

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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Germain Jean Poudrier
Timothy D. Klaassen

v. (26554)

Her Majesty The Queen (B.C.)
Kate Ker
Min. of the A.G.

FILING DATE 11.5.1998

Thomas Bruce Baker
Stephen M. Grant
Gowling, Strathy & Henderson

v. (26562)

Monica Frieda Francis (Ont.)
A. Burke Doran, Q.C.
Lang Michener

FILING DATE 8.5.1998

Edwin K. Lewis
Peter C. Ghiz

v. (26603)

**Her Majesty The Queen in Right of the Province of
Prince Edward Island (P.E.I.)**
Barrie L. Grandy, Q.C.
Patterson, Palmer, Hunt and Murphy

FILING DATE 21.4.1998

La Brasserie Labatt Ltée
Alain Gascon
Lavery, de Billy

c. (26605)

**Me André Lacoureur, ès qualités d'arbitre de
griefs et al. (Qué.)**
André Ladouceur

DATE DE PRODUCTION 17.4.1998

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

John Riley Shewfelt
John R. Shewfelt

v. (26606)

Her Majesty The Queen in right of Canada (B.C.)
James D. Bissell, Q.C.
Dep. of Justice

FILING DATE 29.4.1998

Cercle d'Or Taxi Ltée et al.
Nicolas Bellemare

c. (26607)

Ville de Montréal (Qué.)
Sophie Benazet
Cour municipale de Montréal

DATE DE PRODUCTION 24.4.1998

Roya Sheikholeslami
Stuart Rush, Q.C.
Rush Crane Guenther

v. (26608)

Atomic Energy of Canada Ltd. (F.C.A.)
Stephen Bird
Kimmel Victor Ages

FILING DATE 27.4.1998

Stanley Livingston, Junior
Darren T. Hagen
Cuelenaere, Kendall, Katzman & Richards

v. (26609)

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

FILING DATE 20.4.1998

Roger Lawrence et al.
Roger Lawrence

v. (26610)

Her Majesty The Queen (B.C.)
Cory Stolte
Dep. A.G. of Canada

FILING DATE 24.4.1998

Communauté urbaine de Montréal et al.
Pierre Yves Boisvert
Leduc Bélanger Boisvert Laurendeau Rivard

c. (26611)

**Chubb du Canada Compagnie d'assurance et al.
(Qué.)**
Marie-Claude Thibault
Marchand, Magnan, Melançon, Forget

DATE DE PRODUCTION 24.4.1998

Franz Dobnik
Kevin J. Scullion
Harris & Harris

v. (26613)

Darcy's Import Co. Ltd. et al. (Ont.)
Eric Golden
Blaney, McMurtry, Stapells, Friedman

FILING DATE 27.4.1998

Allan Granovsky
Ronald Schmalcel

v. (26615)

Minister of Employment and Immigration (F.C.A.)
Cathy Doolan
Dept. of Human Resource Development

FILING DATE 11.5.1998

Peter Wing Lo et al.
Peter Wing Lo

v. (26616)

Scotiacleod Inc. (B.C.)
C. Andison
Shapray, Cramer & Assoc.

FILING DATE 21.4.1998

Casimir Gadzella
Casimir Gadzella

v. (26618)

Walter Gadzella (Sask.)
Rozdilsky - Baniak Law Firm

FILING DATE 22.4.1998

Marcel Clément et al.
Steve Reimnitz, c.r.
Gauthier Bédard

c. (26619)

Polyvalente La-Porte-Du-Nord et al. (Qué.)
Carl Lachance
Cain Lamarre Wells

DATE DE PRODUCTION 27.4.1998

John Carten Personal Law Corporation et al.
Kerry-Lynne Findlay
Watson Goepel Maledy

v. (26625)

**The Attorney General for British Columbia et al.
(B.C.)**
Douglas Robinson, Q.C.
Lawson Lundell Lawson & McIntosh

FILING DATE 1.5.1998

Gencorp Canada Inc.

J. Brett Ledger
Osler, Hoskin & Harcourt

v. (26626)

**Superintendent of Pensions for Ontario et al.
(Ont.)**

Leslie M. McIntosh
A.G. of Ontario

FILING DATE 8.5.1998

Stephen Byer et al.

Stephen Byer

c. (26539)

Bernardo Reyes (Qué.)

David Joannis
Heenan Blaikie

DATE DE PRODUCTION 30.4.1998

Lawrence S. Etienne et al.

Henry M. Lang, Q.C.

v. (26627)

Dr. John L. Remus et al. (Ont.)

