en *mandamus* contre la Commission des affaires sociales et la Commission de la santé et de la sécurité du travail afin de forcer cette dernière à se prononcer sur l'aggravation de sa condition - Puisque le jugement qui impose au demandeur l'obligation d'obtenir une permission d'intenter un nouveau recours fait l'objet d'un appel, le demandeur devait-il demander la permission de présenter sa requête en *mandamus*? - Est-il exact que l'aggravation alléguée par le demandeur a déjà été reconnue ou évaluée par un tribunal administratif ou quasi-judiciaire?

HISTORIQUE PROCÉDURAL

Le 17 janvier 1996
Cour supérieure du Québec
(Richard j.c.s.)

Requête de l'intimée accueillie; ordonnance interdisant au greffe d'accepter des procédures du demandeur concernant les séquelles de son accident de travail à moins d'avoir reçu une autorisation préalable du juge en chef ou d'un juge désigné

Le 15 janvier 1998
Cour supérieure du Québec
(Dionne j.c.a.c.s.)

Demande d'autorisation du demandeur pour intenter un recours en *mandamus* contre l'intimée et la Commission des affaires sociales rejetée

Le 11 mars 1998
Cour d'appel du Québec (LeBel j.c.a.)

Requête en autorisation de pourvoi à l'encontre de la décision du juge Dionne rejetée

Le 11 mai 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

26598 **TERRASSE JEWELLERS INC., LARRY BAILY AND ROSS BROTHERS (1975) INC. v. HER MAJESTY THE QUEEN** (F.C.A.)(Que.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Administrative law - Illegal seizure of jewellery by the Respondent - Action for damages - Applicants entitled to a return of or compensation for 25% of the value of the goods still remaining in the custody of the Respondent - Subsequent directive by trial judge - Order declaring trial judge *functus officio* - Whether the Court of Appeal erred in law in its interpretation of the effect of the judgment of Rouleau J. of June 9, 1988, and his direction of December 8, 1989 - Whether the Court of Appeal wrongly applied the principle of *functus officio* to this case.

PROCEDURAL HISTORY

June 9, 1988
Federal Court of Canada, Trial Division
(Rouleau J.)

Action against Respondent for damages caused by negligent acts of the Respondent's servants or agents arising out of seizures of jewellery and other decorative items manufactured from precious metal granted

October 31, 1996
Federal Court of Canada, Trial Division
(Rouleau J.)

Motion for an Order declaring that the Respondent was indebted to the Applicants under the judgment of Rouleau J. postponed *sine die* for determination by another judge whether Rouleau was *functus officio*

Federal Court of Canada, Trial Division
(Nadon J.)

Order declaring that Rouleau J. is *functus officio* in this matter dismissed

February 20, 1998
Federal Court of Appeal
(Pratte, Létourneau and Marceau (dissenting) JJ.)

Appeal against order declaring Rouleau J. *functus officio*
dismissed

April 20, 1998
Supreme Court of Canada

Application for leave to appeal filed

26734 **J. ADORY LALIBERTÉ ET GEORGETTE OTIS LALIBERTÉ c. SA MAJESTÉ LA REINE**
(C.A.F.)(Qué.)

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

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 fiscal - Intérêts - Prêt - Cautionnement - Hypothèques - Déduction de frais d'intérêts encourus pour produire un revenu - La Cour fédérale d'appel a-t-elle erré en rejetant la demande de révision des demandeurs?

HISTORIQUE PROCÉDURAL

Le 19 février 1997
Cour canadienne de l'impôt (Tardif j.c.c.i.)

Appels d'avis de cotisation établis en vertu de la *Loi de l'impôt sur le revenu* rejetés

Le 1er mai 1998
Cour d'appel fédérale
(Denault, Décary et Létourneau jj.a.)

Demande de contrôle judiciaire rejetée

Le 12 juin 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

26743 **JOHN LORING PATRICK SINCLAIR v. THE LAW SOCIETY OF MANITOBA** (Man.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Administrative Law - Jurisdiction - Whether a provincial Law Society has jurisdiction to prohibit a bencher of the Law Society from appearing before the governing body or its committees as counsel on behalf of a member - Whether such a prohibition is incidental or necessary to the conduct of Law Society's activities - Lawyer cited by the Law Society on charges of professional misconduct wished to be represented before a disciplinary committee by a bencher - Rule 25(1) of the *Law Society Rules* enacted under *The Law Society Act*, R.S.M. 1987, c. L.100, prohibited bencher from representing lawyer.

PROCEDURAL HISTORY

November 24, 1997 Court of Queen's Bench of Manitoba (Wright J.)	Application for a declaration dismissed
June 26, 1998 Court of Appeal of Manitoba (Huband, Lyon and Kroft JJ.A.)	Appeal dismissed
July 13, 1998 Supreme Court of Canada	Application for leave to appeal filed

26900 **ROY MORENCY c. LA COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL
DU QUÉBEC** (Qué.)

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

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 - La Cour d'appel a-t-elle erré en refusant la requête du demandeur pour ordonnance de sauvegarde des droits au motif qu'elle constituait une tentative de remettre en cause des jugements passés en force de chose jugée?

HISTORIQUE PROCÉDURAL

Le 17 janvier 1996 Cour supérieure du Québec (Richard j.c.s.)	Requête de l'intimée accueillie; ordonnance interdisant au greffe d'accepter des procédures du demandeur concernant les séquelles de son accident de travail à moins d'avoir reçu une autorisation préalable du juge en chef ou d'un juge désigné
Le 15 juin 1998 Cour supérieure du Québec (Dionne j.c.a.c.s.)	Demande du demandeur visant à forcer la Commission à se prononcer sur une aggravation et à payer une indemnité rejetée
Le 6 juillet 1998 Cour d'appel du Québec (LeBel, Gendreau et Rousseau-Houle jj.c.a.)	Requête pour ordonnance de sauvegarder les droits rejetée
Le 28 septembre 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

26814 **WILLIAM JAMES BRADFORD CANNING v. HER MAJESTY THE QUEEN** (Man.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Whether Court of Appeal erred in dismissing appeal.

PROCEDURAL HISTORY

January 24, 1997
Court of Queen's Bench
(Steel J.)

Convictions: 16 counts of robbery and 10 of wearing disguises while committing robbery; Sentences: 20 years imprisonment with no eligibility for parole for 10 years on robbery charges; 10 years on disguise charges

June 17, 1998
Court of Appeal of Manitoba
(Huband, Philp and Monnin JJ.A.)

Appeal against convictions and sentences dismissed

August 27, 1998
Supreme Court of Canada

Application for leave to appeal filed

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

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

27.11.1998

**The Workers' Compensation Board of British
Columbia**

v. (25784)

Frances Elizabeth Kovach et al. (B.C.)

and

Dr. G.S. Singh

v. (25784)

Frances Elizabeth Kovach et al. (B.C.)

30.11.1998

Lance William Wust

v. (26732)

Her Majesty the Queen (B.C.)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

2.12.1998

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

Vincent Godoy

Christopher D. Hicks and Carol Cahill, for the appellant.

v. (26078)

Scott C. Hutchison and Erika Chozik, for the respondent.

