CONTENTS **TABLE DES MATIÈRES**

APPLICATIONS FOR LEAVE TO APPEAL FILED

Clayton Norman Johnson
Joel E. Pink, Q.C.
Pink Murray

v. (24133)

Her Majesty The Queen (N.S.)
Kenneth W.F. Fiske, Q.C.
Public Prosecution Services

FILING DATE 16.6.1994

Joseph Arthur Goguen
Joseph Arthur Goguen

v. (24198)

Her Majesty The Queen (N.B.)
Ronald LeBlanc
Crown Prosecutor

FILING DATE 20.6.1994

Agnes Maud Ethel McRae et al.
G. Brian Longpré
Coglon, Wisinsky, Dadson & Longpré

v. (24201)

Dennis Fraser McRae et al. (B.C.)
Michael R. Giroday
Giroday & Co.

FILING DATE 15.6.1994

Mary Isabel Morrissey
Zia H. Chishti

v. (24202)

Gerald Morrissey (P.E.I.)
Barbara Stevenson
Carr, Stevenson & MacKay

FILING DATE 16.6.1994

DEMANDES D'AUTORISATION D'APPEL DÉPOSÉES

Victor Hugo Silva
Roe & Olson

v. (24203)

Her Majesty The Queen (Sask.)
Daryl L. Rayner
Agent of the A.G.

FILING DATE 17.6.1994

L.G.B.
Park Sullivan
Wenngatz & Bourassa

v. (24204)

Her Majesty The Queen (Alta.)
Earl Wilson, Q.C.
Dept. of Justice

FILING DATE 15.6.1994

Her Majesty The Queen
David Lepofsky
Min. of the A.G.

v. (24205)

Clifford Galbraith (Ont.)
Ronald A. Krueger

FILING DATE 17.6.1994

Anthony Scott Beals et al.
Stanley W. MacDonald
Garson, Knox & MacDonald

v. (24206)

Her Majesty The Queen (N.S.)
Kenneth W.F. Fiske, Q.C.
Public Prosecution Services

FILING DATE 17.6.1994

Her Majesty The Queen
Gregg Lawlor
Manitoba Justice

v. (24207)

Thomas Albert Prince (Man.)
J.A. McAmmond
Walsh, Micay & Co.

FILING DATE 23.6.1994

Pinecliff Homes Inc.

Martin Teplitsky, Q.C.
Teplitsky, Colson

v. (24209)

Fiore Disera (Ont.)
Thomas S. Kent
Dingwall, McLauchlin

FILING DATE 23.6.1994

Sa Majesté La Reine
Pierre Lapointe
Subs. Procureur général

c. (24210)

Jean Polo (Qué.)
Céline Lamontagne
Boulé, Lamontagne

DATE DE PRODUCTION 20.6.1994

Her Majesty The Queen
David Butt
Min. of the A.G.

v. (24142)

Dorothy Sloan (Ont.)
Irwin Koziebrocki

FILING DATE 21.6.1994

Gregory O'Connor
Gregory O'Connor

v. (24208)

Louis Mostyn, Q.C. (Ont.)
Janet E. Gross
John Cannings

FILING DATE 27.6.1994

Pierre Villeneuve et al.
Pierre Villeneuve

v. (24212)

Continental Insurance Co. (P.E.I.)
Sean J. Casey
Stewart McKelvey Stirling Scales

FILING DATE 29.6.1994

Norma Janzen
Donald J. Jordan, Q.C.
Blake, Cassels & Graydon

v. (24213)

Attorney General for British Columbia et al. (B.C.)
John Baigent
Baigent & Jackson

FILING DATE 21.6.1994

The Canadian Association of Fire Bomber Pilots et al.
MaPherson, Leslie & Tyerman

v. (24214)

Government of Saskatchewan et al. (Sask.)
Rath John Hart

FILING DATE 21.6.1994

Morris Manning
David M. Brown
Stikeman, Elliot

v. (24216)

S. Casey Hill et al. (Ont.)
Kent Thomson
Tory, Tory, DesLauriers & Binnington

FILING DATE 29.6.1994

Reynard Vacheal Burwash
Thomas M. Engel
Molstad Gilbert

v. (24217)

Her Majesty The Queen (Alta.)
Bart D. Rosborough
A.G. of Alberta

FILING DATE 30.6.1994

Her Majesty The Queen
Susan L. Reid
Min. of the A.G.

v. (24218)

William Stewart (Ont.)
Alan D. Gold
Gold & Fuerst

FILING DATE 27.6.1994

Gilles Charlebois
Todd A. McKendrick

v. (24219)

Amalgamated Transit Union Local 279 et al. (F.C.A.)
David J. Jewitt
Raven, Jewitt & Allen

FILING DATE 27.6.1994

Luis Enrique Monsalve
Louis D. Silver, Q.C.

v. (24220)

The United States of America et al. (Ont.)
Robert W. Hubbard
Min. of Justice

FILING DATE 28.6.1994

Century Holdings Ltd. et al.
J. Kenneth McEwan
Farris, Vaughan, Wills & Murphy

v. (24221)

The Corporation of Delta et al. (B.C.)
Michael C. Woodward
Thompson & McConnell

FILING DATE 27.6.1994

Siraz Pabani
Marc Rosenberg
Greenspan, Rosenberg and Buhr

v. (24222)

Her Majesty The Queen (Ont.)
A.G. of Ontario

FILING DATE 30.6.1994

Compagnie d'assurance Canadienne générale
Paul Picard
Desmarais Picard Garceau Pasquin

v. (24225)

Auberge Roland St-Pierre Inc. et al. (Qué.)
Gaétane Jacques
Oligny & Jacques

DATE DE PRODUCTION 30.6.1994

Leonard Lyle Reynolds

v. (24226)

The Canadian Human Rights Commission (F.C.A.)
Fiona Keith
Min. of Justice

FILING DATE 28.6.1994

Her Majesty The Queen
William F. Ehrcke
Min. of A.G.

v. (24227)

Michael Thomas Shropshire (B.C.)
Anthony H. Zipp
Zipp & Company

FILING DATE 4.7.1994

Mushtaq Ahmed
Normand Terroux

c. (24228)

Le Ministre de l'emploi et de l'immigration (C.A.F.)(Qué.)
Michel Lecours
Min. de la Justice

DATE DE PRODUCTION 4.7.1994

Irvin Andrew Luke
Clayton C. Ruby
John Norris
Ruby & Edwardh

v. (24229)

Her Majesty The Queen (Ont.)
David Butt
Min. of the A.G.

FILING DATE 7.7.1994

Powrmatic du Canada Ltée
Martin J. Sklar
Sklar & Pitts

v. (24230)

Angele Boivin (Que.)
Brent D. Tyler

FILING DATE 7.7.1994

Betty MacNeill
Andrew J. Raven

Raven, Jewitt & Allen

v. (24231)

Attorney General of Canada (F.C.A.)
Brian Saunders
Dept. of Justice

FILING DATE 8.7.1994

John Alexander Sarson
Timothy E. Breen
Rosen, Fleming

v. (24233)

Her Majesty The Queen (Ont.)
A.G. of Ontario

FILING DATE 14.7.1994

David Priestley
Timothy E. Breen
Rosen, Fleming

v. (24232)

Her Majesty The Queen (Ont.)
A.G. of Ontario

FILING DATE: 14.7.1994

Gordon Capital Corporation
Thomas G. Heintzman, Q.C.
McCarthy Tétrault

v. (24199)

The Guarantee Company of North America (Ont.)
K. H. Scott, Q.C.
Borden & Elliot

FILING DATE: 14.7.1994

Attorney General of Ontario
Scott C. Hutchison
Min. of the A.G.

v. (24195)

Gary Comeau (Ont.)
Felicity I. Hawthorn
O'Hara, Bastos

FILING DATE: 30.6.1994

Canadian Forest Products Ltd.
William M. Everett, Q.C.
Craig A. B. Ferris
Lawson Lundell Lawson & McIntosh

v. (24235)

Bovar Inc. et al. (B.C.)
Douglas G. S. Rae
Holly Brinton
Russell & DuMoulin

FILING DATE: 18.7.1994

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

Ronald Paul Bartlett and Richard Willis Hill

v. (24170)

The Attorney General of Canada (Crim.)(N.S.)

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Pre-trial procedure - Right against self-incrimination - Does s. 545 of the *Criminal Code* give a preliminary inquiry justice authority to adjourn the hearing or to grant other remedies to a witness on finding that the excuse offered for the refusal to be examined is a reasonable one? - Is a preliminary inquiry justice able to grant remedies as a court of competent jurisdiction within the meaning of s. 24 of the *Canadian Charter of Rights and Freedoms*? - Is the explanation that a person's legal rights will be determined in litigation presently before the Supreme Court of Canada reasonable and sufficient to excuse him from performing otherwise legal obligations at least until those rights are so determined?

PROCEDURAL HISTORY

June 24, 1993 Provincial Court of Nova Scotia (Campbell J.)	Order: preliminary hearing adjourned pending decision of Supreme Court of Canada
December 6, 1993 Supreme Court of Nova Scotia (Edwards J.)	Crown's mandamus application dismissed
March 30, 1994 Nova Scotia Court of Appeal (Jones, Matthews and Chipman JJ.A.)	Appeal allowed: judgment below set aside
May 27, 1994 Supreme Court of Canada	Application for leave to appeal filed

---

Philip Keith Fire, Cathy Fran Fire and Samuel Fire

v. (24148)

Georges-Andre Longtin and Gloria G. Longtin (Ont.)

NATURE OF THE CASE

Property law - Real property - Land titles - Conveyancing - Title searching - "Forty year" rule - Effect of the amendment in 1981 to the *Registry Act*, R.S.O. 1980, c. 445, ss. 69(1) (the *Registry Amendment Act*, S.O. 1981, c. 17, s. 4) which states that one need only establish a good root of title within prior forty years.

PROCEDURAL HISTORY

March 31, 1992 Ontario Court (General Division) (MacLeod J.)	Declarations, *inter alia*, that Respondents have no legal or equitable rights to disputed lands
March 21, 1994 Court of Appeal for Ontario (Dubin C.J.O and McKinlay and Carthy JJ.A.)	Appeal allowed
May 17, 1994 Supreme Court of Canada	Application for leave to appeal filed

Canadian Commercial Bank

v. (24188)

Crawford, Smith & Swallow (Ont.)

NATURE OF THE CASE

Torts - Interpretation - Duty of care owed by auditors of companies to lenders who may rely on their work in making loans to those companies.

PROCEDURAL HISTORY

April 1, 1993 Ontario Court of Justice (General Division) (Rosenberg J.)	Action in damages for negligent misrepresentation dismissed
March 29, 1994 Court of Appeal for Ontario (Arbour, Weiler and Abella JJ.A.)	Appeal dismissed
May 27, 1994 Supreme Court of Canada	Application for leave to appeal filed

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

Chief Roy Whitney, Jr., Bradford Littlelight, Tom Runner, Bruce Starlight, Alex Crowchild, Peter Manywoods, Jr., Gilbert Crowchild, Sidney Starlight and Gordon Crowchild on behalf of the Sarcee Band of Indians and the said Sarcee Band of Indians also known as the Tsuu T'ina Nation

v. (24179)

Nathanson, Schachter & Thompson (B.C.)

NATURE OF THE CASE

Procedural law - Barristers and solicitors - Evidence - Taxation of solicitor's accounts - Registrar of the Supreme Court of British Columbia reviewing Respondent's accounts of legal fees to the Applicants and reducing the total amount - Whether the Court of Appeal erred in finding that the Respondent was entitled to charge or collect a bonus in its legal fees - Whether the Court of Appeal erred in failing to apply the law as set out in the decision *Campney Murphy v. Arctic Installations (Victoria) Ltd.*, [1994] B.C.J. No. 13 (B.C.C.A.) - Whether the Court of Appeal erred in failing to find that the evidence of the Applicant Nation should be preferred over that of the solicitor where there was no retainer agreement.

PROCEDURAL HISTORY

May 10, 1993 Supreme Court of British Columbia (Edwards J.)	Appeal from Registrar's decision dismissed and total amount of accounts of legal fees awarded
March 28, 1994 Court of Appeal for British Columbia (Cumming, Finch and Donald JJ.A.)	Appeal dismissed
May 25, 1994 Supreme Court of Canada	Application for leave to appeal filed

The University of Alberta
Non-Academic Staff Association

v. (24190)

Board of Governors of the
University of Alberta (Alta.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

May 26, 1992 Adjudication Board (Moreau, Chair, and Neuman and Pilling (dissenting), Members)	Adjudication award: Grievance dismissed
October 28, 1992 Court of Queen's Bench of Alberta (Agrios J., in chambers)	Applicant's motion to set aside the decision of the Adjudication Board dismissed
April 7, 1994 Court of Appeal of Alberta (McClung, Kerans and McFadyen JJ.A.)	Appeal dismissed
June 2, 1994 Supreme Court of Canada	Application for leave to appeal filed

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

Gérald Bougie

v. (24192)

Her Majesty The Queen (Crim.)(Qué.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

April 8, 1992 Superior Court of Quebec (Paul S.C.J.)	Conviction: Second degree murder
April 11, 1994 Court of Appeal of Quebec (Nichols, Rothman and Tourigny, JJ.A.)	Appeal dismissed
June 3, 1994 Supreme Court of Canada	Application for leave to appeal filed

André Mercier

c. (24187)

La Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

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

HISTORIQUE PROCÉDURAL

Le 12 mars 1991 Cour supérieure du Québec (Jourdain J.C.S.)	Culpabilité: Meurtre au premier degré Peine: prison à perpétuité sans possibilité de libération conditionnelle avant 25 ans
Le 23 mars 1994 Cour d'appel du Québec (Gendreau, Mailhot et Otis, JJ.C.A.)	Appel rejeté
Le 1er juin 1994 Cour suprême du Canada	Demande d'autorisation d'appel et de prorogation de délai déposée

Roxanne Perry

v. (24126)

City of Vancouver (B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Constitutional law - City of Vancouver bylaw requiring that any enclosed space containing a film viewer be configured in such a way that it no longer remains an enclosure and is opened to public view - Right to privacy - Right to be secure from unreasonable search and seizure - Void for vagueness doctrine - Whether bylaw 4450 of the City of Vancouver infringes upon sections 7 and 8 of the *Charter* by breaching an individual's right to privacy and to be secure from unreasonable search and seizure -Whether bylaw is contrary to section 7 of the *Charter* because it is unconstitutionally vague in that it so lacks in precision as not to give sufficient guidance for legal debate.

PROCEDURAL HISTORY

August 20, 1990
Supreme Court of British Columbia
(Maczko J. chambers judge)

Declaration: That the city bylaw 4450 is unconstitutional

February 15, 1994 Court of Appeal for British Columbia (Lambert, Cumming and Gibbs JJ.A.)	Appeal allowed
May 5, 1994 Supreme Court of Canada	Application for leave to appeal and for an extension of time filed

JULY 4, 1994 / LE 4 JUILLET 1994

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

Kenneth Douglas Hanna

v. (24174)

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

NATURE OF THE CASE

Criminal law - Defence - Evidence - Whether the Applicant's right to a fair trial prejudiced by the admission into evidence of a portion of the evidence in chief given by a child witness at the first trial; when the evidence was elicited in the first trial without mandatory inquiry of the child witness as required by s. 16 of the *Canada Evidence Act* or without a warning as to the frailties of his evidence? - Whether the Court of Appeal erred in holding that although the trial judge should have instructed the jury to disregard the police hearsay statements to the Applicant, that that error was curable under s. 686 (1)(b)(iii) - Whether the trial judge erred in failing to instruct the jury that they were not entitled to draw any inference from the fact that the Applicant chose to exercise his right to remain silent, to understand the charge and to consult with legal counsel - Whether the Court of Appeal erred in minimizing the effect of the disagreement of the expert witnesses and the failure of the trial judge to warn the jury about their approach to the expert evidence - Whether the Court of Appeal erred in holding that although the right of the defence to question a juror suspected of partiality is an important question of practice to consider, refusal does not preclude the right to full answer and defence or a fair trial? -Whether the Court of Appeal erred in failing to consider the cumulative effect of all the errors at trial and whether they were satisfied that had the errors not occurred, would a reasonable jury, properly instructed according to law necessarily have reached the same result and convicted of murder?