J. Thomas Curry
McCarthy, Tetrault

FILING DATE 29.4.1998

Town of Port McNeill

Guy McDannold
Staples McDannold Stewart

v. (26628)

Regina (B.C.)

Brian Rendell
Min. of the A.G.

FILING DATE 1.5.1998

MAY 11, 1998 / LE 11 MAI 1998

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

Christian Leonardo Bazgan

v. (26457)

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

NATURE OF THE CASE

Criminal law - Sentencing - Conditional sentence - Whether the conditional sentence provisions under s. 742.1 of the *Criminal Code* are available to persons convicted of narcotic trafficking offences - What procedure is a sentencing judge to follow with respect to the imposition of a conditional sentence.

PROCEDURAL HISTORY

| | |
|---|--|
| March 14, 1997 Court of Queen's Bench of Alberta (Murray J.) | Conviction: trafficking in cocaine; Sentence: 18 month conditional sentence |
| October 14, 1997 Court of Appeal of Alberta (Côté J.A., Bensler and Moreau JJ.) | Crown sentence appeal allowed; Applicant sentenced to 12 months imprisonment |
| February 3, 1998 Supreme Court of Canada | Application for leave to appeal and motion for the extension of time filed |

Her Majesty The Queen

v. (26462)

R.N.S. (Crim.)(B.C.)

NATURE OF THE CASE

Criminal law - Sentencing - Conditional sentence - Whether the Court of Appeal erred when it determined that a conditional sentence was appropriate in this case.

PROCEDURAL HISTORY

| | |
|--|--|
| May 8, 1996 Provincial Court of British Columbia (MacArthur P.C.J.) | Conviction: sexual assault; invitation to sexual touching Sentence: nine months incarceration |
| December 12, 1997 British Columbia Court of Appeal (Lambert, Esson, Southin JJ.A.) | Sentence appeal allowed; nine month conditional sentence substituted |

February 3, 1998
Supreme Court of Canada

Application for leave to appeal filed

Ion Chiselita

v. (26471)

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

NATURE OF THE CASE

Criminal law - Sentencing - Conditional sentence - Whether the conditional sentence provisions under s. 742.1 of the *Criminal Code* are available to persons convicted of narcotic trafficking offences - What is the scope of appellate review of sentencing decisions - What power does a court of appeal have to interfere with a finding of exceptional circumstances of such significance as to justify the imposition of a conditional sentence - Whether the imposition of a conditional sentence constitutes a penalty that includes components of deterrence and denunciation.

PROCEDURAL HISTORY

September 4, 1997
Provincial Court of Alberta (Saddy J.)

Conviction: trafficking in cocaine; Sentence: conditional sentence of two years less a day

December 12, 1997
Court of Appeal of Alberta
(Picard J.A., Marshall, Hart JJ.)

Crown's sentence appeal allowed; sentence of incarceration for two years less a day imposed

February 10, 1998
Supreme Court of Canada

Application for leave to appeal filed

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

L.K.N.

c. (26434)

I.G. (Qué.)

NATURE DE LA CAUSE

Droit de la famille - Divorce - Garde - Pensions - Procédure - Appel - Critère du meilleur intérêt de l'enfant - Pouvoir d'une cour d'appel de rejeter sommairement un appel portant sur le droit de garde d'enfants mineurs - La Cour d'appel a-t-elle outrepassé ses pouvoirs et s'est-elle écartée de façon erronée, manifeste ou déraisonnable des critères applicables quant à l'interprétation et l'application de l'article 501(5) du *Code de procédure civile*, lequel permet un rejet d'appel en raison du "caractère abusif et dilatoire" de l'appel?

HISTORIQUE PROCÉDURAL

Le 11 juillet 1997
Cour supérieure du Québec
(Décarie J.C.S.)

Jugement de divorce prononcé; garde des enfants confiée à l'intimé; droits d'accès accordés à la demanderesse

Le 10 octobre 1997
Cour d'appel du Québec (Beauregard et Nuss J.J.C.A.,
et Philippon J.C.A. [*ad hoc*])

Requête de l'intimé en rejet d'appel accueillie; appel de
la demanderesse rejetée

Le 29 janvier 1998
Cour suprême du Canada

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

Co-operators General Insurance Company

v. (26445)

Canada Trustco Mortgage Company (N.S.)