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

Bernard Laprade and Carole Sheppard, for the intervener the A.G. of Canada.

THE CHIEF JUSTICE (orally):

[TRADUCTION] LE JUGE EN CHEF (oralement):

The appeal is dismissed. The decision of the Court of Appeal is upheld and the order of a new trial stands. Reasons to follow.

Le pourvoi est rejeté. La décision de la Cour d'appel est confirmée et l'ordonnance de nouveau procès est maintenue. Motifs à suivre.

2.12.1998

CORAM: L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Bastarache and Binnie JJ.

Royal Bank of Canada

Frank R. Foran, Q.C. and M.G. Massicotte, for the appellant.

v. (26081)

W. Got & Associates Electric Ltd. et al. (Alta.)

F. David Cook and John A. Weir, Q.C., for the respondents.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Nature de la cause:

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

Droit commercial — Séquestre — Opérations bancaires — Contrats — Dommages-intérêts — Responsabilité délictuelle — Intrusion — Cautionnement — Chose jugée — Contestation indirecte — Preuve par affidavit trompeuse — Une banque qui intente une action en recouvrement de dette contre une compagnie et qui obtient qu'un administrateur-séquestre soit nommé relativement aux affaires de la compagnie peut-elle ultérieurement être tenue de payer des dommages-intérêts à cette compagnie pour cause d'intrusion et de détournement? — La cour a-t-elle commis une erreur en ordonnant à la banque de payer des dommages-intérêts exemplaires? — La cour a-t-elle commis une erreur en concluant que la caution n'était pas responsable en vertu du cautionnement?

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning December 7, 1998.

ORDRE DU JOUR pour la semaine commençant le 7 décembre 1998.

<u>Date of Hearing/ Date d'audition</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
07/12/98	Motions - Requêtes
08/12/98	Cynthia Dobson v. Ryan Leigh Maclean Dobson, by his litigation guardian, Gerald M. Price (N.B.)(26152)
09/12/98	Edwin Pearson v. Her Majesty the Queen (Crim.)(Qué.)(24107)
10/12/98	Attorney General of Canada v. Canadianoxy Chemicals Ltd., et al. (Crim.)(B.C.)(25944)
10/12/98	Jamie Tanis Gladue v. Her Majesty the Queen (Crim.)(B.C.)(26300)
11/12/98	Lee Edward Campbell v. Her Majesty the Queen (Crim.)(B.C.)(26454)
11/12/98	Her Majesty the Queen v. Kevin White (Crim.)(Nfld.)(26510)

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.

26152 *Cynthia Dobson v. Ryan Leigh MacLean Dobson by his litigation guardian, Gerald M. Price*

Torts - Negligence - Whether the New Brunswick Court of Appeal erred in finding that the infant Respondent had the legal capacity to commence or continue an action in negligence against the Appellant, his mother, for injuries suffered due to the Appellant's negligence while the infant Respondent was *en ventre sa mere* - Whether the New Brunswick Court of Appeal erred in creating a rule of maternal tort liability for fetal injuries caused by the negligent use or operation of a motor vehicle or for other negligent conduct not peculiar to parenthood.

On March 14, 1993, the Appellant negligently operated her vehicle in such a manner that serious injuries were suffered by her unborn child. Later that day, the infant Respondent was born alive, and suffers permanent mental and physical impairment. The infant Respondent, by his litigation guardian, sued the Appellant in tort for the resulting damages to him.

At trial, the issues of liability and quantum of damages were severed. Miller J., on an application for determination prior to trial of a question of law, declared that the infant Respondent has the legal capacity to sue the Appellant for injuries suffered pre-natally as a result of the Appellant's negligence. The Court of Appeal dismissed the appeal.

Origin of the case:	New Brunswick
File No.:	26152
Judgment of the Court of Appeal:	May 28, 1997
Counsel:	Robert L. Barnes Q.C. for the Appellant James MacAuley for the Respondent

26152 *Cynthia Dobson c. Ryan Leigh MacLean Dobson par l'entremise de son tuteur à l'instance, Gerald M. Price*

Responsabilité délictuelle – Négligence – La Cour d'appel du Nouveau-Brunswick a-t-elle commis une erreur en concluant que le mineur intimé avait la capacité juridique d'intenter ou de poursuivre une action en négligence contre l'appelante, sa mère, pour les préjudices corporels subis en raison de la négligence de l'appelante lorsque le mineur intimé était dans le ventre de sa mère? – La Cour d'appel du Nouveau-Brunswick a-t-elle commis une erreur en créant une règle de responsabilité civile délictuelle maternelle pour les préjudices corporels au fœtus causés par l'utilisation ou la conduite négligente d'un véhicule automobile ou pour une autre conduite négligente qui n'est pas propre à la condition de parents?

Le 14 mars 1993, l'appelante a conduit de façon négligente son véhicule de telle sorte que son enfant à naître a subi des préjudices corporels graves. Plus tard au cours de la même journée, le mineur intimé est né vivant et il souffrait d'une déficience intellectuelle et d'un handicap physique permanents. Le mineur intimé, par l'entremise de son tuteur à l'instance, a intenté une action en responsabilité délictuelle contre l'appelante pour le préjudice qui en a découlé pour lui.

Au procès, les questions de responsabilité et d'évaluation des dommages-intérêts ont été séparées. Le juge Miller, dans le cadre d'une demande antérieure au procès pour qu'il soit statué sur un point de droit, a déclaré que le mineur intimé a la capacité juridique d'intenter une action contre l'appelante pour les préjudices subis avant sa naissance en raison de la négligence de l'appelante. La Cour d'appel a rejeté l'appel.

Origine :	Nouveau-Brunswick
N° du greffe :	26152
Jugement de la Cour d'appel :	Le 28 mai 1997
Avocats :	Robert L. Barnes, c.r., pour l'appelante James MacAuley pour l'intimé

24107 *Edwin Pearson v. Her Majesty The Queen*

Canadian Charter of Rights and Freedoms - Criminal law - Appeal - Jurisdiction - Statutes - Interpretation - Offences - Narcotics - Evidence - Duty to disclose - Whether the Court of Appeal erred in applying ss. 686(2) and 686(8) of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in ordering a new trial only on the ground of entrapment - Whether the Court of Appeal erred in allowing the Respondent's motion to produce the notes of the informant Bard and in not giving the Appellant an opportunity to cross-examine Bard - Whether the Crown's refusals to disclose relevant documents prevented the Appellant from making a full answer and defence and having a fair trial - Whether the Court of Appeal erred in holding that the trial judge's directives as regards the concept of aiding and abetting were adequate - Whether the Court of Appeal erred in stating that Bard was not a witness to facts upon which guilt or innocence depended - Whether the Court of Appeal erred in interpreting *R. v. Mack*, [1988] 2 S.C.R. 903 - Whether the Court of Appeal erred in confirming the guilty verdict on Count 4 - Whether the trial judge erred in his charge to the jury with respect to the definition of reasonable doubt.