PROCEDURAL HISTORY

March 27, 1991 Supreme Court of British Columbia (McKinnon J.)	Conviction: second degree murder
April 29, 1994 Court of Appeal for British Columbia (Wood, Gibbs and Goldie JJ.A.)	Appeal dismissed
May 27, 1994 Supreme Court of Canada	Application for leave to appeal filed

Her Majesty the Queen

v. (24182)

A.B. (Crim.)(Nfld.)

NATURE OF THE CASE

Criminal law - Procedural law - Evidence - Crown - Whether the Court of Appeal erred in holding that it had the authority and jurisdiction to both order a new trial and enter a stay of proceedings - Whether the Court of Appeal erred in entering a stay of proceedings after concluding that an acquittal was not an appropriate remedy - Whether the Court of Appeal erred in entering a stay of proceedings on the basis that a new trial would be "pointless" - Whether the Court of Appeal erred in not giving counsel for the Applicant an opportunity to make submissions on the remedy - Whether the Court of Appeal

erred in entering a stay of proceedings prior to the Applicant deciding whether or not it would seek to have a second trial - Whether the Court of Appeal erred in usurping the responsibility and role of the Applicant to determine if it wished to seek to hold a second trial - Whether the Court of Appeal in ignoring the trial judge's statement in his reasons for judgment that he would not consider the contested evidence in determining the guilt or innocence of the Respondent - Whether the Court of Appeal erred in failing to apply the provisions of s. 686(1)(*a*)(i) of the *Criminal Code*, R.S.C. 1985, c. C-46.

PROCEDURAL HISTORY

April 25, 1991 Supreme Court of Newfoundland, Trial Division (O'Regan J.)	Conviction: sexual intercourse with a female under 14 years; illicit sexual intercourse with stepdaughter; 2 counts of indecent assault
May 4, 1994 Court of Appeal for Newfoundland (Gushue, O'Neill and Steele JJ.A.)	Appeal from conviction allowed: Conviction quashed, new trial ordered and stay of proceedings entered
May 27, 1994 Supreme Court of Canada	Application for leave to appeal filed

Arthur Andersen, Inc. in its capacity as Lien Trustee and Municipal Financial Corporation

v. (24111)

Toronto-Dominion Bank

- and -

Stolp Building (Bridlethorn) Corporation, Stolp Building (Pickering) Corporation, Gordon Ridge Investors Inc., Springfield Homes Inc., Gouldbourn Homes Inc., Doverbridge Investors Inc., St. Andrew's Summit Building Corp., Barningham Investments Ltd., Coolmine Construction Ltd. Stolp Homes (Toronto) Inc., Stolp Building Corporation, Stolp Building (Bridlepath) Corporation Doverbridge Investors Inc., Earnbridge Investors Inc., Penta Gold Enterprises Inc., Penta Syndicates Inc., Diamond View Developments Inc., Stolp Homes (Ottawa) Inc., Tysoneville Construction Ltd., Coolmine Construction Ltd., 133007 Canada Inc., Grand Oakes-Stolp Homes Inc., Liverpool Finch Contractors Limited, Penta Ranch Holdings Limited, Sable Green Construction Ltd., Woodhampton Developers Inc., Liverpool Finch Developers Inc., Stolp Homes (Aurora) Inc., Earnbridge Investors (Ajax) Inc., Pickfair Construction Ltd., Fabean Construction Inc., Bainhart Construction Ltd., Harmony Hills Developers Inc., Stolp Building (Whitby) Corporation, Lodgepine Developments Inc., Penta Stolp Corporation, Stolp Homes (Brampton) Inc., Stolp Homes (Richmond Hill) Inc., Gibson Park Developments Inc., Observation Hill Developments Inc., Vogue Developments (Phase II) Inc., Vogue Developments (Phase III) Inc., Vogue Developments (Phase V) Inc., Stolp Homes (Rossland) Inc., Stolp Homes (Scarborough) Inc., 748896 Ontario Limited, Trigirl Management Limited, Vogue Developments Inc., North Betty Ann Developments Inc., Stolp Homes (Cedarbrook) Inc., Penta Universiad Developments Inc., Stolp Homes (Rossland) Inc., Stolp Homes (Whitby) Inc., Stolp Homes (Aurora) Developers Inc., Stolp Homes (Morningside) Inc., Vestinit Holdings Inc., Tellaw Developers Limited, Somtri Enterprises Inc., Gryle Developers Limited, Stolp Homes (Barrie) Developers Inc., Stolp Homes (Newcastle) Developers Inc., Pri Reform Inc., Stolp Homes (Barrie) Inc., Stolp Homes (Veterans Drive) Inc., Penta Stolp Commercial Inc., Penta Realty Inc., Penta-Platinum Holdings Inc., Tara Hill Developers Inc., Gibson Park Developments Inc., Penta Sheppard Developments Inc., Gibson Park Partnership, PRL Crosby Inc., PRI Daycare Inc., Hendrick Stolp P. Christopher Mullin (Ont.)

NATURE OF THE CASE

Commercial law - Trusts and trustees - Banks/banking operations - Contracts - Damages - Fiduciary duty - Breach of contract - Breach of trust - What is the test for the imposition of liability on a stranger to a trust who has improperly received trust funds and whether the test should be different if the stranger is a bank - Whether a court should impose liability on a bank for "knowingly assisting" in a breach of trust or "knowingly receiving" trust funds if it has promoted a banking arrangement that improperly commingles in one account the funds of different trusts and different trustees - Whether a bank has any duty of inquiry in respect of a breach of construction trust obligations until the bank is aware, or should be aware, that trust beneficiaries would likely suffer damage as a result of that breach - Whether a bank is

responsible for participating in breaches of construction trust obligations before the bank is aware, or should be aware, that trust beneficiaries would likely suffer damages as a result of such breaches.

PROCEDURAL HISTORY

July 16, 1992 Ontario Court of Justice (O'Brien J.)	Action allowed: Respondent Bank ordered to pay $10,500,000 to trustee
March 7, 1994 Court of Appeal for Ontario (Grange, McKinlay and Abella (dissenting) JJ.A.)	Appeal allowed: trial judgment set aside, reference ordered to determine amount owing to the Applicant Arthur Andersen Inc.
May 3, 1994 Supreme Court of Canada	Application for leave to appeal filed

BETWEEN:

Stolp Homes (Barrie) Inc., Stolp Homes (Barrie) Developers Inc., Stolp Homes (Veterans Drive) Inc., Penta Stolp Corporation

v. (24111)

Toronto-Dominion Bank

- and -

Municipal Financial Corporation

AND BETWEEN

Vogue Developments (Phase II) Inc.

v.

Toronto-Dominion Bank

- and -

Municipal Financial Corporation

- and -

Stolp Homes (Barrie) Inc., Stolp Homes (Barrie) Developers Inc., Stolp Homes (Veterans Drive) Inc., Penta Stolp Corporation

- and -

Stolp Building (Bridlethorn) Corporation, Stolp Building (Pickering) Corporation, Gordon Ridge Investors Inc., Springfield Homes Inc., Gouldbourn Homes Inc., Doverbridge Investors Inc., St. Andrew's Summit Building Corp., Barningham Investments Ltd., Coolmine Construction Ltd. Stolp Homes (Toronto) Inc., Stolp Building Corporation, Stolp Building (Bridlepath) Corporation, Doverbridge Investors Inc., Earnbridge Investors Inc., Penta Gold Enterprises Inc., Penta Syndicates Inc., Diamond View Developments Inc., Stolp Homes (Ottawa) Inc., Tysoneville Construction Ltd., Coolmine Construction Ltd., 133007 Canada Inc., Grand Oakes-Stolp Homes Inc., Liverpool Finch Contractors Limited, Penta Ranch Holdings Limited, Sable Green Construction Ltd., Woodhampton Developers Inc., Liverpool Finch Developers Inc., Stolp Homes (Aurora) Inc., Earnbridge Investors (Ajax) Inc., Pickfair Construction Ltd., Fabean Construction Inc., Bainhart Construction Ltd., Harmony Hills Developers Inc., Stolp Building (Whitby) Corporation, Lodgepine Developments Inc., Penta Stolp Corporation, Stolp Homes (Brampton) Inc., Stolp Homes (Richmond Hill) Inc., Gibson Park Developments Inc., Observation Hill Developments Inc., Vogue Developments (Phase III) Inc., Vogue Developments (Phase V) Inc., Stolp Homes (Rossland) Inc., Stolp Homes (Scarborough) Inc., 748896 Ontario Limited, Tri-Girl Management Limited, Vogue Developments Inc., North Betty Ann Developments Inc., Stolp Homes (Cedarbrook) Inc., Penta Universiad Developments Inc., Stolp Homes (Rossland) Inc., Stolp Homes (Whitby) Inc., Stolp Homes (Aurora) Developers Inc., Stolp Homes (Morningside) Inc., Vestinit Holdings Inc., Tellaw Developers Limited, Somtri Enterprises Inc., Gryle Developers Limited, Stolp Homes (Newcastle) Developers Inc., Pri Reform Inc., Stolp Homes (Rossland) Builders Inc., Penta Stolp Commercial Inc., Penta Realty Inc., Penta-Platinum Holdings Inc., Tara Hill Developers Inc., Gisbon Park Developments Inc., Penta Sheppard Developments Inc., Gibson Park Partnership, PRI Crosby Inc., PRI Daycare Inc., Hendrick Stolp P. Christopher Mullin, John Overzet

AND BETWEEN

Arthur Anderson Inc., in its capacity as Lien Trustee

- and -

The Toronto-Dominion Bank

- and -

Municipal Financial Corporation, Stolp Building (Bridlethorn) Corporation, Stolp Building (Pickering) Corporation, Gordon Ridge Investors Inc., Springfield Homes Inc., Gouldbourn Homes Inc., Doverbridge Investors Inc., St. Andrew's Summit Building Corp., Barningham Investments Ltd., Coolmine Construction Ltd., Stolp Homes (Toronto) Inc., Stolp Building Corporation, Stolp Building (Bridlepath) Corporation, Doverbridge Investors Inc., Earnbridge Investors Inc., Penta Gold Enterprises Inc., Penta Syndicates Inc., Diamond View Developments Inc., Stolp Homes (Ottawa) Inc., Tysonville Construction Ltd., Coolmine Construction Ltd., 133007 Canada Inc., Grand Oaks-Stolp Homes Inc., Liverpool Finch Contractors Limited, Penta Rach Holdings Limited, Sable Green Construction Ltd., Woodhampton Developers Inc., Liverpool Finch Developers Inc., Stolp Homes (Aurora) Inc., Earnbridge Investors (Ajax) Inc., Pickfair Construction Ltd., Fabean Construction Inc., Bainhart Construction Ltd., Harmony Hills Developers Inc., Stolp Building (Whitby) Corporation, Lodgepine Developments Inc., Stolp Homes (Brampton) Inc., Stolp Homes (Richmond Hill) Inc., Gibson Park Developments Inc., Observation Hill Developments Inc., Vogue Developments (Phase II) Inc., Vogue Developments (Phase III) Inc., Vogue Developments (Phase V) Inc., Stolp Homes (Rossland) Inc., Stolp Homes (Scarborough) Inc., 748896 Ontario Limited, Tri-Girl Management Limited, Vogue Developments Inc., North Betty Ann Developments Inc., Stolp Homes (Cedarbrooke) Inc., Penta Universiad Developments Inc., Stolp Homes (Rossland) Inc., Stolp Homes (Whitby) Inc., Stolp Homes (Aurora) Developers Inc., Stolp Homes (Morningside) Inc., Vestinit Holdings Inc., Tellaw Developers Limited, Somtri Enterprises Inc., Gryle Developers Limited, Stolp Homes (Barrie) Developers Inc., Stolp Homes (Newcastle) Developers Inc., PRI Reform Inc., Stolp Homes (Rossland) Builders Inc., Stolp Homes (Barrie) Inc., Stolp Homes (Veteran's Drive) Inc., Penta Stolp Commercial Inc., Penta Realty Inc., Penta-Platinum Holdings Inc., Tara Hill Developers Inc., Gibson Park Developments Inc., Penta Sheppard Developments Inc., Gibson Park Partnership, Pri Crosby Inc., Pri Daycare Inc., Hendrik Stolp, P. Christopher Mullin, John Overzet (Ontario)(24111) (Ont.)

NATURE OF THE CASE

Commercial law - Administrative law - Banks/banking operations - Trusts and trustees - Accounts - Mirror accounting systems - Construction liens - Trust funds - Contracts - Interpretations - Ambiguity - *Contra proferentum rule* - Appeals - Standards of review - Condominiums - Bank and group of construction companies agreeing to accounts being administered using mirror accounting system - Circumstances putting Bank on inquiry whether breach of trust - Whether the concentrator agreement authorized the Bank to transfer funds from the designated accounts of participants on a daily basis or not - Whether extrinsic evidence is admissible - Whether the Bank transfers or otherwise seized funds present in the designated accounts, and if so, whether the Bank had knowledge of the trust nature of such funds pursuant to provisions of the *Construction Lien Act*, R.S.O. 1990, c. C.30 and *Condominium Act*, R.S.O. 1990, c. C.26.

PROCEDURAL HISTORY

July 16, 1992 Ontario Court of Justice (O'Brien J.)	Action allowed: Respondent Bank ordered to pay $10,500,000 to trustee
March 7, 1994 Court of Appeal for Ontario (Grange, McKinlay and Abella (dissenting) JJ.A.)	Appeal allowed: Trial judgment set aside, reference ordered to determine amount owing to Arthur Andersen Inc.
May 4, 1994 Supreme Court of Canada	Application for leave to appeal filed
May 30, 1994 Supreme Court of Canada (Gonthier J.)	Motion to strike affidavit material granted
June 8, 1994 Supreme Court of Canada	Revised application for leave to appeal filed

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

**Faye Conrad and Adam Conrad, infant children,
by Lorraine Elizabeth Conrad, their guardian ad litem,
and Lorraine Elizabeth Conrad**

v. (24191)

**The Municipality of the County of Halifax
Province of Nova Scotia (N.S.)**

NATURE OF THE CASE

Civil rights - Social welfare - Spousal relationship - Benefits - Entitlement and bars to social assistance - Whether spouses are cohabiting - Applicant's entitlement to social assistance being terminated - What are the elements of proof required to show that a single-parent is cohabiting so as to render them ineligible for social assistance? - What are the circumstances

in which a party will be held to have sufficiently raised an allegation of fraud or illegality so that it may be considered by a trial Court.

PROCEDURAL HISTORY

August 11, 1993 Nova Scotia Supreme Court (Gruchy J.)	Applicant's action for damages dismissed
April 5, 1994 Nova Scotia Court of Appeal (Clarke C.J.N.S., Chipman and Pugsley JJ.A.)	Appeal dismissed
June 6, 1994 Supreme Court of Canada	Application for leave to appeal filed

Workers' Compensation Board

Applicant (Respondent by cross-appeal)

v. (24193)

Marion I.E. Melanson (N.B.)

Respondent (Applicant by cross-appeal)

NATURE OF THE CASE

Administrative law - Appeal - Board - After decision signed, but not issued, executive deciding to make a `test case' - Whether failure at the intermediate level of Review Committee to maintain procedural fairness in the processing of claim tainted the proceedings before the Appeals Board -Whether privilege attaches to legal opinions requested by the Workers' Compensation Board.

PROCEDURAL HISTORY

	Appeal denied
February 11, 1993 Workers' Compensation Appeals Board	
April 12, 1994 Court of Appeal of New Brunswick (Hoyt C.J.N.B. and Angers and Ryan JJ.A.)	Appeal allowed
June 7, 1994 Supreme Court of Canada	Application for leave to appeal filed
June 27, 1994 Supreme Court of Canada	Application for leave to cross-appeal filed
June 28, 1994 Supreme Court of Canada	Application for a stay of proceedings filed

Red River Valley Mutual Insurance Company

v. (24194)

Sharon McMurachy and Richard Pritchard (Man.)