NATURE OF THE CASE

Commercial Law - Insurance - Procedural Law - Civil Procedure - Whether Court of Appeal erred by not properly considering an agreed statement of facts - Whether Court of Appeal misapplied section 169 of the *Insurance Act*, R.S.N.S., c. 231 - Subrogation of subscription insurers to rights of recovery of a mortgagee from another insurer under a standard mortgage endorsement clause in a policy covering the mortgaged property - Subrogation of subscription insurers after making an *ex gratia* payment to the mortgagee.

PROCEDURAL HISTORY

September 12, 1996
Supreme Court of Nova Scotia (Haliburton J.)

Damages awarded

November 17, 1997
Nova Scotia Court of Appeal
(Pugsley, Chipman and Flinn J.J.A.)

Appeal dismissed, cross-appeal allowed

January 14, 1998
Supreme Court of Canada

Application for leave to appeal filed

Robert McMichael and Signe McMichael

v. (26443)

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

NATURE OF THE CASE

Statutes - Interpretation - Crown - Contracts - Agreement in 1965 between Applicants and Respondent Crown - Whether the Court of Appeal erred in law in holding that the Agreement had been superseded, in part, by the 1989 Act - Whether the Court of Appeal erred in law in holding that the Applicants had contracted away certain of their rights provided for in the 1965 agreement - Whether the Court of Appeal erred in law in reversing the trial judge's finding that the Crown had breached paragraph 13 of the 1965 agreement.

PROCEDURAL HISTORY

November 15, 1996
Ontario Court (General Division) (Grossi J.)

Application for various declarations granted

November 20, 1997
Court of Appeal for Ontario
(Carthy, Doherty and Finlayson [dissenting] JJ.A.)

Appeal allowed, application dismissed; cross-appeal dismissed

January 19, 1998
Supreme Court of Canada

Application for leave to appeal filed

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

Warrington Olanzo James

v. (26405)

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

NATURE OF THE CASE

Criminal law - Evidence - Fresh evidence - Whether the Court of Appeal erred in dismissing the Applicant's application to admit fresh evidence - Juries - Whether there was a reasonable apprehension of bias in a juror - Defences - Honest but mistaken belief in consent - Whether the trial judge erred in failing to instruct the jury on honest but mistaken belief in consent - Recent complaint - Prior consistent statements - Whether the trial judge erred in failing to warn the jury that the complaints made by the complainant after the alleged offence were not proof of the offence.

PROCEDURAL HISTORY

November 28, 1996
Court of Queen's Bench of Alberta (Wilkins J.)

Conviction: sexual assault

December 1, 1997
Court of Appeal of Alberta
(McClung, Russell JJ.A. and Hutchinson J.)

Appeal dismissed

January 30, 1998
Supreme Court of Canada

Application for leave to appeal filed

Carole L. Barrons

v. (26486)

**Her Majesty the Queen In Right of Ontario, Minister of Consumer & Commercial
Relations, Ken Simard Sales Inc. O/A Ontario Hyundai, Gregory Mason,
and Ontario Automobile Dealer Association (N.S.)**

NATURE OF THE CASE

Procedural law- Appeals - Constitutional Law - Courts - Small Claims Court - Likelihood of success as a basis for dismissing appeal - Constitutional challenge to Small Claims Court - Applicant's appeal from dismissal of small claims court action dismissed based on assessment of the likelihood of her success at trial - Applicant raises constitutional and jurisdictional challenges to Small Claims Court of Ontario.

PROCEDURAL HISTORY

| | |
|--|---------------------------------------|
| June 20, 1996 Ontario Small Claims Court (Thomson J.) | Action dismissed |
| September 9, 1997 Ontario Divisional Court (O'Leary J.) | Appeal dismissed |
| November 17, 1997 Ontario Court of Appeal (Laskin, Rosenberg JJ.A and McMurtry C.J.) | Leave to appeal refused |
| March 12, 1998 Supreme Court of Canada | Application for leave to appeal filed |

M. Donald Easton

v. (26353)

Her Majesty the Queen and The Minister of National Revenue (Ont.)

AND BETWEEN:

Harold Freeman

v. (26353)

Her Majesty the Queen (Ont.)

NATURE OF THE CASE

Taxation - Assessment - Shareholders granted personal guarantees of a credit facility granted to holding companies that owned real estate for the purposes of developing the land - Shareholders suffered losses when the guarantees were called - Whether the losses were capital losses - Paragraph 39(1)(c) of the *Income Tax Act*.