On February 1, 1991, the Appellant was convicted of 4 counts of trafficking in narcotics contrary to s. 4 of the *Narcotic Control Act*, R.S.C. 1985, c. N-1 by Hannan J. of the Superior Court of Quebec and a jury. The Appellant moved for a stay of proceedings on the ground of entrapment. The Appellant, who did not testify at trial, testified at the entrapment hearing, but the Respondent did not call any evidence. On May 16, 1991, Hannan J. dismissed the Appellant's motion and confirmed the conviction.

The Appellant appealed his conviction to the Court of Appeal for Quebec. The Court granted a motion by the Respondent which permitted the production of non-disclosed personal notes of Bard for its consideration. On February 24, 1994, the Court of Appeal allowed the Appellant's appeal in part, concluding that the Respondent had committed a breach of its disclosure obligation. The Court of Appeal ordered that a new trial be held on the issue of whether the Appellant was entitled to a stay of proceedings on the ground of abuse of process by reason of entrapment. Writing the judgment for the Court, Fish J.A. concluded as follows: "*For all of these reasons, I would allow the appeal in part, affirm the verdicts of the jury, and order a new trial before a judge of the Superior Court, limited to one issue: whether Appellant is entitled to a stay of proceedings on the ground of abuse of process by reason of entrapment.*" Leave to appeal to this Court was originally dismissed on August 4, 1994 and on the first motion for reconsideration on March 2, 1995, but was granted on the second motion for reconsideration on October 24, 1996.

Origin of the case:	Quebec
File No.:	24107
Judgment of the Court of Appeal:	February 24, 1994
Counsel:	Gérald Danis for the Appellant Bernard Laprade for the Respondent

24107 Edwin Pearson c. Sa Majesté la Reine

Charte canadienne des droits et libertés – Droit criminel – Pourvoi – Compétence – Lois – Interprétation – Infractions – Stupéfiants – Preuve – Devoir de divulgation – La Cour d'appel a-t-elle commis une erreur en appliquant les par. 686(2) et 686(8) du *Code criminel*, L.R.C. (1985), ch. C-46? – La Cour d'appel a-t-elle commis une erreur en ordonnant la tenue d'un nouveau procès pour cause de provocation policière? – La Cour d'appel a-t-elle commis une erreur en accueillant la requête de l'intimée visant à produire les notes de l'informateur Bard et en ne permettant pas à l'appelant de contre-interroger Bard? – Les refus du ministère public de divulguer des documents pertinents ont-t-ils empêché l'appelant de présenter une défense pleine et entière et d'avoir un procès équitable? – La Cour d'appel a-t-elle commis une erreur en concluant que les directives du juge de première instance relativement au principe d'aide et d'encouragement étaient appropriées? – La Cour d'appel a-t-elle commis une erreur en affirmant que Bard n'était pas un témoin des faits desquels dépendait la culpabilité ou l'innocence? – La Cour d'appel a-t-elle commis une erreur dans son interprétation de l'arrêt *R. c. Mack*, [1988] 2 R.C.S. 903? – La Cour d'appel a-t-elle commis une erreur en confirmant le verdict de culpabilité relativement au quatrième chef d'accusation? – Le juge de première instance a-t-il commis une erreur dans son exposé au jury relativement à la définition du doute raisonnable?

Le 1^{er} février 1991, l'appelant a été déclaré coupable relativement à quatre chefs d'accusation de trafic de stupéfiant en contravention de l'art. 4 de la *Loi sur les stupéfiants*, L.R.C. (1985), ch. N-1, par le juge Hannan de la Cour supérieure du Québec et un jury. L'appelant a demandé par voie de requête un arrêt des procédures pour cause de provocation policière. L'appelant, qui n'a pas témoigné au procès, a témoigné à l'audition sur la provocation policière, mais l'intimée n'a pas présenté de preuve. Le 16 mai 1991, le juge Hannan a rejeté la requête de l'appelant et a confirmé la déclaration de culpabilité.

L'appelant a interjeté appel de sa déclaration de culpabilité à la Cour d'appel du Québec. Celle-ci a accueilli une requête présentée par l'intimée en vue de produire des notes personnelles non divulguées de Bard pour examen. Le 24 février 1994, la Cour d'appel a accueilli en partie l'appel de l'appelant et conclu que l'intimée avait enfreint son obligation de divulgation. La Cour d'appel a ordonné la tenue d'un nouveau procès sur la question du droit de l'appelant à un arrêt des procédures en raison d'un abus de procédure pour cause de provocation policière. Auteur des motifs du jugement de la Cour d'appel, le juge Fish a conclu de la façon suivante: [TRADUCTION] « *Pour tous ces motifs, je suis d'avis d'accueillir l'appel en partie, de confirmer les verdicts du jury et d'ordonner la tenue d'un nouveau procès devant un juge de la Cour supérieure, sur la seule question suivante: l'appelant a-t-il droit à un arrêt des procédures en raison d'un abus de procédure pour cause de provocation policière.* » L'autorisation d'interjeter appel devant la Cour a, à l'origine, été rejetée le 4 août 1994 et sur la première requête en réexamen, le 2 mars 1995, mais a été accordée sur la deuxième requête en réexamen le 24 octobre 1996.

Origine :	Québec
N° du greffe :	24107
Jugement de la Cour d'appel :	Le 24 février 1994
Avocats :	Gérald Danis pour l'appelant Bernard Laprade pour l'intimée

25944 *Attorney General of Canada v. Canadian Oxy Chemicals Ltd. et al*

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

The Respondents operate an industrial plant on tide water. On October 13, 1994, the Respondents deposited chlorine in the water, thereby allegedly committing an offence under the *Fisheries Act*, R.S.C. 1985, c. F-14. The Respondents informed Environment Canada of the spill on October 13, 1994. Immediately thereafter, officials attended at the Respondents' plant and seized samples of dead fish and a portion of a chart recording chlorine concentrations in the plant's effluent, as discharged in tidal waters, for the period between 1700 hours and 2330 hours on October 13. This seizure was done under the provisions of the *Fisheries Act*. On March 16, 1995, an information to obtain a search warrant was sworn pursuant to s. 487 of the *Criminal Code*. On April 26, 1995 a further information was sworn to seize documents that were returned following the first seizure.

The Respondent sought an order in the nature of certiorari to quash the two search warrants. The application was granted. The Appellant appealed to the Court of Appeal. The appeal was dismissed.

Origin of the case:	British Columbia
File No.:	25944
Judgment of the Court of Appeal:	March 26, 1997
Counsel:	S. David Frankel Q.C. for the Appellant Gary A. Letcher for the Respondents

25944 *Procureur général du Canada c. Canadian Oxy Chemicals Ltd. et autres*

Droit criminel - Perquisition - Mandat de perquisition - Législation - Interprétation - Infraction à la réglementation - Défenses - Diligence raisonnable - La Cour d'appel, à la majorité, a-t-elle commis une erreur en concluant que le mandat de perquisition délivré en vertu de l'alinéa 487(1)(b) du *Code criminel* ne permettait pas une perquisition en vue de recueillir les éléments de preuve nécessaires à l'établissement d'une éventuelle défense de diligence raisonnable à une infraction à la réglementation ?