NATURE OF THE CASE

Torts - Insurance - Whether the Court of Appeal erred in overturning the trial judge's finding that the release of the Respondent McMurachy from liability by the Respondent Pritchard resulted in the Applicant having no obligation to provide indemnity since its insuring agreement provided it was only to pay those sums the Respondent McMurachy became legally liable to pay - Whether the Court of Appeal erred in overturning the trial judge's finding that the Respondent McMurachy had suffered no loss as a result of the Applicant's breach of its contract of insurance with the Respondent.

PROCEDURAL HISTORY

June 23, 1993 Court of Queen's Bench of Manitoba (Hirschfield J.)	Respondents' action dismissed
April 15, 1994 Court of Appeal for Manitoba (Scott C.J.M., Helper and Kroft JJ.A.)	Appeal allowed
June 10, 1994 Supreme Court of Canada	Application for leave to appeal filed

Carlo Montemurro

v. (24178)

Deloitte & Touche Inc., as receiver and manager and trustee in bankruptcy of the estate of Re-Mor Investment Management Corporation, a bankrupt (Ont.)

NATURE OF THE CASE

Procedural law - Actions - Delay - Prejudice - Right to retain counsel - Actions against Applicant based on fraud and breach of trust in relation to various transactions involving investors and their trusts - Actions commence in 1980, 1985, and 1987 - Trial commencing in 1992 - Trial judge refusing to grant an adjournment to permit Applicant to retain counsel - Trial judge refusing to stay or dismiss actions as a result of alleged prejudice to the Applicant caused by delay, failure to produce documents and death of a witness - Finding of fraud by trial judge - Whether Court of Appeal erred in its judgment with respect to the 1980 and 1985 actions.

PROCEDURAL HISTORY

December 24, 1992 Ontario Court of Justice (General Division) (Macdonald J.)	Three actions of the Respondent allowed
April 12, 1994 Court of Appeal for Ontario (Lacourciere, Grange and Carthy JJ.A.)	Appeals in respect of two actions quashed
June 6, 1994 Supreme Court of Canada	Application for leave to appeal filed

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

Agnes Maud Ethel McRae, Executrix of the Estate of Farquhar Fraser McRae, and Agnes Maud Ethel MacRae

v. (24201)

Dennis Fraser McRae, John Alexander McRae and Catherine Jane McRae, Harriet Anne Jacqueline Wallace, Scotch Fir Estates Ltd.

and

Royal Trust Corporation of Canada, Executors of the Estate of Farquhar Fraser McRae, Deceased, Dennis Fraser McRae, John Alexander McRae and Catherine Jane McRae, Harriet Anne Jacqueline Wallace

AND BETWEEN:

Dennis Fraser McRae

and

John Alexander McRae, Catherine Jane McRae

and

Royal Trust Corporation of Canada and Agnes Maud Ethel McRae, Executors of the Estate of Farquhar Fraser McRae, Deceased, and the said Agnes Maud Ethel McRae and Harriet Anne Jacqueline Wallace (B.C.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

September 16, 1992 Supreme Court of British Columbia (Hogarth J.)	Conveyance of land declared null and void
April 20, 1994 Court of Appeal for British Columbia (Gibbs, Goldie and Donald JJ.A.)	Appeal dismissed
June 15, 1994 Supreme Court of Canada	Application for leave to appeal filed

Minnie Pearl Wilder, Executrix of the Estate of Earl A. Wilder, deceased, Minnie Pearl Wilder, Terrance Wilder a.k.a. Tara Wilder, Cecilia Melrose and Tara Wilder

v. (24186)

Davis & Company (B.C.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

June 30, 1992 Supreme Court of British Columbia (Finch J. in Chambers)	Application to set aside renewal of writ orders dismissed
March 14, 1994 Court of Appeal for British Columbia (Carrothers, Gibbs and Goldie JJ.A.)	Appeal allowed
May 31, 1994 Supreme Court of Canada	Application for leave to appeal filed

Imprimerie Quebecor Inc. -
Quebecor Printing Inc.

v. (24175)

Charles Rittel, Barry Hession, Alan Ryder
Stephen King, Arie Stryland and Joseph Frate (B.C.)

NATURE OF THE CASE

Labour law - Pensions - Contracts - Interpretation of a pension plan established by the employer -Dispute between the employer and the employees as to the proper application of the formula in the pension plan to calculated the amount of each pension - Method of calculation of "years credited service" - Whether the Court of Appeal erred by disregarding basic contract interpretation principles and deciding that the pension plans in issue ought to be construed differently from other contracts.

PROCEDURAL HISTORY

October 5, 1992 Supreme Court of British Columbia (Prowse J.)	Claims of the Respondents dismissed
March 28, 1994 Court of Appeal for British Columbia (Hinds, Southin and Ryan JJ.A.)	Appeal allowed
May 27, 1994 Supreme Court of Canada	Application for leave to appeal filed

Vicki Winnie Wong

v. (24189)

Louis A.T. Williams carrying on the practice of law under the firm and style of Louis A.T. Williams, Barrister and Solicitor (Alta.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

April 20, 1993 Court of Queen's Bench of Alberta (Dea J.)	Respondent's application allowed: Applicant found to be in civil contempt of court and her statement of claim was ordered to be struck out
April 8, 1994 Court of Appeal of Alberta (Lieberman, Kerans, amd Irving JJ.A.)	Appeal dismissed
June 21, 1994 Supreme Court of Canada	Application for leave to appeal filed

JULY 12, 1994 / LE 12 JUILLET 1994

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

Victor Hugo Silva

v. (24203)

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

NATURE OF THE CASE

Criminal law - Offences - Evidence - Sexual assault - Prior sexual activity - What ruling should be made or what remedy should be granted to the accused by the trial court when the Crown introduces the evidence of prior sexual activity of the complainant with the accused or other persons, contrary to the provisions of section 276 of the *Criminal Code* - What ruling should be made or what remedy should be granted to the accused by the trial court when the Crown introduces the issue of sexual reputation, contrary to the provisions of section 277 of the *Criminal Code*. (CMS - 39, 102, 55)

PROCEDURAL HISTORY

November 9, 1992 Court of Queen's Bench for Saskatchewan (Barclay C.Q.B.J.)	Conviction: Sexual assault Sentence: 32 months imprisonment
April 19, 1994 Court of Appeal for Saskatchewan (Bayda C.J.S., Wakeling and Sherstobitoff JJ.A.)	Appeal against conviction and sentence dismissed
June 17, 1994 Supreme Court of Canada June 29, 1994.	Application for leave to appeal filed

Donald Arthur Luke and Shirley Margaret Luke

v. (24163)

Thomas Alexander, Guardian *ad Litem* of Barry Ross Alexander (B.C.)

NATURE OF THE CASE

Property law - Real property - Contracts - Interpretation - Applicants applying for a building permit to renovate their home - Whether the Court of Appeal erred in failing to find the covenant void for uncertainty - Whether covenants are subject to normal rules of contract interpretation - Whether different principles of interpretation as to certainty should apply depending on whether the application is for enforcement by injunction or enforcement generally - Whether municipal bylaws are subject to different rules of interpretation from restrictive covenants. (CMS - 114, 117, 34, 76)

PROCEDURAL HISTORY

February 27, 1991 Supreme Court of British Columbia (Hutchinson J.)	Injunction granted prohibiting Applicants' from proceeding with renovations
June 12, 1991 Supreme Court of British Columbia (Gow J.)	Petition to have covenant cancelled dismissed
March 18, 1994 Court of Appeal for British Columbia (Gibbs, Rowles and Ryan JJ.A.)	Appeal dismissed
May 17, 1994 Supreme Court of Canada 30 June 1994	Application for leave to appeal filed

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

Royal Oak Mines Inc.

v. (24169)

Canadian Association of Smelter and Allied Workers (CASAW), Local No. 4, and Canada Labour Relations Board (B.C.)(F.C.A.)

NATURE OF THE CASE

Labour law - Collective agreement - Jurisdiction - Whether the Canada Labour Relations Board had jurisdiction to impose a collective agreement on a party, in the absence of an express provision in its enabling statute - Whether, following a finding of bargaining in bad faith on a specific issue, the Board has jurisdiction un der s. 99(2) of the *Canada Labour Code*, R.S.C. 1985, c. L-2, to impose the terms of a collective agreement on topics which were not the subject of the bad faith bargaining finding so long as "it is impossible to say there is no rational connection" between the unfair practice, its consequences and the remedial order - Whether the Board's order was purely discretionary, or a matter going to its jurisdiction - Whether a finding that a party has bargained in bad faith necessarily involves drawing an inference of surface bargaining. (CMS - 80, 43, 79)

PROCEDURAL HISTORY

November 11, 1993 Canada Labour Relations Board	Respondent Union's complaint allowed
March 24, 1994 Federal Court of Appeal (Pratte, Hugessen and McDonald JJ.A.)	Application for judicial review dismissed
May 20, 1994 Supreme Court of Canada	Application for leave to appeal filed

Canadian Human Rights Commission

v. (24197)

Attorney General of Canada (Man.)(F.C.A.)

NATURE OF THE CASE

Civil rights - Statutes - Interpretation - *Bona fide* occupational requirement - Discrimination on the basis of visual disability - Whether the Federal Court of Appeal erred by applying an incorrect standard for measuring "sufficiency of risk" for a *bona fide* occupational requirement defence under s. 15(*a*) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 - Whether the Court of Appeal erred by finding that the definition of the occupation was a pure question of fact - Whether the Court of Appeal erred in respect of the issues of individual assessment and reasonable alternatives as elements of a *bona fide* occupational requirement defence. (CMS - 25, 128, 76)

PROCEDURAL HISTORY

August 2, 1991 Human Rights Tribunal (R.I. Hornung, Q.C. [dissenting], H.C. Beard, Q.C. and N.G. McLeod)	Complaint of discrimination dismissed
April 14, 1994 Federal Court of Appeal (Isaac C.J., Robertson [dissenting] and McDonald JJ.A.)	Application for judicial review dismissed
June 13, 1994 Supreme Court of Canada	Application for leave to appeal filed

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

L.G.B.

v. (24204)

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

NATURE OF THE CASE

Criminal law - Defences - Charge to jury - Killing committed following homosexual advances by victim - Defences of self-defence and drunkenness - Judge making references to issue of capacity - Whether the Court of Appeal erred in law in declining to follow and apply the principles of law set out in *R. v. Canute* (1993), 80 C.C.C.(3rd) 403 (B.C.C.A.) and *R. v. Cormier* (1993), 86 C.C.C.(3rd) 163 (C.A. Que) (CMS - 39, 46)

PROCEDURAL HISTORY

December 19, 1991 Court of Queen Bench of Alberta (O'Leary J.)	Conviction: Murder in the second degree
April 13, 1994 Court of Appeal of Alberta (McClung and Irving JJ.A., and McBain J.)	Appeal from conviction dismissed
June 15, 1994 Supreme Court of Canada	Application for leave to appeal filed

Antonio Flamand et Martine Godard

c. (24196)

Corporation des religieuses de Jésus-Marie (Qué.)

NATURE DE LA CAUSE

Droit municipal - Municipalités - Législation - Textes réglementaires - Interprétation - Demandeurs possédant un lot contigu à la propriété de l'intimée - Construction d'un gymnase par l'intimée - La Ville de Sillery devait-elle déclarer irrecevable la demande de permis de construire de l'intimée et obliger celle-ci à accompagner sa demande d'un plan de lotissement ou de subdivision conformément aux exigences des articles 1.6.3 *in fine* et 1.6.2d) du règlement de zonage de la Ville? - Si la demande de permis était recevable, la Ville a-t-elle illégalement émis le permis en raison du fait que la construction projetée ne respectait pas les marges de recul imposées tant par le règlement de zonage que par le règlement de construction par l'application implicite du Code national du bâtiment? - L'intimée et la Ville ont-elles commis à l'endroit des demandeurs un abus de droit susceptible de donner ouverture à une demande en dommages-intérêts? (SGDJ - 98, 97, 128, 129, 76)

HISTORIQUE PROCÉDURAL

Le 5 mars 1992 Cour supérieure du Québec (Allard j.c.s.)	Action en injonction permanente rejetée
Le 15 avril 1994 Cour d'appel du Québec (Nichols, Vallerand et Tourigny jj.c.a.)	Appel rejeté
Le 13 juin 1994 Cour suprême du Canada	Demande d'autorisation d'appel et requête en prorogation du délai d'appel déposées

JUNE 30, 1994 / LE 30 JUIN 1994

24087 **HER MAJESTY THE QUEEN v. JATINDERPAL SINGH UBHI** (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Offences - Interpretation - Evidence - *Mens rea* - Respondent convicted of criminal negligence - New evidence sought to be adduced regarding Respondent's mental capacity - Test for admission of fresh evidence set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759 - Test for capacity set out in *R. v. Creighton*, [1993] 3 S.C.R. 3.

24097 **SUCHA SINGH NAGRA v. THE SECRETARY OF STATE OF CANADA** (F.C.A.)(Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is quashed, as there is no appeal under s. 40(1) of the *Supreme Court Act* from a judgment of the Trial Division of the Federal Court.

La demande d'autorisation d'appel est annulée étant donné qu'en vertu du par. 40(1) de la *Loi sur la cour suprême* il ne peut être interjeté appel d'un jugement de la Section de première instance de la Cour fédérale.

NATURE OF THE CASE

Immigration - Procedural law - Appeal - Jurisdiction - Applicant applying for a stay of the execution of the removal order pending the disposition of his leave application against the Immigration officer's decision rejecting Applicant's application made on humanitarian and compassionate grounds - Whether the Federal Court, Trial Division, erred in deciding that it had no jurisdiction to order a stay of execution because there was no attack on the validity of the deportation order - Whether s. 40(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, provides the Applicant with the right to seek leave to appeal from this decision - Whether the issue of the validity of the order of the Federal Court, Trial Division, is moot.

24049 **DENISE DOMPIERRE ET ANDRÉ TOUCHET c. CONSTANCE PROVOST ET HÉLÈNE LAVIGNE ET VILLE D'AYLMER** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit administratif - Droit municipal - Élection - Assermentation - Requête en contestation d'élection - Interprétation de l'expression "effet déterminant" de l'article 294 de la *Loi sur les élections et les référendums dans les municipalités*, L.R.Q. ch. E-2.1 - Les bulletins de vote, remis et initialés par une personne non assermentée, doivent-ils être rejetés au motif que cette personne n'est jamais entrée en fonctions, faute d'avoir été assermentée?

24063 **CHRISTIE MACKAY & COMPANY v. HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA** (Man.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Administrative law - Procedural law - Judicial review - Prerogative writs - Expropriation - Land Value Appraisal Commission concluding that disturbance compensation was payable on the basis of rent differential for renewal period on Applicant's lease following expropriation - Whether the Crown can seek a prerogative writ of *certiorari* to challenge the amount of due compensation as determined by its own agency, the Commission - Whether a judicial review proceeding of the Commission's decision can be commenced without naming the Commission as a party - Whether the Applicant loses his right to compensation by a judicial finding that a five year renewal option has no value - Where a statutory body is given the right to determine due compensation and is given a residual right to determine value or special economic advantage to the owner if no other provision is contained in *The Expropriation Act*, R.S.M. 1987, c. E-190, can the residual statutory authority be nullified by a court.

JULY 21, 1994 / LE 21 JUILLET 1994

24105 CLIFFORD BURTON v. THE CITY OF VERDUN (Que.)

CORAM: The Chief Justice and Cory 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

Municipal law - Administrative law - Statutes - Statutory instruments - Interpretation - Section 8.1 of By-law 1414 prohibits having more than two animals in one "unit of occupation" - Whether the By-law is *ultra vires* the specific powers of the municipality - Whether the By-law is vague and imprecise both in the definition of "unité d'occupation" and of "gardien" - Whether the By-law is absurd and unreasonable in creating a situation where, the more people, the more animals will be permitted in a place.

24131 MICHAEL TIBANDO v. HER MAJESTY THE QUEEN (Crim.)(Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Offenses - Interpretation - Whether the Court of Appeal erred in holding that an intent that words spoken be taken "seriously" is a sufficient *mens rea* for the offence of threatening as defined by s. 264.1 of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in holding that the finding that the Applicant did not intend that his words be communicated to his former girl friend was irrelevant in determining liability for the offence of threatening.