PROCEDURAL HISTORY

| | |
|--|--|
| February 6, 1992 Federal Court, Trial Division (Dubé J.) | Appeals from tax reassessments dismissed |
| October 3, 1997 Federal Court of Appeal (Denault, Linden, Robertson JJ.A.) | Appeals dismissed |
| November 27, 1997 Supreme Court of Canada | Application for leave to appeal filed |

Seloame David Chapman

v. (26468)

**Shirley Kathleen Webster and Trisha Kathleen Joy Webster,
an infant who sues by her mother and next friend, Shirley Kathleen Webster (Man.)**

NATURE OF THE CASE

Torts - Negligence - Physicians & surgeons - Whether the Court of Appeal applied the wrong test for causation by equating “materially increasing the risk” of damage to “materially contributing” to the damage - Whether the Court of Appeal erred in requiring the Applicant to disprove causation to standard of scientific certainty once the Respondents proved that the impugned conduct occurred when damage was theoretically possible - Whether the Court of Appeal erred in holding that the finding of when certain damage was sustained or became inevitable was not a finding of fact and in interfering with it without identifying an overriding and palpable error - Whether the Court of Appeal erred in upholding the findings of negligence without expert evidence establishing standards of practice and in the face of expert evidence approving the Applicant’s conduct - Whether the Court of Appeal erred in applying an objective test when considering informed consent - Whether the finding of causation is so fundamentally wrong that it cannot stand.

PROCEDURAL HISTORY

August 6, 1996
Court of Queen’s Bench of Manitoba (MacInnes J.)

Respondents’ action for negligence dismissed

September 26, 1996
Court of Appeal of Manitoba (Lyon J.A.)

Motion to bifurcate appeal granted; appeal as to liability to be heard prior to appeal as to damages

December 9, 1997
Court of Appeal of Manitoba
(Twaddle, Lyon and Helper JJ.A.)

Appeal as to liability allowed

February 6, 1998
Supreme Court of Canada

Application for leave to appeal filed

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

MAY 14, 1998 / LE 14 MAI 1998

26332 **DOUGLAS EARL GUYATT - v. - HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Unreasonable verdict - *Criminal Code* s. 686(1)(a)(iii) - Whether the Court of Appeal erred in deciding that s. 686(1)(a)(iii) of the *Criminal Code* does not provide an appellate court with the power to quash a criminal conviction where the evidence is weak and the jury charge is deficient - Reasonable doubt - Whether the Court of Appeal erred in holding that the jury were properly instructed on the application of reasonable doubt to the evidence - Expert evidence - Whether the Court of Appeal erred in holding that the trial judge did not err in failing to withdraw from the jury gravely prejudicial expert evidence of little or no probative value.

PROCEDURAL HISTORY

| | |
|--|---------------------------------------|
| October 7, 1994 Supreme Court of British Columbia (Melvin J.) | Conviction: second degree murder |
| October 3, 1997 Court of Appeal of British Columbia (Goldie, Prowse, Ryan JJ.A.) | Appeal dismissed |
| November 25, 1997 Supreme Court of Canada | Application for leave to appeal filed |

26408 **LAI LING YAMMIE KWAN - v. - HER MAJESTY THE QUEEN** (Crim.)(Man.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Charge to the jury - Reasonable doubt - Whether the trial judge's charge to the jury on reasonable doubt was adequate - Whether out-of-court statements made by one accused that implicate a co-accused can be used to bolster accused's testimony - Whether severance should be mandatory where an accused's out-of-court statements that implicate a co-accused will be introduced as evidence - Whether the trial judge's charge on the out-of-court statements of the Applicant's co-accused was deficient.

PROCEDURAL HISTORY

| | |
|--|----------------------------------|
| February 5, 1996 Manitoba Court of Queen's Bench (Kennedy J.) | Conviction: second degree murder |
|--|----------------------------------|

November 6, 1997
Court of Appeal for Manitoba
(Scott C.J.M., Huband, Monnin JJ.A.)

Appeal dismissed

January 2, 1998
Supreme Court of Canada

Application for leave to appeal filed

26409 **ERWIN FRANZ SILLIPP - v. - HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Criminal harassment - Whether s. 264 (criminal harassment) is contrary to ss. 2(b), 2(d) and 7 of the Charter - Whether the Court of Appeal erred in approving the charge to the jury on s. 264 (criminal harassment).

PROCEDURAL HISTORY

June 20, 1995
Alberta Court of Queen's Bench (Murray J.)

Conviction: criminal harassment

November 12, 1997
Court of Appeal of Alberta
(Fraser C.J.A., Hunt, Berger JJ.A.)