Les intimés exploitent une installation industrielle sur des eaux de marée. Le 13 octobre 1994, les intimés y ont déversé du chlore, commettant de ce fait une infraction à la *Loi sur les pêches*, L.R.C. (1985), ch. F-14. Le même jour, les intimés ont avisé Environnement Canada de cet incident. Immédiatement après, des fonctionnaires se sont rendus aux installations des intimés et y ont saisi des échantillons de poisson mort de même qu'une partie d'un graphique des concentrations de chlore enregistrées dans les effluents des installations, entre 17h et 23 h 30, le 13 octobre. Cette saisie a été effectuée conformément aux dispositions de la *Loi sur les pêches*. Le 16 mars 1995, une dénonciation sous serment visant à obtenir un mandat de perquisition a été déposée conformément à l'art. 487 du *Code criminel*. Le 26 avril 1995, une deuxième dénonciation sous serment a été produite en vue de saisir des documents restitués à la suite de la première perquisition.

L'intimé a demandé une ordonnance de la nature d'un *certiorari* dans le but d'obtenir l'annulation des deux mandats de perquisition. La demande a été accordée. L'appelant a interjeté appel devant la Cour d'appel. L'appel a été rejeté.

Origine:	Colombie-Britannique
N° du greffe:	25944
Arrêt de la Cour d'appel:	Le 26 mars 1997
Avocats:	S. David Frankel, c.r., pour l'appelant Gary A. Letcher pour les intimés

26300 *Jamie Tanis Gladue v. Her Majesty The Queen*

Criminal law - Sentencing - Aboriginal persons - Statutes - Interpretation - Whether the Court of Appeal erred in its interpretation of s. 718.2(e) of the *Criminal Code* by concluding that in the circumstances of this case there was no reason to consider the aboriginal status of the Appellant as a factor in imposing sentence - What impact, if any, should the principle in ss. 718.2(d),(e) of the *Criminal Code* have on the other sentencing objectives and principles in Part XXIII of the *Code*?

One evening, after a party in which the Appellant, husband and other guests had been drinking heavily, the Appellant's husband left the party with the Appellant's sister. The Appellant, suspecting her husband of infidelity, became enraged and began to search for the Appellant in the townhouse complex in which they lived. When she eventually found him in her sister's house, an argument erupted, and the husband told the Appellant she was fat and ugly and "not as good as the others". The Appellant stabbed her husband in the arm with a small paring knife. He ran to get away from her and she chased him with a larger knife. When she caught up to him, she plunged the knife into his chest. She then jumped up and down and shouted, "I got you". She went back to her apartment and became hysterical. The husband died.

The Appellant pleaded guilty to manslaughter. The trial judge sentenced her to three years imprisonment. Her appeal to the Court of Appeal was dismissed.

Origin of the case:	British Columbia
File No.:	26300
Judgment of the Court of Appeal:	October 24, 1997
Counsel:	Gil D. McKinnon Q.C. for the Appellant Wendy L. Rubin for the Respondent

26300 *Jamie Tanis Gladue c. Sa Majesté la Reine*

Droit criminel - Détermination de la peine - Autochtones - Lois - Interprétation - La Cour d'appel a-t-elle mal interprété l'art. 718.2e) du *Code criminel* en concluant que, dans les circonstances de la présente affaire, il n'y avait aucune raison de tenir compte du statut d'autochtone de l'appelant dans la détermination de la peine? - Quelle incidence, s'il en est, a le principe contenu aux art. 718.2d) et e) sur les autres objectifs de la détermination de la peine et les principes contenus à la partie XXIII du *Code*?

Après une soirée au cours de laquelle l'appelante, son mari et d'autres invités avaient beaucoup bu, le mari de l'appelante a quitté les lieux avec la soeur de celle-ci. Soupçonnant son mari d'infidélité, l'appelante est entrée en colère et a commencé des recherches dans l'ensemble de maisons en rangée où ils vivaient. Lorsqu'elle l'a finalement trouvé dans la maison de sa soeur, une dispute a éclaté et le mari a dit à l'appelante qu'elle était grasse et laide et "pas aussi bonne que les autres". L'appelante a frappé son mari au bras avec un petit couteau à légumes. Il s'est éloigné d'elle en courant et elle l'a poursuivi avec un plus gros couteau. Quand elle l'a rattrapé, elle lui a enfoncé le couteau dans la poitrine. Alors, elle sautait et criait: "je t'ai eu". Elle est retournée à son appartement et est devenue hystérique. Le mari est mort.

L'appelante a plaidé coupable d'homicide involontaire coupable. Le juge du procès l'a condamnée à trois ans de prison. La Cour d'appel a rejeté son appel.

Origine:	Colombie-Britannique
N° du greffe:	26300
Arrêt de la Cour d'appel:	Le 24 octobre 1997
Avocats:	Gil D. McKinnon, c.r., pour l'appelante Wendy L. Rubin pour l'intimée

26454 *Lee Edward Campbell v. Her Majesty The Queen*

Criminal law - Charge to the jury - Drunkenness - Consciousness of guilt - *Mens rea* of aiding and abetting for murder and manslaughter - Whether the Court of Appeal erred in applying s. 686(1)(b)(iii) of the *Criminal Code* to the trial judge's misdirection on intoxication - Whether the Court of Appeal erred in concluding that the trial judge's instruction on "consciousness of guilt" was not in error and even if it was, it would only be of minimal significance - Whether the Court of Appeal erred in applying 686(1)(b)(iii) of the *Criminal Code* to the trial judge's misdirections and non directions concerning aiding and abetting and in particular the *mens rea* required in relation to murder and manslaughter.

Shortly before midnight on January 13, 1992, the Appellant had been travelling by car with the co-accused, John Mattice, and Sean Pretty who gave evidence for the Crown. They had spent the day drinking and were on their way from Kamloops to Kelowna. Mr. Palamar, the deceased, was inside his parked pickup truck at the Monte Creek Petro Canada station east of Kamloops on the Trans-Canada Highway. The deceased was attacked and died from massive head wounds which were consistent with being caused by an axe. He had also been robbed. The witness Pretty testified that the Appellant had approached the deceased's vehicle, followed afterwards by Mattice carrying an axe. Mr. and Mrs. Ross, who lived near the parking lot, called the police. Once the two returned to the car, they left the scene in a rapid fashion, but the police caught up to the vehicle and stopped it. Mattice and the Appellant fled in different directions, but were soon apprehended. The Appellant had fallen in a river and was arrested at that location.

Mattice and Campbell were jointly charged with second degree murder and with robbery. Both testified at trial and claimed that the other had committed the homicide. The trial judge on his own motion severed the robbery count at the commencement of his charge to the jury. The trial judge instructed the jury on drunkenness, consciousness of guilt and aiding and abetting. Both Mattice and the Appellant were convicted of second degree murder. The appeal of the co-accused Mattice was dismissed.