Before / Devant: LE JUGE EN CHEF LAMER

Requête pour énoncer une question constitutionnelle et requête en prorogation du délai pour déposer le mémoire de l'appelant

George Weldon Adams

c. (23615)

Sa Majesté La Reine (Qué.)

ACCORDÉES / GRANTED

Motion to state a constitutional question and motion to extend the time to file the appellant's factum

James O'Reilly et Peter Hutchins, pour la requête.

Pierre Lachance et Sylvie Roussel, contra.

Le paragraphe 4(1) du *Règlement de pêche du Québec*, dans sa version du 7 mai 1982, est-il inopérant en ce qui concerne l'appelant dans les circonstances de l'espèce, en vertu de l'art. 52 de la *Loi constitutionnelle de 1982*, en raison des droits ancestraux des peuples autochtones, au sens de l'art. 35 de la *Loi constitutionnelle de 1982*, que l'appelant a invoqués?

Is s. 4(1) of the Québec Fishery Regulations, as they read on May 7, 1982, of no force or effect with respect to Appellant in the circumstances of these proceedings in virtue of s. 52 of the Constitution Act, 1982 by reason of the aboriginal rights within the meaning of s. 35 of the Constitution Act, 1982 invoked by Appellant?

24.6.1994

Before / Devant: L'HEUREUX-DUBÉ J.

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

Gordon Capital Corp.

v. (24199)

The Guarantee Co. of North America et al. (Ont.)

GRANTED / ACCORDÉE Time extended to July 8, 1994.

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

With the consent of the parties.

24.6.1994

Before / Devant: CHIEF JUSTICE LAMER

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

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

A.K.

v. (23808)

Her Majesty The Queen (Man.)

With the consent of the parties.

GRANTED / ACCORDÉE

27.6.1994

Before / Devant: McLACHLIN J.

Motion to appoint counsel **Requête en nomination d'un procureur**

Nasir Ahmed Fiquia

v. (23945)

Her Majesty The Queen (Alta.)

DISMISSED / REJETÉE

27.6.1994

Before / Devant: THE REGISTRAR

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

Murray Weber

v. (23401)

Ontario Hydro (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to June 7, 1994.

30.6.1994

Before / Devant: McLACHLIN J.

Motion to extend the time in which to file the application for leave

Her Majesty The Queen

v. (24142)

Dorothy Sloan (Ont.)

Requête en prorogation du délai pour déposer la demande d'autorisation

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to June 21, 1994.

30.6.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file a response to a leave application

Chi Man (Anthony) Li

v. (24132)

Her Majesty The Queen (B.C.)

Requête en prorogation du délai pour déposer une réponse à la demande d'autorisation

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to June 27, 1994.

4.7.1994

Before / Devant: THE REGISTRAR

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

Co-Operators General Insurance Co.

v. (23502)

Judgment Recovery (P.E.I.) Ltd. (P.E.I.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to July 4, 1994.

5.7.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file a response

Requête en prorogation du délai pour déposer une réponse

Peter Anthony Rowe

v. (24128)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to June 27, 1994.

6.7.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file a response

International Lottery Distribution

v. (24100)

Government of Manitoba (Man.)

Requête en prorogation du délai pour déposer une réponse

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to June 9, 1994.

7.7.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file a factum and motion to dispense with printing

Her Majesty The Queen

v. (23479)

Brent Blair Brown (Man.)

GRANTED / ACCORDÉE Time extended to July 6, 1994.

Requête en prorogation du délai de signification et de dépôt d'un mémoire et requête en dispense d'impression

With the consent of the parties.

6.7.1994

Before / Devant: IACOBUCCI J.

Motion to extend the time in which to serve and file the application for leave

Requête en prorogation du délai de signification et de dépôt de la demande d'autorisation

Gordon Capital Corporation

v. (24199)

The Guarantee Co. of North America et al. (Ont.)

UPON APPLICATION by counsel on behalf of the applicant, Gordon Capital Corporation, for an order extending the time within which to serve and file the application for leave to appeal to sixty days after the decision of the Court of Appeal in a related action, or ten days after any application for leave to appeal from the decision of the Court of Appeal of Quebec, whichever shall first occur;

AND HAVING READ the material filed by the parties;

It is hereby ordered that:

1. The motion for an extension of time be referred to the panel of the Court considering the application for leave to appeal;

2. The applicant serve and file its application for leave to appeal no later than July 14, 1994;

3. The respondent serve and file its response 20 days after the service of the application for leave to appeal;

4. The applicant serve and file its reply, if any, 7 days after the service of the response.

7.7.1994

Before / Devant: THE REGISTRAR

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

Imperial Tobacco Ltd.

v. (23490)

Attorney General of Canada (Que.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to June 28, 1994.

11.7.1994

Before / Devant: THE DEPUTY REGISTRAR

Motion to extend the time in which to file a response

Requête en prorogation du délai pour déposer une réponse

Peter Anthony Rowe

v. (24127)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to June 30, 1994.

11.7.1994

Before / Devant: CHIEF JUSTICE LAMER

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

Desmond Haughton

v. (23665)

Her Majesty The Queen (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE on condition that the appeal be ready to be prosecuted in the fall term of 1994.

11.7.1994

Before / Devant: CHIEF JUSTICE LAMER

Motion for directions fixing dates of filing of documents

Delgamuukw, et al.

v. (23799)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE

September 15, 1995 for the hearing of all applications to intervene;
September 15, 1995 for the filing of the appeal case;
October 31, 1995 for the filing of the appellant's factum;
January 31, 1996 for the filing of the Province's factum on cross appeal.

Demande de directives fixant des dates pour le dépôt de documents

With the consent of the parties.

11.7.1994

Before / Devant: LE JUGE EN CHEF LAMER

Demande de directives pour le dépôt de documents

Sa Majesté La Reine

c. (24154)

Suzanne Thibaudeau (C.A.F.)(Qué.)

Motion for directions for the filing of documents

Avec le consentement des parties.

ACCORDÉE / GRANTED

1. Formulation des questions constitutionnelles et avis aux procureurs généraux: 12 juillet 1994.
2. Dépôt du dossier: 29 juillet 1994.
3. Date limite pour faire parvenir les avis d'intention d'intervenir des procureurs généraux et autres demandes d'intervention: 15 août 1994.
4. Dépôt du mémoire de l'appelante: 15 août 1994.
5. Dépôt du mémoire de l'intimée: 15 septembre 1994.
6. Dépôt du mémoire des intervenants: 25 septembre 1994.

11.7.1994

Before / Devant: LE JUGE EN CHEF LAMER

Requête visant à produire de nouveaux éléments de preuve

Sa Majesté La Reine

c. (24154)

Suzanne Thibaudeau (C.A.F.)(Qué.)

ACCORDÉE / GRANTED

Motion to adduce new evidence

Avec le consentement des parties.

11.7.1994

Before / Devant: LE JUGE EN CHEF LAMER

Reqûete visant à déposer un long mémoire de 60 pages (maximum)

Motion to file a lengthy factum of 60 pages (maximum)

Sa Majesté La Reine

c. (24154)

Suzanne Thibaudeau (C.A.F.)(Qué.)

Avec le consentement des parties.

ACCORDÉE / GRANTED Autorisation à déposer un mémoire pouvant atteindre un maximum de cinquante (50) pages.

11.7.1994

Before / Devant: LE JUGE EN CHEF LAMER

Requête pour énoncer une question constitutionnelle

Motion to state a constitutional question

Avec le consentement des parties.

Sa Majesté La Reine

c. (24154)

Suzanne Thibaudeau (C.A.F.)(Qué.)

ACCORDÉE / GRANTED

1. L'alinéa 56(1)b) de la *Loi de l'impôt sur le revenu*, S.C. 1970-71-72, ch. 63, porte-t-il atteinte aux droits à l'égalité garantis par l'article 15 de la *Charte canadienne des droits et libertés*?

2. Dans l'éventualité où l'alinéa 56(1)b) de la *Loi de l'impôt sur le revenu*, S.C. 1970-71-72, ch. 63, portait atteinte aux droits garantis par l'article 15 de la *Charte canadienne des droits et libertés*, est-il justifié dans le cadre de l'article premier de la *Charte canadienne des droits et libertés*?

1. Does paragraph 56(1)b) of the *Income Tax Act*, S.C. 1970-71-72, ch. 63, infringe the equality rights guaranteed by section 15 of the *Canadian Charter of Rights and Freedoms*?

2. If paragraph 56(1)b) of the *Income Tax Act*, S.C. 1970-71-72, ch. 63, infringes the equality rights guaranteed by section 15 of the *Canadian Charter of Rights and Freedoms* is it justified in the context of section 1 of the *Canadian Charter of Rights and Freedoms*?

12.7.1994

Before / Devant: CHIEF JUSTICE LAMER

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

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

Lawrence Melvin Herman

v. (24040)

Her Majesty The Queen (B.C.)

With the consent of the parties.

GRANTED / ACCORDÉE on condition that the appeal be heard during the fall term.

12.7.1994

Before / Devant: CHIEF JUSTICE LAMER

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

Eric Ralph Biddle

v. (23734)

Her Majesty The Queen (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE on condition that the appeal be heard in the fall term.

12.7.1994

Before / Devant: CHIEF JUSTICE LAMER

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

Timothy Erin Mowers

v. (23890)

Her Majesty The Queen (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE on condition that the appeal be heard at the fall sittings and that the parties submit to the rota Judge for approval of time table for the filing of factums.

12.7.1994

Before / Devant: CHIEF JUSTICE LAMER

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

Percival Whitley

v. (23891)

Her Majesty The Queen (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE on condition that the appeal be heard at the fall sittings and that the parties submit to the rota Judge for approval of time table for the filing of factums.

12.7.1994

Before / Devant: LE JUGE EN CHEF LAMER

Requête pour énoncer une question constitutionnelle

Motion to state a constitutional question

Ghislain Gaudet

c. (24156)

Laval Marchand (Qué.)

Christian Desrosiers, pour la requête.

Robert Frater et Guy Pinsonneault, contra.

REJETÉE / DISMISSED

13.07.1994

Before / Devant: IACOBUCCI J.

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

Irvin Andrew Luke

v. (24229)

Sa Majesté La Reine (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to July 8, 1994.

15.7.1994

Before / Devant: CHIEF JUSTICE LAMER

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

Derik Christopher Lord

v. (23943)

Her Majesty The Queen (B.C.)

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

With the consent of the parties.

GRANTED / ACCORDÉE on condition that the appellant's factum be filed no later than October 6, 1994.

7.6.1994

Before / Devant: CORY J.

Motion to appoint counsel **Requête en nomination d'un procureur**

Jean Arthur Rochon

v. (24155)

Her Majesty The Queen (Alta.)

DISMISSED / REJETÉE

15.7.1994

Before / Devant: THE DEPUTY REGISTRAR

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

Ihor Bardyn, et al.

v. (23517)

Y. R. Botiuk (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to ten days after the date of this order.

15.7.1994

Before / Devant: THE DEPUTY REGISTRAR

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

B. I. Maksymec

v. (23519)

Y. R. Botiuk (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to ten days after the date of this order.

8.7.1994

Before / Devant: CORY J.

Motion to extend the time in which to serve and file an application for leave

Requête en prorogation du délai de signification et de dépôt de la demande d'autorisation

Century Holdings Ltd., et al.

v. (24221)

Corp. of Delta, et al. (B.C.)

GRANTED / ACCORDÉE Time extended to June 27, 1994.

15.7.1994

Before / Devant: IACOBUCCI J.

Motion to extend the time in which to file the notice of intervention of A.G. Quebec

Non-Labour Lien Claimants

v. (23549)

Her Majesty The Queen (Sask.)

Reqûete en prorogation du délai pour produire l'avis d'intervention du Procureur général du Québec

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to July 14, 1994.

10.6.1994

Before / Devant: IACOBUCCI J.

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

Claude St-Georges et Marcel Bélair

c. (24010)

Sa Majesté La Reine (Qué.)

ACCORDÉE / GRANTED Délai prorogé au 21 juillet 1994.

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

Avec le consentement des parties.

NOTICES OF APPEAL FILED SINCE LAST ISSUE

24.6.1994

The Royal Bank of Canada et al.

v. (23914)

Mitsui & Co. (Canada) Ltd. (N.S.)

24.6.1994

Helo Enterprises Ltd.

v. (23924)

Ernst & Young Inc., Liquidators for Standard Trust Co., in liquidation (B.C.)

20.6.1994

Sa Majesté La Reine

c. (24211)

Frédéric Gazquez (Qué.)

DE PLEIN DROIT

28.6.1994

Walter Kingsley Kirti Wijesinha

v. (24015)

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

29.6.1994

Sa Majesté La Reine

c. (24154)

Suzanne Thibaudeau (C.A.F.)(Qué.)

29.6.1994

Fred Harvey

v. (23968)

Attorney General for New Brunswick, Minister of Municipalities, Culture and Housing, Dennis Cochrane and Hazen Myers (N.B.)

AVIS D'APPEL DÉPOSÉS DEPUIS LA DERNIÈRE PARUTION

30.6.1994

The Corporation of the City of Stratford et al.

v. (24004)

Albert Large et al. (Ont.)

4.7.1994

Her Majesty The Queen

v. (24020)

Patrick Pontes (B.C.)

4.7.1994

Thomas P. Walker et al.

v. (23861)

The Government of Prince Edward Island (P.E.I.)

18.7.1994

Sa Majesté La Reine

c. (24234)

Richard Gauthier (Crim.)(Qué.)

DE PLEIN DROIT

BY/PAR: Attorney General of Saskatchewan
Attorney General of Manitoba
Procureur général du Québec

IN/DANS: **Canadian Pacific Ltd.**

v. (23721)

Her Majesty The Queen in right of Ontario (Ont.)

BY/PAR: Minister of Justice of the Northwest Territories
Attorney General of Saskatchewan

IN/DANS: **The Tseshaht, an Indian Band et al.**

v. (23234)

Her Majesty The Queen in right of the province of British Columbia (B.C.)

BY/PAR: Attorney General of Ontario
Procureur général du Québec

IN/DANS: **Non-Labour Lien Claimants**

v. (23549)

Her Majesty The Queen in right of Canada (Sask.)

NOTICES OF DISCONTINUANCE FILED SINCE LAST ISSUE

AVIS DE DÉSISTEMENT DÉPOSÉS DEPUIS LA DERNIÈRE PARUTION

5.7.1994

Gordon Neil Anderson

v. (23524)

Gary Regan, also known as Gary Reagan (B.C.)

(appeal)

JULY 14, 1994 / LE 14 JUILLET 1994

23398 **MARY TATARYN v. EDWARD JAMES TATARYN, Executor named in the Will of Alec Tataryn, a.k.a. ALEX TATARYN and ALEXANDER TATARYN, deceased** (B.C.)

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

The appeal is allowed and the following order is substituted for that of the trial judge:

1. To Mrs. Tataryn:

   (a) Title to the matrimonial home;
   (b) A life interest in the rental property;
   (c) The entire residue of the estate after payment of the immediate gifts to the sons.

2. To each son: an immediate gift of $10,000;

3. Upon the death of Mrs. Tataryn: the rental property to be divided between John and Edward in the shares suggested by the trial judge for division of the residue, being one-third to John and two-thirds to Edward.

4. Costs from the estate.

Le pourvoi est accueilli et l'ordonnance suivante est substituée à celle du juge de première instance:

1. À M^{me} Tataryn:

   a) Droit de propriété sur la résidence familiale;
   b) Intérêt viager sur le bien locatif;
   c) Reliquat de la succession après le paiement des legs immédiats aux fils.

2. À chaque fils: un legs immédiat de 10 000 $;

3. Au décès de M^{me} Tataryn, le partage du bien locatif entre John et Edward dans les proportions proposées par le juge de première instance quant au partage du reliquat, soit un tiers à John et deux tiers à Edward.

4. Dépens à prendre sur la succession.

23677 **LORNE FRANÇOIS - v. - HER MAJESTY THE QUEEN** (Crim.)(Ont.)

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

The appeal is dismissed, Sopinka, Cory and Major JJ. dissenting.

L'appel est rejeté. Les juges Sopinka, Cory et Major sont dissidents.

23340 **HER MAJESTY THE QUEEN v. JOHN CHARTRAND** (Crim.)(Ont.)

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

The appeal is allowed, the judgment of the Court of Appeal is reversed and a new trial is ordered.

Le pourvoi est accueilli, le jugement de la Cour d'appel est infirmé et un nouveau procès est ordonné.

23273 **PEAT MARKWICK THORNE INC., Trustee of the Estate of ARDEN ANTHONY MARZETTI, a bankrupt - v. - DIRECTOR OF MAINTENANCE ENFORCEMENT, ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL FOR ALBERTA - and - THE SUPERINTENDENT OF BANKRUPTCY - and - JACQUELINE JEANNINE MARZETTI - v. - ARDEN ANTHONY MARZETTI** (Alta.)

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

The appeal is dismissed. By agreement among the parties, there will be no order as to costs.

L'appel est rejetée. Selon une entente entre les parties, il n'y aura pas d'ordonnance quant aux dépens.

REASONS FOR JUDGMENT HAVE BEEN DELIVERED IN THE FOLLOWING APPEAL - LES MOTIFS DE JUGEMENT SONT DÉPOSÉS DANS L'APPEL SUIVANT:

1. *Victor Francisco Clemente v. Her Majesty the Queen* (Crim.)(Man.)(23931)
(Hearing and judgment: June 13, 1994; Reasons delivered: July 14, 1994.
Audition et jugement: 13 juin 1994; Motifs déposés: 14 juillet 1994.)

Mary Tataryn v. Edward James Tataryn, Executor named in the Will of Alec Tataryn, a.k.a. Alex Tataryn and Alexander Tataryn, Deceased **(B.C.)(23398)**
Indexed as: Tataryn *v.* Tataryn Estate / Répertorié: Tataryn *c.* Succession Tataryn
Judgment rendered July 14, 1994 / Jugement rendu le 14 juillet 1994

Present: La Forest, L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Wills -- Variation -- Testator having statutory duty to make adequate provision for proper maintenance and support of surviving spouse and children -- Testator leaving wife only life estate in matrimonial home and benefit of discretionary trust -- Whether courts below failed to provide for wife appropriately in varying will -- Meaning of "adequate, just and equitable in the circumstances" -- Wills Variation Act, R.S.B.C. 1979, c. 435, s. 2(1).

The appellant and the testator were married for 43 years. Through their joint efforts they amassed an estate held in the testator's name at the time of his death consisting of the house in which they lived, a rental property next door inherited from the testator's father and money in the bank. They had two sons, J and E. The testator did not wish to leave anything to J, whom he disliked, and feared that if he left any of his estate to his wife in her own right, she would pass it on to him. He made a will leaving his wife a life estate in the matrimonial house and making her the beneficiary of a discretionary trust of the income from the residue of the estate, with E as trustee. After her death, everything was to go to E. The appellant and J claimed against the estate under the *Wills Variation Act*, s. 2(1) of which provides that if the testator fails to make adequate provision for the proper maintenance and support of a surviving spouse and children, the court may order the provision from the estate that it considers "adequate, just and equitable in the circumstances". The trial judge revoked the gift to E of the house next door and granted the appellant a life estate in it; directed that J and E each receive an immediate gift of $10,000 out of the residue of the estate; and directed that when the appellant died, the residue of the estate be divided one-third to J and two-thirds to E. The Court of Appeal dismissed the appeal, but clarified that certain expenditures should be made from the residue and that the trustee's discretion to encroach upon the residue to make payments to the appellant should be "exercised in a manner that will ensure that she shall have a reasonable standard of living commensurate with the standard of living she had prior to the death of her husband".

Held: The appeal should be allowed and the following order substituted for that of the trial judge: (1) to the appellant: (a) title to the matrimonial home; (b) a life interest in the rental property; and (c) the entire residue of the estate after payment of the immediate gifts to the sons; (2) to each son, an immediate gift of $10,000; (3) upon the appellant's death, the rental property to be divided one-third to J and two-thirds to E.

The generous language of the Act confers a broad discretion on the court and, combined with the rule in the *Interpretation Act* that a statute is always speaking, means that the Act must be read in light of modern values and expectations. The first consideration in determining what is "adequate, just and equitable" in the circumstances of the case must be the testator's legal responsibilities during his or her lifetime. Maintenance and provision for basic needs may or may not be sufficient to meet this legal obligation. Depending on the length of the relationship, the contribution of the claimant spouse and the desirability of independence, each spouse is entitled to a share of the estate. For further guidance in determining what is "adequate, just and equitable", the court should next turn to the testator's moral duties toward spouse and children. Where priorities among conflicting claims must be established, claims which would have been recognized during the testator's life should generally take precedence over moral claims. As between moral claims, some may be stronger than others. Any moral duty should be assessed in the light of the deceased's legitimate concerns which, where the assets of the estate permit, may go beyond providing for the surviving spouse and children. A will is the exercise by the testator of his freedom to dispose of his property and is to be interfered with not lightly but only in so far as the statute requires.

In the present case the testator's only legal obligations during his life were toward his wife. Since the marriage was a long one and the appellant worked hard and contributed much to the assets she and her husband acquired, she would have been entitled to maintenance and a share in the family assets had the parties separated. The appellant's legal claims entitle her to at least half the estate and arguably to additional maintenance. Her moral claim to the funds set aside for old age is strong and indicates that an "adequate, just and equitable" provision for her requires giving her the bulk of the estate. The remaining moral claims are those of the two grown and independent sons, which cannot be put very high and are adequately met by the immediate gift awarded by the trial judge to each of them and a residuary interest in a portion of the property upon the appellant's death.

APPEAL from a judgment of the British Columbia Court of Appeal (1992), 74 B.C.L.R. (2d) 211, 20 B.C.A.C. 218, 35 W.A.C. 218, 98 D.L.R. (4th) 717, 47 E.T.R. 221, affirming a decision of Paris J. granting the appellant's claim for relief under the *Wills Variation Act*. Appeal allowed.

Rhys Davies and *Kerry D. Sheppard*, for the appellant.

Robin J. Stewart, for the respondent.

Solicitors for the appellant: Davis & Company, Vancouver.

Solicitors for the respondent: McLachlan Brown Anderson, Vancouver.

Présents: Les juges La Forest, L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci et Major.

Testaments -- Modification -- Testateur tenu par la loi de pourvoir convenablement à l'entretien et à la subsistance raisonnables du conjoint et des enfants survivants -- Testateur n'ayant laissé à son épouse qu'un domaine viager sur la résidence familiale et le bénéfice d'une fiducie discrétionnaire -- Les juridictions inférieures ont-elles omis de pourvoir convenablement aux besoins de l'épouse en modifiant le testament? -- Signification de l'expression «convenable, juste et équitable dans les circonstances» -- Wills Variation Act, R.S.B.C. 1979, ch. 435, art. 2(1).

L'appelante et le testateur ont été mariés pendant 43 ans. Ils ont pu, grâce à leurs efforts communs, accumuler un patrimoine, détenu au nom du testateur au moment de son décès, qui consistait en la résidence dans laquelle ils vivaient, un bien locatif voisin hérité du père du testateur et une somme d'argent en banque. Ils avaient deux fils, J. et E. Le testateur ne voulait rien laisser à J., qui lui déplaisait, et il craignait que, s'il léguait une partie de son patrimoine à son épouse en propre, elle ne le lui transmette. Dans son testament, il a légué à son épouse un domaine viager sur la résidence familiale et l'a nommée bénéficiaire d'une fiducie discrétionnaire du revenu du reliquat de la succession dont le deuxième fils, E., était fiduciaire. Au décès de l'épouse, tout devait échoir à E. L'appelante et J. ont contesté la succession en vertu du par. 2(1) de la *Wills Variation Act*, qui prévoit que, si le testateur ne pourvoit pas convenablement à l'entretien et à la subsistance raisonnables du conjoint et des enfants survivants, la cour peut adjuger sur la succession ce qu'elle estime «convenable, juste et équitable dans les circonstances». Le juge de première instance a révoqué le legs à E. de la maison voisine et accordé à l'appelante un domaine viager sur celle-ci, il a ordonné que J. et E. reçoivent tous deux la somme de 10 000 $ immédiatement, à imputer sur le reliquat de la succession, et qu'au décès de l'appelante, J. reçoive un tiers du reliquat de la succession et E., les deux tiers. La Cour d'appel a rejeté l'appel, tout en précisant que certains frais devraient être pris sur le reliquat et que la discrétion du fiduciaire d'empiéter sur le reliquat pour verser de l'argent à l'appelante devait être «exercée d'une manière qui garantisse à celle-ci une qualité de vie raisonnable, proportionnée à celle dont elle jouissait avant le décès de son époux.»

Arrêt: Le pourvoi est accueilli et l'ordonnance suivante est substituée à celle du juge de première instance: (1) à l'appelante: a) droit de propriété sur la résidence familiale; b) intérêt viager sur le bien locatif; c) reliquat de la succession après le paiement des legs immédiats aux fils; (2) à chaque fils: un legs immédiat de 10 000 $; (3) au décès de l'appelante, un tiers du bien locatif à J. et deux tiers à E.

Le libellé généreux de la Loi confère un pouvoir discrétionnaire général au tribunal et, conjointement avec la règle de l'*Interpretation Act* selon laquelle la loi a vocation permanente, cela signifie que la Loi doit être interprétée à la lumière des valeurs et des attentes modernes. Il faut d'abord considérer, pour déterminer ce qui est «convenable, juste et équitable» dans les circonstances de l'affaire, les responsabilités légales du testateur de son vivant. Assurer l'entretien et pourvoir aux besoins essentiels peuvent être suffisants pour satisfaire à cette obligation légale, mais peuvent également ne pas l'être. Selon la durée de la relation, la contribution du conjoint requérant et l'opportunité de permettre l'indépendance, chaque conjoint a droit à une part du patrimoine. Afin de pouvoir mieux déterminer ce qui est «convenable, juste et équitable», la cour devrait ensuite se pencher sur les obligations morales du testateur à l'égard de son conjoint et de ses enfants. S'il faut établir des priorités entre des prétentions contradictoires, celles qui auraient été reconnues du vivant du testateur devraient en général avoir préséance sur les prétentions morales. Parmi les prétentions morales, certaines peuvent être plus importantes que d'autres. Toute obligation morale doit être évaluée en fonction des préoccupations légitimes du défunt qui, lorsque la valeur de la succession le permet, peuvent aller au delà d'assurer la subsistance du conjoint et des enfants survivants. Le testament est l'exercice par le testateur de la liberté de disposer de ses biens, et il ne doit pas être modifié à la légère mais seulement dans la mesure où la loi l'exige.

En l'espèce, les seules obligations légales dont le testateur devait s'acquitter pendant sa vie étaient envers son épouse. Puisqu'ils ont été mariés de nombreuses années et que l'appelante a travaillé fort et a grandement contribué aux biens qu'elle et son époux ont acquis, elle aurait eu droit à ce qu'il soit pourvu à son entretien et à recevoir une part des biens familiaux, si elle et son époux s'étaient séparés. Les prétentions légales de l'appelante lui donnent droit à au moins la moitié de la succession et, pourrait-on soutenir, à un soutien supplémentaire. Sa «prétention morale» à l'argent mis de côté en prévision des vieux jours est solide et elle indique qu'à son égard, ce qui est «convenable, juste et équitable» doit consister en la plus grosse part de la succession. Restent les prétentions morales des enfants adultes indépendants, qui ne peuvent recevoir une très grande reconnaissance et qui sont convenablement reconnues par le legs immédiat à chacun d'eux ordonné par le juge de première instance et un intérêt résiduaire dans une part des biens au décès de l'appelante.

POURVOI contre un arrêt de la Cour d'appel de la Colombie-Britannique (1992), 74 B.C.L.R. (2d) 211, 20 B.C.A.C. 218, 35 W.A.C. 218, 98 D.L.R. (4th) 717, 47 E.T.R. 221, qui a confirmé une décision du juge Paris, qui avait accueilli la demande de réparation de l'appelante en vertu de la *Wills Variation Act*. Pourvoi accueilli.

Rhys Davies et *Kerry D. Sheppard*, pour l'appelante.

Robin J. Stewart, pour l'intimé.

Procureurs de l'appelante: Davis & Company, Vancouver.

Procureurs de l'intimé: McLachlan Brown Anderson, Vancouver.

Lorne François v. Her Majesty the Queen **(Crim.)(Ont.)(23677)**
Indexed as: R. *v.* François / Répertorié: R. *c.* François
Judgment rendered July 14, 1994 / Jugement rendu le 14 juillet 1994

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

Criminal law -- Appeals -- Unreasonable verdict -- Accused charged with rape -- Complainant's evidence containing inconsistencies concerning number of times she was raped and conflicting with prior sworn statements indicating that she had never been sexually abused -- Complainant offering explanations for inconsistencies -- Accused not testifying in his defence -- Whether guilty verdict unreasonable -- Criminal Code, R.S.C., 1985, c. C-46, s. 686(1)(a)(i).

Criminal law -- Evidence -- Inferences -- Failure to testify -- Accused charged with rape -- Complainant's evidence containing several inconsistencies -- Complainant offering explanations for inconsistencies -- Accused not testifying in his defence -- Jury during deliberation asking trial judge for clarification on accused's right to testify -- Guilty verdict rendered shortly after trial judge's answer to jury's question -- Whether jury may have drawn improper inference from accused's failure to testify.

The accused was charged with rape. The only evidence at the trial was that of the complainant, who testified that, during the year her family lived next door to the accused in the early 1980s, she was regularly sent to his home to make phone calls since her family did not have a telephone, and that the accused raped her on several occasions. She was 13 years old at the time. The complainant reported the incidents only 10 years later, stating that she was afraid to tell anyone because of what the accused could do to her. Her cross-examination disclosed inconsistencies concerning the number of times she was raped by the accused. In her first statement to the police, she said it had happened three times; at the preliminary inquiry, she put the number at five or six, and at trial at 10 to 20. The complainant explained this by saying that it was "hard to put a number on exactly how many times these things happen to you". In cross-examination, she was also confronted with two statements inconsistent with her allegations about the accused, the first one made in 1987 in child support proceedings where she swore that she was a virgin prior to 1985, and the second in 1989 in wardship proceedings, where she swore that she had never been sexually abused. The complainant explained that she believed the statements were true at the time she made them, because she had blocked out the incidents involving the accused until her memory returned in a flashback in 1990. The complainant testified that this flashback occurred during a period when she was being interviewed by police and children's aid workers in connection with further wardship proceedings concerning her son, where she was told that part of the process to get him back might be admitting things that had happened to her. The complainant denied in cross-examination that the pressure she was experiencing caused the flashbacks. The accused did not testify. The jury after deliberating for two hours asked for clarification as to the accused's right to testify in his defence. The trial judge answered and, 10 minutes later, the jury returned with a verdict of guilty. The majority of the Court of Appeal upheld the conviction. This appeal raises two issues: (1) whether the verdict should be set aside because the jury drew an improper inference from the accused's failure to testify; and (2) whether the verdict was unreasonable and should be set aside under s. 686(1)(*a*)(i) of the *Criminal Code*.

Held (Sopinka, Cory and Major JJ. dissenting): The appeal should be dismissed.

Per La Forest, Gonthier, **McLachlin** and Iacobucci JJ.: The first ground of appeal cannot succeed. Since the inferences the jury drew in this case cannot be known, in determining whether the jury may have drawn an improper inference from the accused's failure to testify would require speculation as to what the jury did. In any event, while an accused's failure to testify cannot be used to shore up a Crown case which otherwise does not establish guilt beyond a reasonable doubt, a jury is permitted to draw an adverse inference from the failure of an accused to testify.