On appeal, the Crown conceded that the charge to the jury on intoxication was not in accord with recent authorities because the trial took place before this Court's decision in *R. v. Robinson* [1996] 1 S.C.R. 683. The majority of the Court of Appeal dismissed the appeal. Prowse J.A. dissenting would have allowed the appeal based on the following question of law:

"Whether the cumulative effect of the errors in the charge to the jury in relation to the effect of drunkenness on intent, consciousness of guilt, and the *mens rea* of aiding and abetting for murder and manslaughter was such that it was inappropriate to dismiss the appeal upon the application of s. 686(1)(b)(iii) of the *Criminal Code*."

Origin of the case:	British Columbia
File No.:	26454
Judgment of the Court of Appeal:	January 12, 1998
Counsel:	Sheldon Goldberg for the Appellant John M. Gordon for the Respondent

26454 *Lee Edward Campbell c. Sa Majesté la Reine*

Droit criminel - Exposé au jury - Ivresse - Conscience coupable - *Mens rea* de la complicité de meurtre et d'homicide involontaire coupable - La Cour d'appel a-t-elle commis une erreur en appliquant l'art. 686(1)b)(iii) du *Code criminel* à la directive erronée du juge du procès sur l'intoxication? - La Cour d'appel a-t-elle commis une erreur en concluant que la directive du juge du procès sur la « conscience coupable » n'était pas erronée et que, même si elle l'était, l'erreur n'aurait que peu d'importance? - La Cour d'appel a-t-elle commis une erreur en appliquant l'art. 686(1)b)(iii) du *Code criminel* aux directives erronées ou aux absences de directives du juge du procès sur la complicité, et en particulier sur la *mens rea* requise relativement au meurtre et à l'homicide involontaire coupable?

Peu avant minuit le 13 janvier 1992, l'appelant avait voyagé en auto avec le coaccusé John Mattice et Sean Pretty qui a témoigné pour le ministère public. Ils avaient passé la journée à boire et ils allaient de Kamloops à Kelowna. M. Palamar, la victime, était à l'intérieur de sa camionnette stationnée à la station-service Petro Canada de Monte Creek, à l'est de Kamloops, sur la route transcanadienne. La victime a été attaquée et est morte des suites de blessures importantes à la tête pouvant avoir été causées par une hache. Il a également été volé. Le témoin Pretty a dit que l'appelant s'était approché du véhicule de la victime, plus tard suivi par Mattice qui avait une hache. M. et Mme Ross, qui demeuraient près du terrain de stationnement, ont appelé la police. Une fois les deux hommes revenus à l'auto, ils ont quitté les lieux rapidement, mais la police a rattrapé le véhicule et l'ont fait arrêter. Mattice et l'appelant ont pris la fuite dans des directions différentes, mais ont été rapidement appréhendés. L'appelant était tombé dans une rivière et a été arrêté à cet endroit.

Mattice et Campbell ont été accusés conjointement de meurtre au deuxième degré et de vol qualifié. Tous deux ont témoigné au procès et prétendu que l'autre avait commis l'homicide. De sa propre initiative, le juge du procès a séparé les accusations de vol qualifié au commencement de son exposé au jury. Il a donné au jury des directives sur l'ivresse, la conscience coupable et la complicité. Mattice et l'appelant ont été reconnus coupables de meurtre au deuxième degré. L'appel du coaccusé Mattice a été rejeté.

En appel, le ministère public a reconnu que l'exposé au jury sur l'intoxication n'était pas conforme à la jurisprudence récente parce que le procès a eu lieu avant l'arrêt de notre Cour *R. c. Robinson*, [1996] 1 R.C.s. 683. La Cour d'appel a rejeté l'appel à la majorité. Le juge Prowse, dissident, se fondant sur la question de droit suivante, aurait accueilli l'appel :

« L'effet cumulatif des erreurs contenues dans l'exposé au jury relativement à l'effet de l'ivresse sur l'intention, la conscience coupable et la *mens rea* de la complicité de meurtre et d'homicide coupable, était-il tel qu'il ne convenait pas de rejeter l'appel par application du sous-al. 686(1)b)(iii) du *Code criminel*? »

Origine:	Colombie-Britannique
N° du greffe:	26454
Arrêt de la Cour d'appel:	Le 12 janvier 1998
Avocats:	Sheldon Goldberg pour l'appelant John M. Gordon pour l'intimée

26510 *Her Majesty The Queen v. Kevin White*

Criminal law - Canadian Charter of Rights and Freedoms - Trial - Delay - Whether the Court of Appeal erred in failing to properly analyse the criteria that must be considered in determining if there has been a violation of section 11(b) of the *Charter* - Whether the Court of Appeal erred in finding that there was a violation of section 11(b) of the *Charter*.

The Respondent was charged with eight sex-related offences on November 1, 1993. The offences were alleged to have been committed against young males in Davis Inlet. The Respondent appeared in Provincial Court in Davis Inlet on December 1, 1993, elected trial by judge and jury and agreed to the setting of April 13, 1994 as the date for the preliminary inquiry.

In December 1993, controversy arose between the native leadership in Davis Inlet and the Provincial Court concerning justice issues. As a result, the Provincial Court, its officials and the police were expelled from the community. The first full circuit following resolution of the controversy was on July 11, 1995. The Respondent's preliminary inquiry had to be postponed and the Respondent was served with a summons to appear on April 16, 1996 for the purpose of setting a date for the preliminary hearing. The preliminary inquiry was set for the next available date of July 24, 1996. That date would have been 996 days from the date the charges were laid.

On July 12, 1996, the Respondent made an application to the Trial Division of the Supreme Court for a stay of proceedings alleging a breach of s. 11(b) of the *Charter*. The applications judge granted the stay application and concluded that the Respondent was not responsible for any of the delays that had occurred. On appeal, the majority of the Court of Appeal affirmed the decision of O'Regan J. that the Respondent's rights under s. 11(b) had been violated and that the remedy was a stay of proceedings on all charges under s. 24(1) and dismissed the appeal. Mahoney J.A. in dissent found no violation of the *Charter* and would have allowed the appeal and set aside the stay order.

Origin of the case:	Newfoundland
File No.:	26510
Judgment of the Court of Appeal:	February 10, 1998
Counsel:	Colin J. Flynn Q.C. for the Appellant Thomas J. Burke for the Respondent

26510 *Sa Majesté la Reine c. Kevin White*

Droit criminel - Charte canadienne des droits et libertés - Procès - Retard - La Cour d'appel a-t-elle commis une erreur en n'analysant pas correctement les critères dont il faut tenir compte pour décider s'il y a eu atteinte à l'al. 11b) de la *Charte*? - La Cour d'appel a-t-elle commis une erreur en concluant qu'il y avait eu atteinte à l'al. 11b) de la *Charte*?

Le 1^{er} novembre 1993, l'intimé a été accusé d'avoir commis huit infractions à caractère sexuel. Les victimes étaient de jeunes hommes de Davis Inlet. L'intimé a comparu devant la Cour provinciale à Davis Inlet le 1^{er} décembre 1993, a choisi de subir un procès devant jury et a accepté que la date de l'enquête préliminaire soit fixée au 13 avril 1994.

En décembre 1993, une controverse a éclaté entre les dirigeants autochtones de Davis Inlet et la Cour provinciale concernant des questions relatives à la justice. En conséquence, la Cour provinciale, ses fonctionnaires et les policiers ont été expulsés de la collectivité. La première séance complète une fois que la controverse a été réglée a eu lieu le 11 juillet 1995. L'enquête préliminaire de l'intimé a dû être reportée et l'intimé a reçu signification d'une citation à comparaître le 16 avril 1996 en vue de la fixation d'une date pour l'enquête préliminaire. La prochaine date disponible était le 24 juillet 1996, soit 996 jours après la date du dépôt des accusations.

Le 12 juillet 1996, l'intimé a demandé à la Section de première instance de la Cour suprême un arrêt des procédures au motif qu'il y avait atteinte à l'al. 11b) de la *Charte*. Le juge des requêtes a fait droit à la demande d'arrêt des procédures et a conclu que l'intimé n'était pas responsable des retards qui s'étaient produits. En appel, la Cour d'appel à la majorité a confirmé la décision du juge O'Regan que les droits qui sont garantis à l'intimé par l'al. 11b) avaient été violés et que la réparation était un arrêt des procédures à l'égard de toutes les accusations en vertu du par. 24(1), et a rejeté l'appel. Le juge Mahoney, dissident, a conclu qu'il n'y avait pas eu d'atteinte à la *Charte*, et aurait accueilli l'appel et annulé l'ordonnance d'arrêt des procédures.

Origine :	Terre-Neuve
N° du greffe :	26510
Arrêt de la Cour d'appel :	Le 10 février 1998
Avocats :	Colin J. Flynn, c.r., pour l'appelante Thomas J. Burke pour l'intimé

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**INDEX CUMULATIF - REQUÊTES
EN AUTORISATION DE POURVOI**

This index includes applications for leave to appeal standing for judgment at the beginning of 1998 and all the applications for leave to appeal filed or heard in 1998 up to now.

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The applications for an extension of time are granted. The applications for oral hearings are dismissed. An order will go staying the following orders pending the determination of the appeals in *Royal Bank of Canada v. Director of Investigation and Research* (Ont.) (26316); *Canadian Pacific Limited, et al v. Director of Investigation and Research* (Ont.) (26317).

a) The order granted on February 20, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95F, B55/95G and B55/95H;

b) The order granted on May 21, 1996 by Farley J. in Ontario Court (General Division) Commercial List File No. B55/95F; and

c) The order granted on March 19, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95B, B55/95F and B55/95M.

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The applications for an extension of time are granted. The applications for oral hearings are dismissed. An order will go staying the following

orders pending the determination of the appeals in *Royal Bank of Canada v. Director of Investigation and Research* (Ont.) (26316); *Canadian Pacific Limited, et al v. Director of Investigation and Research* (Ont.) (26317).

a) The order granted on February 20, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95F, B55/95G and B55/95H;

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<i>R. v. White (Joann Kimberley)</i> (Crim.)(B.C.), 26473, *03 17.9.98	1124(98)	1285(98)
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<i>R. in right of the Province of Newfoundland v. Atlantic Leasing Ltd.</i> (Nfld.), 26846, *05 20.10.98	1350(98)	1578(98)
<i>R. in right of the Province of Ontario v. Mason</i> (Ont.), 26797, *B	1872(98)	
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<i>Rockwood v. Minister of National Revenue</i> (Nfld.), 26777, *02 29.10.98	1391(98)	1615(98)
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<i>Roussel c. La Reine</i> (Crim.)(Qué.), 26551, *01 8.10.98	1142(98)	1460(98)
<i>Roy c. La Reine</i> (Crim.)(Qué.), 26452, *01 26.3.98	414(98)	531(98)
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The applications for an extension of time are granted. The applications for oral hearings are dismissed. An order will go staying the following orders pending the determination of the appeals in *Royal Bank of Canada v. Director of Investigation and Research* (Ont.) (26316); *Canadian Pacific Limited, et al v. Director of Investigation and Research* (Ont.) (26317).

a) The order granted on February 20, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95F, B55/95G and B55/95H;

b) The order granted on May 21, 1996 by Farley J. in Ontario Court (General Division) Commercial List File No. B55/95F; and

c) The order granted on March 19, 1997 by Farley J. in Ontario Court
(General Division) Commercial List File Nos. B55/95B, B55/95F and B55/95M.

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<i>Zink c. Graybec Immobilier Inc.</i> (Qué.), 26314, *03 19.3.98	383(98)	470(98)
<i>Zündel v. Minister of Citizenship and Immigration</i> (F.C.A.)(B.C.), 26417, *02 30.4.98 653(98)	707(98)	

This index includes appeals standing for judgment at the beginning of 1998 and all appeals heard in 1998 up to now.

Cet index comprend les pourvois en délibéré au début de 1998 et tous ceux entendus en 1998 jusqu'à maintenant.