The function of a court of appeal, under s. 686(1)(*a*)(i) of the *Code*, is not to substitute itself for the jury, but to decide whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered. In order to apply the test the court of appeal must re-examine and to some extent reweigh and consider the effect of the evidence. This rule also applies to cases where the objection to the conviction is based on credibility. In such cases, the court of appeal should show great deference to findings of credibility made at trial. Review for credibility may involve consideration of the basis for conclusions which the witness has drawn. More problematic is a challenge to credibility based on the witness's alleged lack of truthfulness and sincerity, the problem posed in this appeal. A court of appeal reviewing a jury verdict on the basis of credibility cannot, however, infer from the mere presence of contradictory details or motives to concoct that the jury's verdict is unreasonable. A jury may deal with inconsistencies and motive to concoct in a variety of ways and its verdict based on such evidence may very well be both reasonable and lawful. Here, the verdict was not unreasonable. The complainant gave a detailed and largely consistent account of what had happened to her and offered an explanation for each of the alleged inconsistencies concerning the number of times she was raped and her sexual history. It was for the jury to weigh the significance, if any, of the inconsistencies and to determine whether they had been neutralized by the complainant's explanations. It was thus open to the jury to accept those explanations and, if they did, the inconsistencies lost their power to raise a reasonable doubt with respect to the accused's guilt. It was also for the jury

to determine, on the basis of common sense and experience, whether they believed the complainant's story of repressed and recovered memory, and whether the recollection she experienced in 1990 was the truth. The jury's acceptance of the complainant's evidence concerning what happened to her cannot, on the basis of the record, be characterized as unreasonable. In sum, the verdict was not illogical or speculative or inconsistent with the main body of the evidence.

Per Sopinka, Cory and **Major** JJ. (dissenting): There is more than one inference that can be drawn from the accused's failure to testify and there is no reason to assume the jury drew the wrong one, using the lack of testimony by the accused to strengthen the Crown's case to a point where they felt safe in convicting. It is impossible to know what took place either in the jury room or in the minds of the individual jurors and a jury's verdict cannot be interfered with on the basis of speculation.

In enacting s. 686(1)(*a*)(i) of the *Code*, Parliament has given appellate courts the jurisdiction to interfere with a jury verdict on occasion, even where there is no error of law, but purely on the basis of unreasonableness. When considering an appeal under that section, the function of the appellate court is not to substitute itself for the jury, but to decide whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered. In order to apply the test, the court must re-examine and to some extent reweigh and consider the effect of the evidence. This test equally applies to cases where the verdict is based on findings of credibility. The deference to be shown to a trier of fact on questions of credibility, while high, is not absolute. Finally, it is not necessary to find an error or omission in the Court of Appeal's reasoning before this Court can interfere with their decision. When considering the reasonableness of a verdict under s. 686(1)(*a*)(i), this Court is entitled, and obligated, to consider the matter anew. In this case, the majority of the Court of Appeal erred in holding that the verdict was not unreasonable. The question asked by the jury, which was irrelevant to the consideration of this issue, appears to have diverted the Court of Appeal's attention from the obligation to re-examine and to some extent reweigh and consider the effect of the evidence. When the complainant's evidence is fully reviewed, and allowing for the advantage enjoyed by the jury in assessing the complainant's credibility, it is unreasonable that the jury did not have at least a reasonable doubt as to the accused's guilt, given the vital inconsistencies in the complainant's evidence on central matters and the suspicious circumstances of the flashbacks.

APPEAL from a judgment of the Ontario Court of Appeal (1993), 14 O.R. (3d) 191, 64 O.A.C. 140, 82 C.C.C. (3d) 441, 21 C.R. (4th) 350, dismissing the accused's appeal from his conviction for sexual assault. Appeal dismissed, Sopinka, Cory and Major JJ. dissenting.

Bruce Duncan, for the appellant.

James K. Stewart, for the respondent.

Solicitors for the appellant: Duncan, Fava, Schermbrucker, Toronto.

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

Présents: Les juges La Forest, Sopinka, Gonthier, Cory, McLachlin, Iacobucci et Major.

Droit criminel -- Appels -- Verdict déraisonnable -- Accusation de viol -- Témoignage de la plaignante contenant des incohérences au sujet du nombre de fois où elle a été violée et contredisant des déclarations antérieures faites sous serment selon lesquelles elle n'avait jamais été victime d'abus sexuels -- Explications de la plaignante au sujet des incohérences -- Accusé ne témoignant pas pour sa défense -- Le verdict de culpabilité était-il déraisonnable? -- Code criminel, L.R.C. (1985), ch. C-46, art. 686(1)a)(i).

Droit criminel -- Preuve -- Conclusions -- Omission de témoigner -- Accusation de viol -- Plusieurs incohérences dans le témoignage de la plaignante -- Explications de la plaignante au sujet des incohérences -- Accusé ne témoignant pas pour sa défense -- Jurés en délibération demandant au juge du procès des précisions sur le droit de témoigner de l'accusé -- Verdict de culpabilité rendu peu après la réponse du juge du procès à la question des jurés -- Les jurés peuvent-ils avoir tiré une conclusion inadmissible de l'omission de témoigner de l'accusé?

L'accusé a été accusé de viol. Seule la plaignante a témoigné au procès et elle a déclaré que, pendant l'année où sa famille a habité à côté de chez l'accusé au début des années 1980, on l'envoyait régulièrement téléphoner chez ce dernier parce que sa famille n'avait pas le téléphone, et que l'accusé l'a violée à maintes reprises. Elle avait 13 ans à l'époque. La plaignante n'a signalé les incidents que 10 ans plus tard, affirmant qu'elle avait eu peur d'en parler à quelqu'un en raison de ce que l'accusé pourrait lui faire. Le contre-interrogatoire de la plaignante a révélé des incohérences concernant le nombre de fois où elle a été violée par l'accusé. Dans sa première déclaration à la police, elle a dit que c'était arrivé trois fois; à l'enquête préliminaire, elle a avancé le nombre de cinq ou six fois et, au procès, le nombre de 10 à 20 fois. La plaignante s'est justifiée en disant qu'il était «difficile d'indiquer le nombre exact de fois où ce genre de choses vous arrive». En contre-interrogatoire, elle a également été mise en présence de deux déclarations contredisant ses allégations

concernant l'accusé, la première faite en 1987 dans une instance où elle réclamait des aliments pour son enfant, dans laquelle elle affirmait sous serment avoir conservé sa virginité jusqu'en 1985, et la deuxième, en 1989 dans une instance de tutelle, dans laquelle elle disait n'avoir jamais été victime d'abus sexuels. La plaignante a expliqué qu'elle croyait que ces déclarations étaient véridiques à l'époque où elle les a faites, parce qu'elle avait refoulé les événements impliquant l'accusé jusqu'à ce que ceux-ci remontent à la surface en 1990. La plaignante a témoigné que cette réminiscence est survenue à une époque où elle était interrogée par la police et des travailleurs sociaux d'aide à l'enfance en rapport avec une autre instance de tutelle concernant son fils, où on lui a dit que, pour ravoir la garde de son fils, elle pourrait notamment reconnaître des choses qui lui étaient arrivées. Contre-interrogée, la plaignante a nié que la pression ressentie ait été à l'origine des réminiscences. L'accusé n'a pas témoigné. Après deux heures de délibération, les jurés ont demandé des précisions au sujet du droit de l'accusé de témoigner pour sa propre défense. Le juge du procès a répondu et les jurés sont revenus, 10 minutes plus tard, prononcer un verdict de culpabilité. La Cour d'appel à la majorité a confirmé la déclaration de culpabilité. Le présent pourvoi soulève deux questions: (1) Y avait-il lieu d'annuler le verdict pour le motif que les jurés avaient tiré une conclusion inadmissible de l'omission de témoigner de l'accusé? Et (2) le verdict prononcé était-il déraisonnable et devrait-il être annulé en vertu du sous-al. 686(1)*a*)(i) du *Code criminel*?

Arrêt (les juges Sopinka, Cory et Major sont dissidents): Le pourvoi est rejeté.

Les juges La Forest, Gonthier, **McLachlin** et Iacobucci: Le premier moyen d'appel ne saurait être retenu. Comme il n'est pas possible de savoir quelles conclusions les jurés ont tirées en l'espèce, il faudrait conjecturer sur ce qu'ils ont fait pour déterminer s'ils peuvent avoir tiré une conclusion inadmissible de l'omission de témoigner de l'accusé. De toute façon, même si l'omission de témoigner d'un accusé ne peut pas servir à consolider une preuve du ministère public qui, par ailleurs, n'établit pas la culpabilité de l'accusé hors de tout doute raisonnable, un jury peut tirer une conclusion défavorable de l'omission de témoigner d'un accusé.

Le rôle d'une cour d'appel, en vertu du sous-al. 686(1)*a*)(i) du *Code*, n'est pas de se substituer au jury mais de décider si le verdict est l'un de ceux qu'un jury qui a reçu les directives appropriées et qui agit d'une manière judiciaire aurait pu raisonnablement rendre. Pour appliquer le critère, la cour d'appel doit réexaminer l'effet de la preuve et aussi dans une certaine mesure la réévaluer. Cette règle s'applique également aux cas où l'opposition à la déclaration de culpabilité se fonde sur la crédibilité. En pareils cas, la cour d'appel devrait faire preuve d'un grand respect envers les conclusions tirées au procès quant à la crédibilité des témoins. L'examen de la crédibilité peut exiger que l'on étudie ce sur quoi se fondent les conclusions que le témoin a tirées. Plus problématique est la contestation de la crédibilité fondée sur la prétendue absence de véracité et de sincérité du témoin, problème qui se pose dans le présent pourvoi. Une cour d'appel qui examine le verdict d'un jury sous l'angle de la crédibilité ne peut toutefois pas conclure de la simple présence de détails contradictoires ou de raisons d'inventer que le verdict du jury est déraisonnable. Le jury peut traiter de diverses façons les incohérences et la raison d'inventer, et son verdict fondé sur un tel témoignage peut très bien être à la fois raisonnable et légitime. Ici, le verdict n'était pas déraisonnable. La plaignante a donné un compte rendu détaillé et très cohérent de ce qui lui était arrivé et a offert une explication pour chacune des prétendues incohérences concernant sa vie sexuelle et le nombre de fois où elle a été violée. Il appartenait aux jurés d'évaluer, s'il y avait lieu, l'importance des incohérences et de déterminer si elles avaient été neutralisées par les explications de la plaignante. Il était donc loisible aux jurés d'accepter ces explications et, s'ils le faisaient, les incohérences perdaient leur pouvoir de soulever un doute raisonnable quant à la culpabilité de l'accusé. Il appartenait également aux jurés de déterminer, en fonction du bon sens et de leur expérience, s'ils croyaient l'histoire de la plaignante concernant les souvenirs refoulés et ravivés et si ces souvenirs qui avaient refait surface en 1990 étaient véridiques. L'acceptation par les jurés du témoignage de la plaignante au sujet de ce qui lui était arrivé ne saurait être qualifiée de déraisonnable, compte tenu du dossier. Somme toute, le verdict n'était pas illogique, conjectural ou incompatible avec la preuve principale.

Les juges Sopinka, Cory et **Major** (dissidents): Il y a plus d'une conclusion qui peut être tirée de l'omission de témoigner de l'accusé et il n'y a aucune raison de présumer que les jurés ont tiré la mauvaise en utilisant le défaut de témoigner de l'accusé pour renforcer la preuve du ministère public au point où ils ont jugé prudent de prononcer la déclaration de culpabilité. Il est impossible de savoir ce qui s'est passé dans la salle des jurés ou dans l'esprit de chacun d'eux et on ne saurait modifier le verdict d'un jury en se fondant sur des conjectures.

En adoptant le sous-al. 686(1)*a*)(i) du *Code*, le législateur a donné aux cours d'appel le pouvoir de modifier à l'occasion le verdict d'un jury simplement parce qu'il est déraisonnable, même s'il n'y a aucune erreur de droit. Dans l'examen d'un appel fondé sur ce sous-alinéa, le rôle de la cour d'appel n'est pas de se substituer au jury mais de décider si le verdict est l'un de ceux qu'un jury qui a reçu les directives appropriées et qui agit d'une manière judiciaire aurait pu raisonnablement rendre. Pour appliquer le critère, la cour doit réexaminer et, dans une certaine mesure, réévaluer et étudier les effets du témoignage. Ce critère s'applique également aux cas où le verdict est fondé sur des conclusions en matière de crédibilité. Bien qu'il faille faire preuve d'un grand respect envers le juge des faits, relativement à des questions de crédibilité, ce respect n'est toutefois pas absolu. Enfin, il n'est pas nécessaire de conclure à l'existence d'une erreur ou d'une omission dans le raisonnement de la Cour d'appel pour que notre Cour puisse modifier sa décision. Lorsqu'elle examine si un verdict est déraisonnable au sens du sous-al. 686(1)*a*)(i), notre Cour a le droit et est obligée d'étudier la question de nouveau. En l'espèce, la Cour d'appel à la majorité a commis une erreur en concluant que le verdict n'était

pas déraisonnable. Même si elle ne devait pas être retenue comme un élément pertinent, la question posée par les jurés semble avoir détourné l'attention de la Cour d'appel de son obligation de réexaminer et, dans une certaine mesure, de réévaluer et d'étudier les effets du témoignage. Si on procède à un examen complet du témoignage de la plaignante et si on tient compte de l'avantage dont jouissaient les jurés pour évaluer la crédibilité de la plaignante, il est déraisonnable que les jurés n'aient pas eu au moins un doute raisonnable quant à la culpabilité de l'accusé, étant donné les incohérences fondamentales sur des points essentiels que l'on constate dans le témoignage de la plaignante et les circonstances suspectes des réminiscences.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1993), 14 O.R. (3d) 191, 64 O.A.C. 140, 82 C.C.C. (3d) 441, 21 C.R. (4th) 350, qui a rejeté l'appel interjeté par l'accusé contre sa déclaration de culpabilité d'agression sexuelle. Pourvoi rejeté, les juges Sopinka, Cory et Major sont dissidents.

Bruce Duncan, pour l'appelant.

James K. Stewart, pour l'intimée.

Procureurs de l'appelant: Duncan, Fava, Schermbrucker, Toronto.

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

Her Majesty the Queen v. John Chartrand **(Crim.)(Ont.)(23340)**
Indexed as: R. *v.* Chartrand / Répertorié: R. *c.* Chartrand
Judgment rendered July 14, 1994 (English version of reasons only) / Jugement rendu le 14 juillet 1994 (version anglaise des motifs seulement)

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

Criminal law -- Abduction of person under fourteen -- Elements of offence -- Meaning of word "unlawfully" in English text of s. 281 of Criminal Code -- Whether Crown must prove additional unlawful act beyond taking of child by stranger -- Criminal Code, R.S.C., 1985, c. C-46, s. 281.

Criminal law -- Abduction of person under fourteen -- Mens rea -- Whether sufficient to establish that taker knew or foresaw that his actions would be certain or substantially certain to result in parents being deprived of ability to exercise control over their child -- Criminal Code, R.S.C., 1985, c. C-46, s. 281.

The accused, aged 43, was hitting golf balls in a field in the school yard when T, aged 8, and his friends A and J, asked him if they could catch the balls with their baseball gloves. The young boys had first met the accused in that same field the previous summer, but only knew him by his first name. They played for a while and then A and J left to get refreshments. When they returned, they found T and the accused in a wooded area at the edge of the school yard. The accused was taking pictures of T and, when the two boys began to interfere with that activity, the accused became annoyed and asked them several times to leave him and T alone. Eventually, the accused suggested to T that they could go to a nearby bridge. Although A and J told T not to go, T entered the accused's car and left with him. They drove approximately 2.9 km, stopping at various locations to take pictures. When T's father was informed of the situation by J's mother, he began a search with the help of others, including a police officer. T's father found his child sometime later and confronted the accused. The latter indicated that he had only intended to take pictures of T as a surprise for T's parents. As a consequence of these events, the accused was charged with several offences, including abduction of a person under 14 years of age contrary to s. 281 of the *Criminal Code*. At trial, at the close of the Crown's case, the trial judge granted the defence's motion for a directed verdict on the s. 281 charge. He found that the Crown had failed to prove the essential elements of the offence as there was no evidence upon which a jury properly instructed could arrive at the conclusion that the accused intended to deprive T's parents of the possession of their child by an unlawful act. The Court of Appeal dismissed the Crown's appeal.