*01 dismissed/rejeté

*02 dismissed with costs/rejeté avec dépens

*03 allowed/accueilli

*04 allowed with costs/accueilli avec dépens

*05 discontinuance/désistement

CASE/AFFAIRE	Hearing/ Audition Page	Judgment/ Jugement
<i>Abdallah v. The Queen</i> (Crim.)(Ont.), 26028, *01 29.5.98	963(98)	963(98)
<i>Abouchard v. Conseil scolaire de langue française d'Ottawa-Carleton — Section Publique</i> (Ont.), 25899	1788(98)	
<i>Adrien v. Zittreer, Biblin and Associates Inc.</i> (Ont.), 24711, *03 22.1.98	1859(97)	97(98)
<i>Apotex Inc. v. Eli Lilly and Co.</i> (F.C.A.)(Ont.), 25348, *04 9.7.98	94(98)	1094(98)
<i>Apotex Inc. v. Merck Frosst Canada Inc.</i> (F.C.A.)(Ont.), 25419, *04 9.7.98	94(98)	1093(98)
<i>Arp v. The Queen</i> (Crim.)(B.C.), 26100	1028(98)	
<i>Attorney General for Ontario v. M.</i> (Ont.), 25838	489(98)	
<i>Attorney General of Canada v. Schreiber</i> (F.C.A.)(Alta.), 26039, *04 Gonthier and Iacobucci JJ. dissenting 28.5.98 / les juges Gonthier et Iacobucci sont dissidents 28.5.98	540(98)	882(98)
<i>BC Gas Utility Ltd. v. Westcoast Energy Inc.</i> (F.C.A.)(B.C.), 25259, *02 McLachlin J. dissenting 19.3.98 / le juge McLachlin est dissidente 19.3.98	2037(97)	492(98)
<i>Baker v. Minister of Citizenship and Immigration</i> (F.C.A.)(Ont.), 25823	1742(98)	
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<i>Bekoe v. The Queen</i> (Crim.)(Ont.), 25615, *01 30.1.98	196(98)	196(98)
<i>Bernier c. La Reine</i> (Crim.)(Qué.), 26219, *01 26.5.98	880(98)	880(98)
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<i>Bracklow v. Bracklow</i> (B.C.), 26178	1744(98)	
<i>Campbell v. The Queen</i> (Crim.)(Ont.), 25780	881(98)	
<i>Canadian Egg Marketing Agency v. Pineview Poultry Products Ltd.</i> (N.W.T.), 25192, *04 McLachlin and Major JJ. dissenting 5.11.98 / les juges McLachlin et Major sont dissidents 5.11.98	490(98)	1674(98)
<i>Canadian Human Rights Commission v. Canadian Liberty Net</i> (F.C.A.)(Crim.)(Ont.), 25228, the appeal of the decision of the Federal Court of Appeal on jurisdiction is allowed with costs, McLachlin and Major JJ. dissenting; the second appeal is dismissed with costs 9.4.98 / le pourvoi formé à l'encontre de la décision rendue par la Cour d'appel fédérale relativement à la compétence est accueilli avec dépens, les juges McLachlin et Major sont dissidents; le deuxième pourvoi est rejeté avec dépens 9.4.98	2196(97)	611(98)
<i>Canderel Ltd. v. The Queen</i> (F.C.A.)(Ont.), 24663, *04 12.2.98	2161(97)	233(98)
<i>Caslake v. The Queen</i> (Crim.)(Man.), 25023, *01 22.1.98	2036(97)	97(98)
<i>Charemski v. The Queen</i> (Crim.)(Ont.), 26033, *01 26.2.98	356(98)	405(98)
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<i>Children's Foundation v. Bazley</i> (B.C.), 26013	1542(98)	
<i>Chippewas of Kettle v. Attorney General of Canada</i> (Ont.), 25795, *02 19.5.98	839(98)	839(98)
<i>Commission d'appel en matière de lésions professionnelles c. J.M. Asbestos Inc.</i> 25617, *04 23.2.98	354(98)	354(98)
<i>Consolidated Maybrun Mines Ltd. v. The Queen</i> (Ont.), 25326, *01 30.4.98	174(98)	718(98)
<i>Consortium Developments (Clearwater) Ltd. v. Corporation of the City of Sarnia</i> (Ont.), 25604, *02 hearing and judgment 16.3.98; reasons delivered 22.10.98 / audition et jugement 16.3.98; motifs déposés 22.10.98	488(98)	1582(98)
<i>Continental Bank Leasing Corporation v. The Queen</i> (F.C.A.)(Ont.), 25532, *04 L'Heureux-Dubé and Bastarache JJ. dissenting 3.9.98 / les juges L'Heureux-Dubé et Bastarache sont dissidents 3.9.98	171(98)	1309(98)
<i>Cook v. The Queen</i> (Crim.)(B.C.), 25852, *04 3.9.98, the appeal is allowed, the judgments of the British Columbia Court of Appeal and of the British Columbia Supreme Court is set aside, and a new trial is ordered, L'Heureux-Dubé and McLachlin JJ. dissenting 1.10.98 / le pourvoi est accueilli, les jugements de la Cour d'appel de la Colombie-Britannique et de la Cour suprême de la Colombie-Britannique sont annulés et un nouveau procès est ordonné, les juges L'Heureux-Dubé et McLachlin sont dissidentes 1.10.98	1027(98)	1406(98)
<i>Côté v. The Queen</i> (Crim.)(Ont.), 25854, *01 9.7.98	544(98)	1093(98)
<i>D.D.W. v. The Queen</i> (Crim.)(B.C.), 25970, *01 15.10.98	1579(98)	1579(98)
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<i>Delisle c. Attorney General of Canada</i> (Qué.), 25926	1544(98)	
<i>Des Champs v. Conseil des écoles séparées catholiques de langue française de Prescott-Russell</i> (Ont.), 25898	1788(98)	
<i>Dixon v. The Queen</i> (Crim.)(N.S.), 25834, *01 19.2.98	2194(97)	297(98)
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<i>Éditions Vice-Versa Inc. c. Aubry</i> (Qué.), 25579, *02 le juge en chef Lamer et le juge Major sont dissidents 9.4.98 / Lamer C.J. and Major J. dissenting 9.4.98	2195(97)	610(98)
<i>Eurig v. Registrar of the Ontario Court (General Division)</i> (Ont.), 25866, *04 Gonthier and Bastarache JJ. dissenting 22.10.98 / les juges Gonthier et Bastarache sont dissidents 22.10.98	715(98)	1581(98)
<i>FBI Foods Ltd. v. Cadbury Schweppes Inc.</i> (B.C.), 25778	716(98)	
<i>Fontaine v. Insurance Corporation of British Columbia</i> (B.C.), 25381, *02 hearing and judgment 14.11.97; reasons delivered 19.3.98 / audition et jugement 14.11.97; motifs déposés 19.3.98	2063(97)	493(98)
<i>Garland v. Consumers' Gas Co.</i> (Ont.), 25644, *04 Bastarache J. dissenting 30.10.98 / le juge Bastarache est dissident 30.10.98	541(98)	1629(98)
<i>Gauthier c. Corporation municipale de la ville de Lac Brôme</i> (Qué.), 25022, *04 le Juge en chef et le juge McLachlin sont dissidents 9.7.98 / the Chief Justice and McLachlin J. are dissenting 9.7.98	2162(97)	1093(98)
<i>Gellvear v. The Queen</i> (Crim.)(Alta.), 25973, *01 23.6.98	1057(98)	1057(98)
<i>Godoy v. The Queen</i> (Crim.)(Ont.), 26078, *01 2.12.98	1889(98)	1889(98)
<i>Grail v. Ordon</i> (Ont.), 25702	1055(98)	
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<i>Lauda v. The Queen</i> (Crim.)(Ont.), 26444, *01 16.10.98	1580(98)	1580(98)
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<i>Lepage v. The Queen</i> (Crim.)(Ont.), 26320	1026(98)	
<i>Lucas v. The Queen</i> (Crim.)(Sask.), 25177, *01 McLachlin and Major JJ. dissenting 2.4.98 / les juges McLachlin et Major sont dissidents 2.4.98	1859(97)	609(98)
<i>M.J.B. Entreprises Ltd. V. Defence Construction (1951) Ltd.</i> (Alta.), 25975	1744(98)	
<i>M.R.M. v. The Queen</i> (Crim.)(N.S.), 26042	1057(98)	
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<i>Malott v. The Queen</i> (Crim.)(Ont.), 25613, *01 12.2.98	1857(97)	233(98)
<i>Maracle v. The Queen</i> (Crim.)(Ont.), 26034, *01 23.1.98	170(98)	170(98)
<i>Marshall v. The Queen</i> (N.S.), 26014	1743(98)	
<i>McQuaid v. The Queen</i> (Crim.)(N.S.), 25833, *01 19.2.98	2194(97)	297(98)
<i>Ménard v. The Queen</i> (Crim.)(Ont.), 25707, *01 9.7.98	543(98)	1093(98)
<i>Minister of finance for the Province of New Brunswick v. Union of New Brunswick Indians</i> (N.B.), 25427, *03 Gonthier and Binnie JJ. dissenting 18.6.98 / les juges Gonthier et Binnie sont dissidents 18.6.98	543(98)	1029(98)
<i>Minister of Health and Community Services v. M.L.</i> (N.B.), 26321, *03 23.6.98	1056(98)	1056(98)
<i>Mullins-Johnson v. The Queen</i> (Crim.)(Ont.), 25860, *01 26.5.98	962(98)	962(98)
<i>Neuman v. The Queen</i> (F.C.A.)(Man.), 25565, *04 21.5.98	173(98)	841(98)
<i>Nijjar v. The Queen</i> (Crim.)(B.C.), 25987, *01 27.2.98	406(98)	406(98)
<i>Novopharm Ltd. v. Eli Lilly and Co.</i> (F.C.A.)(Ont.), 25402, *04 9.7.98	94(98)	1094(98)
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<i>Perry v. Hall</i> (Ont.), 25702	1055(98)	
<i>Pushpanathan v. Minister of Citizenship and Immigration</i> (F.C.A.)(Ont.), 25173, *03 Cory and Major JJ. are dissenting 4.6.98 / les juges Cory and Major sont dissidents 4.6.98	1855(97)	964(98)
<i>R. v. Al Klippert Ltd.</i> (Alta.), 25670, the appeal is allowed and the judgment of the Court of Appeal is set aside. The conviction entered by Chromka J. of the Court of Queen's Bench and the sentence imposed by the Provincial Court (Criminal Division) are affirmed, the whole with cost / le pourvoi est accueilli et le jugement de la Cour d'appel est infirmé. La déclaration de culpabilité prononcée par le juge Chromka de la Cour du Banc de la Reine de même que la sentence prononcée par la Cour provinciale (Division criminelle) sont confirmés, le tout avec dépens	174(98)	718(98)
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<i>R. v. Poirier</i> (Crim.)(P.E.I.), 25886, *01 22.1.98	95(98)	95(98)