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

The word "unlawfully" (*illégalement*) which appears in the English, but not in the French, text of s. 281 of the *Code* has generally been interpreted to mean "without lawful justification, authority or excuse" and does not entail evidence beyond that of the taking by a person without legal authority over the child. In s. 281, the word "unlawfully" is surplusage as the general defences, justifications and excuses available under the *Code* apply to the offence of abduction just as they do for other offences generally. This interpretation of the word "unlawfully" is in accord with the purpose of the section, which is to prevent and punish a stranger intending to deprive the parent, guardian or person who has the lawful care or charge of the child of the ability to exercise physical control over the child. It also accords with the protection of those persons who innocently take a child out of the control of the person lawfully in charge of the child and who may well be able to provide justification for their conduct. Retaining the word in the English text of s. 281 was a mere oversight and the French text reflects the true intent of Parliament when it redrafted in 1982 the section to apply only to abduction by strangers. Consequently, there was no necessity for the Crown to prove an additional unlawful act or some element of unlawfulness beyond the taking of a child by a person who did not have lawful authority over the child and the trial judge was in error in so interpreting s. 281 of the *Code*.

Although the proof of intent under s. 281 can be met by the intentional and purposeful deprivation of the parent's control over the child, the *mens rea* can be established by the mere fact of depriving the child's parent (or guardian or any other person having the lawful care or charge of the child) of possession of the child through the taking, as long as the trier of fact draws an inference that the consequences of that taking are foreseen by the accused as a certain or substantially certain result from the taking, independently of the purpose or motive for which such taking occurred.

Given the proper interpretation of s. 281 and the evidence adduced, the trial judge erred in granting the motion for a directed verdict and the Court of Appeal should have allowed the appeal. There was evidence upon which a reasonable jury properly instructed could conclude that the accused would have known or foreseen that his actions in taking or enticing the 8-year-old boy would be certain or substantially certain to result in his parents being deprived of their ability to exercise control over him.

APPEAL from a judgment of the Ontario Court of Appeal rendered October 6, 1992, dismissing the Crown's appeal from the accused's acquittals on charges under ss. 218 and 281 of the *Criminal Code*. Appeal allowed.

Catherine A. Cooper, for the appellant.

Robert F. Meagher, for the respondent.

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

Solicitors for the respondent: Addelman, Edelson & Meagher, Ottawa.

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

Droit criminel -- Enlèvement d'une personne âgée de moins de quatorze ans -- Éléments de l'infraction -- Signification du mot «unlawfully» dans le texte anglais de l'art. 281 du Code criminel -- Le ministère public doit-il établir la perpétration d'un acte illégal autre que l'enlèvement d'un enfant par un étranger? -- Code criminel, L.R.C. (1985), ch. C-46, art. 281.

Droit criminel -- Enlèvement d'une personne âgée de moins de quatorze ans -- Mens rea -- Est-il suffisant d'établir que la personne qui a enlevé l'enfant savait ou avait prévu qu'il était certain ou presque certain que ses actes priveraient les parents de la capacité d'exercer leur contrôle sur l'enfant? -- Code criminel, L.R.C. (1985), ch. C-46, art. 281.

L'accusé, âgé de 43 ans, frappait des balles de golf sur le terrain d'une cour d'école lorsque T, âgé de 8 ans, et ses amis A et J lui ont demandé la permission d'attraper les balles avec leurs gants. Les garçons avaient déjà rencontré l'accusé dans la même cour l'été précédent, mais ne connaissaient que son prénom. Ils ont joué pendant un certain temps, puis A et J sont allés chercher des rafraîchissements. Lorsqu'ils sont revenus, ils ont retrouvé T et l'accusé dans un endroit boisé à l'extrémité de la cour d'école. L'accusé prenait des photos de T et, lorsque les deux garçons ont commencé à déranger la séance de photos, l'accusé, irrité, leur a demandé à plusieurs reprises de les laisser seuls. Finalement, l'accusé a proposé à T de se rendre à un pont situé près de là. Bien que A et J lui aient dit de ne pas accompagner l'accusé, T est monté dans l'auto de ce dernier et est parti avec lui. Ils ont fait un trajet d'environ 2,9 km, s'arrêtant à certains endroits pour prendre des photos. Lorsqu'il a été informé de la situation par la mère de J, le père de T, aidé d'autres personnes, dont un policier, s'est mis à la recherche de T. Il a trouvé son enfant quelque temps plus tard et a confronté l'accusé. Ce dernier a indiqué qu'il avait pris des photos de T pour faire une surprise aux parents du garçon. Par suite de ces événements, l'accusé a été inculpé de plusieurs infractions, dont l'enlèvement d'une personne âgée de moins de 14 ans, en contravention de l'art. 281 du *Code criminel*. Au procès, à la clôture de la preuve du ministère public, le juge du procès a accueilli une requête de la défense visant à obtenir un verdict imposé relativement à l'accusation portée en vertu de l'art. 281. Il a conclu que le ministère public n'avait pas réussi à établir les éléments essentiels de l'infraction puisqu'il n'existait aucune preuve permettant à un jury ayant reçu des directives appropriées de conclure que l'accusé avait l'intention de priver les parents de T de la possession de leur enfant en commettant un acte illégal. La Cour d'appel a rejeté l'appel du ministère public.

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

Le terme «*unlawfully*» dans la version anglaise, dont l'équivalent «illégalement» ne figure pas dans le texte français de l'art. 281 du *Code*, a généralement été interprété comme signifiant «sans justification, autorisation ou excuse légitime», et il n'exige d'autre preuve que celle de l'enlèvement par une personne qui n'a aucune autorité légale sur l'enfant. Le terme «*unlawfully*» du texte anglais de l'art. 281 est redondant puisque les moyens de défense, justifications ou excuses généraux offerts dans le *Code* s'appliquent à l'infraction d'enlèvement tout autant qu'à l'égard des infractions en général. Cette interprétation du terme «*unlawfully*» est conforme à l'objectif de l'article, qui vise à prévenir et punir un étranger qui a l'intention de priver un parent, un tuteur ou une personne ayant la garde ou la charge légale de l'enfant de la capacité d'exercer un contrôle physique sur celui-ci. Elle permet également de protéger les personnes qui retirent innocemment un enfant du contrôle de la personne qui en a la charge légale et qui peuvent fort bien justifier leur geste. Le maintien du terme dans la version anglaise de l'art. 281 est une simple inadvertance, et c'est le texte français qui exprime la véritable intention du législateur lorsque ce dernier a reformulé l'article en 1982 pour l'appliquer uniquement à l'enlèvement par un étranger. En conséquence, il n'était pas nécessaire pour le ministère public d'établir un acte illégal supplémentaire ou quelque élément d'illégalité outre celui, pour une personne n'ayant aucune autorité légitime sur un enfant, d'enlever l'enfant. Le juge du procès a donc commis une erreur en interprétant ainsi l'art. 281 du *Code*.

Bien que l'on puisse établir l'intention requise à l'art. 281 en démontrant la privation intentionnelle et à dessein du contrôle des parents sur l'enfant, la *mens rea* peut être établie par la simple privation des parents (ou tuteur ou toute personne ayant la garde ou la charge légale de l'enfant) de la possession de leur enfant au moyen de l'enlèvement, pour autant que le juge des faits conclue que l'accusé a prévu certainement ou presque certainement les conséquences de l'enlèvement, indépendamment du mobile ou du but dans lequel l'enlèvement a eu lieu.

Étant donné la juste interprétation de l'art. 281 et la preuve produite, le juge du procès a commis une erreur en accueillant la requête visant à obtenir un verdict imposé, et la Cour d'appel aurait dû accueillir l'appel. Il existait une preuve sur le fondement de laquelle un jury ayant reçu des directives appropriées pourrait conclure que l'accusé savait ou avait prévu que le fait d'enlever ou d'entraîner l'enfant de 8 ans priverait certainement ou presque certainement ses parents de leur capacité d'exercer leur contrôle sur lui.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario rendu le 6 octobre 1992, qui a rejeté l'appel du ministère public contre les acquittements de l'accusé relativement à des accusations portées en vertu des art. 218 et 281 du *Code criminel*. Pourvoi accueilli.

Catherine A. Cooper, pour l'appelante.

Robert F. Meagher, pour l'intimé.

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

Procureurs de l'intimé: Addelman, Edelson & Meagher, Ottawa.

Peat Marwick Thorne Inc., Trustee of the Estate of Arden Anthony Marzetti, a Bankrupt v. The Director of Maintenance Enforcement, the Attorney General of Canada and the Attorney General of Alberta and The Superintendent of Bankruptcy and between Jacqueline Jeannine Marzetti v. Arden Anthony Marzetti **(Alta.)(23273)**
Indexed as: Marzetti *v.* Marzetti / Répertorié: Marzetti *c.* Marzetti
Judgment rendered July 14, 1994 / Jugement rendu le 14 juillet 1994

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

Bankruptcy -- Priority -- Post-bankruptcy income tax refund -- Bankrupt ordered to pay monthly amount for child and spousal support to Director of Maintenance Enforcement -- Bankrupt later filing voluntary assignment in bankruptcy and assigning post-bankruptcy income tax refund to trustee -- Director filing notice of continuing attachment against federal Crown -- Whether income tax refund properly payable to trustee or to Director -- Bankruptcy Act, R.S.C., 1985, c. B-3, ss. 67, 68.

After M's payments of child and spousal support fell into arrears, he was ordered to pay a monthly sum to the Director of Maintenance Enforcement. He later filed a voluntary assignment in bankruptcy and executed an agreement letter authorizing that any refund resulting from a post-bankruptcy income tax return be mailed to the appellant trustee as an asset for distribution to the creditors. The Director filed a notice of continuing attachment against the federal Crown. After M was discharged from bankruptcy, a garnishee summons was issued putting the notice of continuing attachment into effect. The trustee filed a post-bankruptcy income tax return, and a refund became payable. In response to a motion by the trustee, the Master declared that the refund constituted property of the bankrupt which vested in the trustee. Under s. 67(*c*) of the *Bankruptcy Act*, the property of a bankrupt divisible among his creditors comprises all property of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge. Under s. 68(1), however, "the trustee, if directed by the inspectors or the creditors, shall apply to the court for an order directing the payment to the trustee of such part of the salary, wages or other remuneration as the court may determine, having regard to the family responsibilities and personal situation of the bankrupt". Section 68(2) provides that the order must be directed to the bankrupt and his employer. The Master was prepared to accept that s. 68 removes wages from the scope of s. 67(*c*), but was not prepared to accept that income tax deductions from an employee's wages retain the character of wages. The Court of Queen's Bench reversed the Master's decision and ordered that the refund be returned to the Director. The Court of Appeal affirmed that judgment.

Held: The appeal should be dismissed.

A bankrupt's interest in a post-bankruptcy income tax refund can be considered "property" for the purposes of s. 67(*c*) of the *Bankruptcy Act*. Even if a taxpayer who makes overpayments has no right to compel a refund prior to filing a return, that taxpayer has at least a future and contingent interest in the ultimate tax refund which would come within the definition of "property" in s. 2 of the Act. The property need not also meet the requirements of s. 67(*d*) before the trustee can claim it, since ss. 67(*c*) and (*d*) should be treated as alternatives. The bankrupt's interest in his refund did not, however, vest automatically in his trustee. Section 68 is a complete code in respect of a bankrupt's salary, wages or other remuneration, and such forms of property thus cannot be "property of a bankrupt divisible among his creditors" for purposes of s. 67. The trustee can access them only following a court application as contemplated by s. 68(1), and no such application was made in this case. A plain language interpretation of s. 68(1) favours the view that it is a substantive provision: the opening words "[n]otwithstanding section 67" are intended to make it clear that wages will not come within s. 67(*c*) but will be dealt with by s. 68. The mischief which s. 68 was intended to remedy reinforces this view. Since the section was intended to remedy province-to-province disparities in the application of the *Bankruptcy Act*, it necessarily follows that it is a substantive rather than a procedural modification to the pre-existing scheme.

The post-bankruptcy income tax refund in this case retained the character of wages to the extent that it represented a return of employer withholdings. The bankrupt earned a certain amount as wages after his voluntary assignment in bankruptcy, and the fundamental character of these wages is not affected by the fact that a portion was, by virtue of statute, automatically directed toward his tax liability. The only problems with the characterization of an income tax refund as deferred wages for the purposes of s. 68 of the *Bankruptcy Act* are structural ones. The trustee's inability to act independently is a flaw inherent in s. 68(1), which has now been corrected by a statutory amendment. The fact that s. 68(2) orders can be directed only toward "the bankrupt and his employer" is a more serious problem, but this deficiency cannot affect the conclusion that an income tax refund retains its character as wages. While it would be preferable, from a trustee's point of view, to obtain an order directly against the Crown in respect of an income tax refund, an order against the bankrupt person alone does provide the trustee with the necessary legal entitlement to the refund. Moreover, the fact that the court is to have "regard to the family responsibilities and personal situation of the bankrupt" demonstrates an overriding concern for the support of families. The discretion given to courts by s. 68 is amplified by the discretion which is necessarily left in the trustee, creditors and inspectors. Since these kinds of discretion are better able to respond to the costs of raising families, a purposive interpretation should be given to the word "wages" in s. 68, notwithstanding difficulties associated with s. 68(2).

The agreement letter was incapable of creating an effective assignment owing to s. 67 of the *Financial Administration Act*, which states that "[e]xcept as provided in this Act or any other Act of Parliament . . . a Crown debt is not assignable". "Crown debt" is defined to include not only existing debts, but also future debts "due or becoming due". The *Financial Administration Act* fails to permit such assignment, and no express authorization appears in any other federal statute. By taking steps to garnish the income tax refund, the Director thus necessarily obtained priority in this case.

APPEAL from a judgment of the Alberta Court of Appeal (1992), 131 A.R. 154, 25 W.A.C. 154, 4 Alta. L.R. (3d) 97, 14 C.B.R. (3d) 127, 42 R.F.L. 76, 94 D.L.R. (4th) 394, affirming a judgment of the Court of Queen's Bench (1991), 123 A.R. 1, 82 Alta. L.R. (2d) 67, 8 C.B.R. (3d) 238, 35 R.F.L. (3d) 225, reversing a decision of Master Funduk (1990), 112 A.R. 70, 2 C.B.R. (3d) 109, awarding the bankrupt's income tax refund to the trustee of his estate. Appeal dismissed.

Michael J. McCabe, for the appellant.

Jeanette Fedorak, for the respondent the Director of Maintenance Enforcement.

Ingrid C. Hutton, Q.C., and *Robert Moen*, for the respondent the Attorney General of Canada.

No one appeared for the respondent the Attorney General of Alberta.

Rick T. G. Reeson, for the intervener.

Solicitors for the appellant: Cruickshank Karvellas, Edmonton.

Solicitor for the respondent the Director of Maintenance Enforcement: Jeannette W. Fedorak, Edmonton.

Solicitors for the respondent the Attorney General of Canada: Ingrid C. Hutton and Robert Moen, Edmonton.

Solicitors for the intervener: Barr, Wensel, Nesbitt & Reeson, Edmonton.

Présents: Les juges La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin et Iacobucci.

Faillite -- Ordre de priorité -- Remboursement postfaillite d'impôt sur le revenu -- Failli condamné à verser au directeur de l'exécution des ordonnances de soutien une pension alimentaire mensuelle pour ses enfants et son épouse -- Failli produisant par la suite une cession volontaire de ses biens et cédant au syndic son remboursement postfaillite d'impôt sur le revenu -- Directeur produisant un avis de saisie-arrêt continue à l'encontre de la Couronne fédérale -- Le remboursement d'impôt sur le revenu était-il à bon droit payable au syndic ou au directeur? -- Loi sur la faillite, L.R.C. (1985), ch. B-3, art. 67, 68.