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<i>R. West and Associates v. Telecom Leasing Canada (TLC) Ltd.</i> (B.C.), 25193, *04 12.2.98	1759(97)	233(98)
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<i>Reference concerning certain questions relating to the secession of Quebec from Canada</i> (Ont.), 25506	295(98)	1195(98)
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<i>Reitsma v. The Queen</i> (Crim.)(B.C.), 26305, *03 20.5.98	839(98)	839(98)
<i>Retail, Wholesale and Department Store Union, Local 454 v. Battlefords and District Co-Operative Ltd.</i> (Sask.), 25366, *04 4.6.98	172(98)	964(98)
<i>Retail, Wholesale and Department Store Union, Local 454 v. Canada Safeway Ltd.</i> (Sask.), 25356, *02 L'Heureux-Dubé J. dissenting 4.6.98 / le juge L'Heureux-Dubé est dissidente 4.6.98	172(98)	964(98)
<i>Robart v. The Queen</i> (Crim.)(N.S.), 25832, *01 19.2.98	2194(97)	297(98)
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<i>Shalaan v. The Queen</i> (Crim.)(N.S.), 26029, *01 28.1.98	173(98)	173(98)
<i>Skinner v. The Queen</i> (Crim.)(N.S.), 25831, the appeal from the conviction for the assault of Darren Watts is allowed 19.2.98 / le pourvoi contre la déclaration de culpabilité relative aux voies de fait contre Darren Watts est accueilli 19.2.98	2194(97)	297(98)
<i>Smith v. The Queen</i> (Crim.)(N.S.), 25822, the appeal from conviction for the assault of Darren Watts is dismissed; the appeal from conviction for the assault on Rob Gillis is allowed 19.2.98 / le pourvoi contre la déclaration de culpabilité relative aux voies de fait contre Darren Watts est rejeté; le pourvoi contre la déclaration de culpabilité relative aux voies de fait contre Bob Gillis est accueilli 19.2.98	2194(97)	297(98)
<i>Stone v. The Queen</i> (Crim.)(B.C.), 25969	1091(98)	
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<i>Toronto College Park Ltd. v. The Queen</i> (Ont.), 25559, *04 12.2.98	2161(97)	234(98)
<i>Vancouver Society of Immigrant & Visible Minority Women v. Minister of Revenue</i> (F.C.A.)(B.C.), 25359	354(98)	
<i>Vriend v. The Queen in right of Alberta</i> (Alta.), 25285, the appeal is allowed, the cross-appeal is dismissed, and the judgment of the Alberta Court of Appeal is set aside with party-and-party cost throughout, Major J. dissenting in part on the appeal 2.4.98 / le pourvoi principal est accueilli, le pourvoi incident est rejeté et le jugement de la Cour d'appel de l'Alberta est annulé avec		

dépens sur la base de frais entre parties devant toutes les cours, le juge		
Major est dissident en partie quant au pourvoi principal 2.4.98	1992(97)	609(98)
<i>White v. The Queen</i> (Crim.)(Ont.), 25775, *01 9.7.98	544(98)	1093(98)
<i>Williams v. The Queen</i> (Crim.)(B.C.), 25375, *03 4.6.98	355(98)	965(98)
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DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

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

Motion day : **December 7, 1998**
Service : November 16, 1998
Filing : November 23, 1998
Respondent : November 30, 1998

DEVANT LA COUR:

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

Audience du : **7 décembre 1998**
Signification : 16 novembre 1998
Dépôt : 23 novembre 1998
Intimé : 30 novembre 1998

DEADLINES: APPEALS

DÉLAIS: APPELS

The Winter Session of the Supreme Court of Canada will commence January 18, 1999.

La session d'hiver de la Cour suprême du Canada commencera le 18 janvier 1999.

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

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

Appellant's record; appellant's factum; and appellant's book(s) of authorities must be filed within four months of the filing of the notice of appeal.

Le dossier de l'appellant, son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les quatre mois de l'avis d'appel.

Respondent's record (if any); respondent's factum; and respondent's book(s) of authorities must be filed within eight weeks of the date of service of the appellant's factum.

Le dossier de l'intimé (le cas échéant), son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les huit semaines suivant la signification de ceux de l'appellant.

Intervener's factum and intervener's book(s) of authorities, if any, must be filed within four weeks of the date of service of the respondent's factum, unless otherwise ordered.

Le mémoire de l'intervenant et son recueil de jurisprudence et de doctrine, le cas échéant, doivent être déposés dans les quatre semaines suivant la signification de ceux de l'intimé.

Parties' condensed book, if required, must be filed on or before the day of hearing of the appeal.

Le recueil condensé des parties, le cas échéant, doivent être déposés au plus tard le jour de l'audition de l'appel.

Please consult the Notice to the Profession of October 1997 for further information.

Veillez consulter l'avis aux avocats du mois d'octobre 1997 pour plus de renseignements.

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

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

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

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24	25	26	27	28	29	30
31						

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

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

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

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

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

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:



18 sitting weeks / semaines séances de la cour

81 sitting days / journées séances de la cour

9 motion and conference days / journées requêtes, conférences

4 holidays during sitting days / jours fériés durant les sessions