M avait accumulé des arrérages relativement au paiement d'une pension alimentaire à ses enfants et à son épouse et il a été condamné à payer une somme mensuelle au directeur de l'exécution des ordonnances de soutien. Il a par la suite produit une cession volontaire de ses biens et signé un protocole d'entente permettant que tout remboursement résultant d'une déclaration postfaillite d'impôt sur le revenu soit posté au syndic appelant comme étant un élément d'actif, afin d'être partagé entre les créanciers. Le directeur a produit un avis de saisie-arrêt continue à l'encontre de la Couronne fédérale. Après que M eut été libéré de sa faillite, il y a eu délivrance d'un bref de saisie-arrêt rendant exécutoire l'avis de saisie-arrêt continue. Le syndic a produit une déclaration postfaillite d'impôt sur le revenu et un remboursement est devenu payable. En réponse à la requête du syndic, le protonotaire a déclaré que le remboursement constituait un bien du failli dévolu au syndic. En vertu de l'al. 67*c*) de la *Loi sur la faillite*, les biens d'un failli, constituant le patrimoine attribué à ses créanciers, comprennent tous les biens qui appartiennent au failli à la date de la faillite, ou qu'il peut acquérir ou qui peuvent lui être dévolus avant sa libération. Cependant, en vertu du par. 68(1), «le syndic, s'il en est requis par les inspecteurs ou les créanciers, demande au tribunal de rendre une ordonnance portant que soit payée au syndic la partie du traitement, du salaire ou de la rémunération que peut déterminer le tribunal, eu égard aux charges familiales et à la situation personnelle du failli». Le paragraphe 68(2) prévoit que l'ordonnance doit être adressée au failli et à son employeur. Le protonotaire était disposé à accepter que l'art. 68 soustrait le salaire à l'application de l'al. 67*c*), mais il n'était pas disposé à accepter que les déductions d'impôt sur le revenu prélevées sur le salaire d'un employé conservaient leur caractère de salaire. La Cour du Banc de la Reine a infirmé la décision du protonotaire et ordonné que le remboursement soit remis au directeur. La Cour d'appel a confirmé ce jugement.

Arrêt: Le pourvoi est rejeté.

L'intérêt que possède le failli dans un remboursement postfaillite d'impôt sur le revenu peut être considéré comme un «bien» aux fins de l'al. 67*c*) de la *Loi sur la faillite*. Même si le contribuable qui effectue les paiements en trop n'a aucun droit d'exiger un remboursement avant la production d'une déclaration, ce contribuable a assurément, à tout le moins, dans le remboursement d'impôt ultime, un intérêt futur et éventuel qui serait visé par la définition du mot «biens», à l'art. 2 de la Loi. Le bien n'a pas à remplir les exigences de l'al. 67*d*) pour que le syndic puisse le réclamer, puisque les al. 67*c*) et 67*d*) devraient être considérés comme les deux termes d'une alternative. L'intérêt du failli dans le remboursement n'a toutefois pas été automatiquement dévolu à son syndic. L'article 68 constitue un code complet régissant le traitement, le salaire ou autre rémunération du failli et ces biens ne peuvent donc être des «biens d'un failli, constituant le patrimoine attribué à ses créanciers» aux fins de l'art. 67. Le syndic ne peut y avoir accès qu'en présentant une demande en ce sens au tribunal, comme le prévoit le par. 68(1), et aucune demande de cette nature n'a été faite en l'espèce. L'interprétation fondée sur le sens ordinaire du par. 68(1) appuie la conception selon laquelle il s'agit d'une disposition de fond: les mots introductifs «nonobstant l'article 67» visent à établir clairement que le salaire relèvera non pas de l'al. 67*c*), mais bien de l'art. 68. La situation que l'art. 68 visait à réformer renforce ce point de vue. Puisque la disposition visait à remédier aux disparités provinciales dans l'application de la *Loi sur la faillite*, il s'ensuit nécessairement qu'elle constitue, par rapport au régime préexistant, une modification de fond plutôt qu'une modification de procédure.

Le remboursement postfaillite d'impôt sur le revenu conservait, en l'espèce, son caractère de salaire dans la mesure où il représentait la remise de déductions effectuées par l'employeur. Le failli a gagné une certaine somme à titre de salaire après avoir fait volontairement cession de ses biens et le fait qu'une partie de son salaire était, en vertu de la loi, automatiquement imputée à son obligation fiscale ne change rien au caractère fondamental de ce salaire. Les seuls problèmes que pose l'assimilation du remboursement d'impôt sur le revenu à un salaire différé aux fins de l'art. 68 de la *Loi sur la faillite* sont d'ordre structurel. L'inhabilité du syndic à agir unilatéralement constitue une lacune inhérente du par. 68(1) qui a maintenant été corrigée par une modification législative. Le fait que les ordonnances fondées sur le par. 68(2) ne puissent être adressées qu'«au failli et à son employeur» pose un problème plus grave, mais cette déficience ne saurait affecter la conclusion qu'un remboursement d'impôt sur le revenu conserve son caractère de salaire. Même s'il serait préférable, du point de vue du syndic, d'obtenir, à l'égard d'un remboursement d'impôt sur le revenu, une ordonnance visant directement Sa Majesté, une ordonnance contre la seule personne du failli confère légalement au syndic le droit requis au remboursement. De plus, le fait que le tribunal doive avoir «égard aux charges familiales et à la situation personnelle du failli» traduit une préoccupation prépondérante pour le soutien des familles. Le pouvoir discrétionnaire que l'art. 68 confère aux tribunaux est renforcé par le pouvoir discrétionnaire forcément laissé au syndic, aux créanciers et aux inspecteurs. Étant donné que ce type de pouvoirs discrétionnaires permet de mieux répondre aux coûts inhérents à l'entretien d'une famille, le mot «salaire» à l'art. 68 devrait recevoir une interprétation fondée sur son objet, nonobstant les difficultés que soulève le par. 68(2).

Le protocole d'entente ne pouvait créer une cession valide en raison de l'art. 67 de la *Loi sur la gestion des finances publiques* qui prévoit que «[s]ous réserve des autres dispositions de la présente loi ou de toute autre loi fédérale [. . .] les créances sur Sa Majesté sont incessibles». L'expression «créances sur Sa Majesté» est définie comme s'entendant non seulement des créances existantes, mais également des créances futures «échue[s] ou à échoir». La *Loi sur la gestion des finances publiques* ne permet pas une telle cession, et aucune autre loi fédérale ne contient d'autorisation expresse à cet égard. En prenant des mesures en vue de procéder à la saisie-arrêt du remboursement d'impôt sur le revenu, le directeur a donc forcément obtenu priorité en l'espèce.

POURVOI contre un arrêt de la Cour d'appel de l'Alberta (1992), 131 A.R. 154, 25 W.A.C. 154, 4 Alta. L.R. (3d) 97, 14 C.B.R. (3d) 127, 42 R.F.L. 76, 94 D.L.R. (4th) 394, qui a confirmé un jugement de la Cour du Banc de la Reine (1991), 123 A.R. 1, 82 Alta. L.R. (2d) 67, 8 C.B.R. (3d) 238, 35 R.F.L. (3d) 225, qui avait infirmé une décision du protonotaire Funduk (1990), 112 A.R. 70, 2 C.B.R. (3d) 109, accordant le remboursement d'impôt sur le revenu du failli au syndic de son actif. Pourvoi rejeté.

Michael J. McCabe, pour l'appelante.

Jeanette Fedorak, pour l'intimé le Director of Maintenance Enforcement.

Ingrid C. Hutton, c.r., et *Robert Moen*, pour l'intimé le procureur général du Canada.

Personne n'a comparu pour l'intimé le procureur général de l'Alberta.

Rick T. G. Reeson, pour l'intervenant.

Procureurs de l'appelante: Cruickshank Karvellas, Edmonton.

Procureur de l'intimé le Director of Maintenance Enforcement: Jeannette W. Fedorak, Edmonton.

Procureurs de l'intimé le procureur général du Canada: Ingrid C. Hutton et Robert Moen, Edmonton.

Procureurs de l'intervenant: Barr, Wensel, Nesbitt & Reeson, Edmonton.

Victor Francisco Clemente v. Her Majesty the Queen **(Crim.)(Man.)(23931)**
Indexed as: R. *v.* Clemente / Répertorié: R. *c.* Clemente
Hearing and judgment: June 13, 1994; Reasons delivered: July 14, 1994.
Audition et jugement: 13 juin 1994; Motifs déposés: 14 juillet 1994.

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

Criminal law -- Uttering death threats -- Mens rea -- Whether words must be uttered with the intent to intimidate or instill fear or whether sufficient to show threat uttered with the intent that it be taken seriously -- Criminal Code, R.S.C., 1985, c. C-46, s. 264.1(1)(a).

The appellant made threats to his social worker against her colleague (his former social worker) to whom his file was to be transferred. He stated on one occasion that he would blow up her office and strangle her, on another that a dead body would be found in her office on transfer of his file, and on yet another, that he would kill her. The appellant was convicted of intending to convey to his former social worker that he intended to kill or cause serious bodily harm to her, contrary to s. 264.1(1)(*a*) of the *Criminal Code*. The trial judge went on to find that the appellant intended that his present social worker should convey the message to the intended victim. The conviction was upheld on appeal. At issue here was the *mens rea* that is required by s. 264.1(1)(*a*). The appellant argued that it must be established that the words were uttered with the intent to intimidate or instill fear. The respondent contended that it is sufficient if it is shown that the threat was uttered with the intent that it be taken seriously.

Held: The appeal should be dismissed.

The intent required under s. 264.1(1)(*a*), which is aimed at preventing "threats", can be framed in either of the two ways put forward. Firstly, a serious threat to kill or cause serious bodily harm must have been uttered with the intent to intimidate or instill fear. Conversely, such a threat uttered with the intent to intimidate or cause fear must have been uttered with the intent that it be taken seriously.

Section 264.1(1)(*a*) is directed at words which cause fear or intimidation. No further action need be taken by the accused beyond the threat itself. The meaning conveyed by the words is the important factor. Whether the accused had the intent to intimidate, or that his or her words were meant to be taken seriously will, absent an explanation by the accused, usually be determined by the words used, the context in which they were spoken, and the person to whom they were directed. It is not a necessary element of the offence that the intended victim be aware of the threat. The *actus reus* of the offence is the uttering of threats of death or serious bodily harm. The *mens rea* is that the words were meant to intimidate or to be taken seriously. Words spoken in jest or in such a manner that they could not be taken seriously could not lead a reasonable person to conclude that the words conveyed a threat.

The words uttered by the appellant when viewed objectively in the context or circumstances in which they were spoken would "convey a threat of serious bodily harm to a reasonable person".

APPEAL from a judgment of the Manitoba Court of Appeal (1993), 92 Man. R. (2d) 51, 61 W.A.C. 51, 86 C.C.C. (3d) 398, 27 C.R. (4th) 281, [1994] 2 W.W.R. 153, dismissing an appeal from conviction by DeGraves J. Appeal dismissed.

Harvey J. Slobodzian, for the appellant.

Rick Saull, for the respondent.

Solicitors for the appellant: Pullan, Guld, Kammerloch, Winnipeg.

Solicitor for the respondent: Attorney General of Manitoba, Winnipeg.

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

Droit criminel -- Menaces de mort -- Mens rea -- Les paroles doivent-elles être prononcées avec l'intention d'intimider ou de susciter la crainte ou suffit-il de démontrer que la menace a été proférée avec l'intention qu'elle soit prise au sérieux? -- Code criminel, L.R.C. (1985), ch. C-46, art. 264.1(1)a).

L'appelant a proféré à sa travailleuse sociale des menaces qui visaient la collègue de cette dernière (son ancienne travailleuse sociale), à qui son dossier devait être transféré. Il s'est écrié à une occasion qu'il ferait sauter son bureau et qu'il l'étranglerait, et à une autre occasion que, si son dossier était transféré, il y aurait un cadavre dans son bureau. Il a par ailleurs menacé de la tuer. L'appelant a été déclaré coupable d'avoir voulu transmettre à son ancienne travailleuse sociale son intention de la tuer ou de lui causer des blessures graves, en contravention de l'al. 264.1(1)*a*) du *Code criminel*. Le juge du procès a poursuivi en concluant que l'appelant entendait que sa travailleuse sociale actuelle transmette le message à la victime visée. La déclaration de culpabilité a été confirmée en appel. La question en litige porte sur la *mens rea* requise par l'al. 264.1(1)*a*). L'appelant allègue qu'il faut établir que les paroles ont été prononcées avec l'intention d'intimider ou de susciter la crainte. L'intimée soutient qu'il suffit de démontrer que la menace a été proférée avec l'intention qu'elle soit prise au sérieux.

Arrêt: Le pourvoi est rejeté.

L'intention requise à l'al. 264.1(1)*a*), dont le but est de prévenir les «menaces», peut être formulée de l'une ou l'autre façon avancées. Premièrement, une menace sérieuse de tuer ou d'infliger des blessures graves doit avoir été proférée avec l'intention d'intimider ou de susciter la crainte. Par ailleurs, une menace proférée avec l'intention d'intimider ou de susciter la crainte doit l'avoir été avec l'intention qu'elle soit prise au sérieux.

L'alinéa 264.1(1)*a*) vise des mots qui suscitent la crainte ou l'intimidation. La menace n'a pas besoin d'être suivie d'un acte. C'est le sens des mots qui importe. La question de savoir si l'accusé avait l'intention d'intimider ou si les termes qu'il a employés visaient à être pris au sérieux sera habituellement tranchée, en l'absence d'explication de la part de l'accusé, en fonction des mots utilisés, du contexte dans lequel ils s'inscrivent et de la personne à qui ils étaient destinés. Le fait que la victime visée soit au courant de la menace ne constitue pas un élément essentiel de l'infraction. L'*actus reus* de l'infraction est le fait de proférer des menaces de mort ou de blessures graves. La *mens rea* est l'intention de faire en sorte que les paroles prononcées ou les mots écrits soient perçus comme visant à intimider ou à être pris au sérieux. Des paroles prononcées à la blague ou de manière telle qu'elles ne pouvaient être prises au sérieux ne pourraient mener une personne raisonnable à conclure qu'elles constituaient une menace.

Considérés objectivement dans le contexte ou les circonstances dans lesquels elles ont été utilisées, les paroles qu'a prononcées l'appelant constituaient «une menace de blessures graves pour une personne raisonnable».

POURVOI contre un arrêt de la Cour d'appel du Manitoba (1993), 92 Man. R. (2d) 51, 61 W.A.C. 51, 86 C.C.C. (3d) 398, 27 C.R. (4th) 281, [1994] 2 W.W.R. 153, qui a rejeté l'appel de la déclaration de culpabilité prononcée par le juge DeGraves. Pourvoi rejeté.

Harvey J. Slobodzian, pour l'appelant.

Rick Saull, pour l'intimée.

Procureurs de l'appelant: Pullan, Guld, Kammerloch, Winnipeg.

Procureur de l'intimée: Procureur général du Manitoba, Winnipeg.

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

The next bulletin of proceedings will be published August 19, 1994. /
Le prochain bulletin des procédures sera publié le 19 août 1994

DEADLINES: MOTIONS

BEFORE THE COURT:

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

Motion day	**:**	**October 3, 1994**
Service	:	September 12, 1994
Filing	:	September 19, 1994
Respondent	:	September 26, 1994
Motion day	**:**	**November 7, 1994**
Service	:	October 17, 1994
Filing	:	October 24, 1994
Respondent	:	October 31, 1994
Motion day	**:**	**December 5, 1994**
Service	:	November 14, 1994
Filing	:	November 21, 1994
Respondent	:	November 28, 1994

DÉLAIS: REQUÊTES

DEVANT LA COUR:

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

Audience du	**:**	**3 octobre 1994**
Signification	:	12 septembre 1994
Dépôt	:	19 septembre 1994
Intimé	:	26 septembre 1994
Audience du	**:**	**7 novembre 1994**
Signification	:	17 octobre 1994
Dépôt	:	24 octobre 1994
Intimé	:	31 octobre 1994
Audience du	**:**	**5 décembre 1994**
Signification	:	14 novembre 1994
Dépôt	:	21 novembre 1994
Intimé	:	28 novembre 1994

DEADLINES: APPEALS

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

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

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

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

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

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

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

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

DÉLAIS: APPELS

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

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

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

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

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

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

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

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