Appeal dismissed

January 8, 1998
Supreme Court of Canada

Application for leave to appeal filed

26448 **SHEILA ROBERTSON - v. - CANADIAN IMPERIAL BANK OF COMMERCE AND CIBC MORTGAGE CORPORATION** (B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

*Torts - Negligence - Duty of care - Whether the lower courts erred in determining the issue of liability and erred in failing to delineate the duty of care owed by the Respondents to the Applicant - Whether the lower courts erred in failing to apply *Rainbow Industrial Caterers v. Canadian National Railway Co.* [1991] 3 S.C.R. 3.*

PROCEDURAL HISTORY

| | |
|--|--|
| September 27, 1995 Supreme Court of British Columbia (Dillon J.) | Applicant's action for damages dismissed |
| June 4, 1997 British Columbia Court of Appeal (Huddart, Braidwood and Hall JJ.A.) | Appeal dismissed |
| November 17, 1997 British Columbia Court of Appeal (Huddart, Braidwood and Hall JJ.A.) | Supplementary reasons: refusal to award costs to the Respondents |
| January 12, 1998 Supreme Court of Canada | Application for leave to appeal filed |

26216 **ROGER WALLACE WARREN - v. - HER MAJESTY THE QUEEN** (Crim.)(NWT)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Confessions - Whether the Court of Appeal erred in holding that the Applicant's confession was voluntary - Whether the Court of Appeal erred in holding that the Applicant's s. 10(b) *Charter* rights were not infringed - Expert evidence - Whether the Court of Appeal erred in holding that the Applicant's expert could not testify in relation to false confessions - Whether the trial judge's instruction to the jury that a statement made against interest is likely to be true was in error - Whether the Court of Appeal erred in holding that the Applicant was correctly prohibited from cross-examining police on his pre-confession exculpatory statements - Whether the trial judge's charge on second degree murder was correct - Whether the Applicant's rights under s. 9 of the *Charter* were infringed during the remand procedure.

PROCEDURAL HISTORY

| | |
|--|--|
| January 20, 1995 Supreme Court of the Northwest Territories (de Weerd J.) | Conviction: second degree murder (9 counts) |
| July 15, 1997 Court of Appeal for the Northwest Territories (McClung, Hetherington, Foisy JJ.A.) | Appeal dismissed |
| September 30, 1997 Supreme Court of Canada (McLachlin J.) | Motion for the extension of time, Motion to file a lengthy memorandum or argument, motion to appoint counsel granted |
| December 1, 1997 Supreme Court of Canada | Application for leave to appeal filed |

February 5, 1998
Supreme Court of Canada (Registrar)

Respondent's motion for the extension of time granted

26433 CANADIAN STANDARDS ASSOCIATION - v. - JIM CAMPBELL AND MICHELLE ANN-MARIE ISHERWOOD, FLEXWATT CORPORATION, WINTER THERM CORPORATION, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, THERMAFLEX LIMITED, AZTECH INTERNATIONAL LTD., FLEXEL INTERNATIONAL LTD., ADAIR INDUSTRIES LTD., CITY OF VANCOUVER, CITY OF WEST VANCOUVER, CITY OF VICTORIA, CITY OF NORTH VANCOUVER, DISTRICT OF NORTH VANCOUVER, CITY OF BURNABY, CORPORATION OF THE CITY OF NEW WESTMINSTER, DISTRICT OF MAPLE RIDGE AND CITY OF SURREY, CITY OF ABBOTSFORD (B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - Actions - Pre-trial procedure - Certification of class action - Chambers judge ordering certification of class of plaintiffs in whose homes allegedly defective heating panels were installed - Class comprised of approximately 2,000 plaintiffs in the province of British Columbia - Manufacturers and distributors of panels bankrupt - Applicant had set standard and approved product for use and installation - Problems with certain types of heating panels resulting in disconnect order by the Province - Damages suffered by plaintiffs - Chambers judge certifying threshold issues to be determined in a series of class proceedings trials - Court of Appeal upholding decision with amendments to certification order - Applicant appealing from interlocutory order on the grounds, *inter alia*, that class proceedings severely limit right to discovery of individual plaintiffs regarding possibility of negligent installation and right to seek contribution and indemnity from third parties.

PROCEDURAL HISTORY

June 14, 1996
Supreme Court of British Columbia (Hutchison, J.)

Order for certification of class action

November 7, 1997
Court of Appeal for British Columbia
(Cumming, Newbury and Huddart JJ.A.)

Applicant's appeal dismissed; Respondents' appeal allowed; order for certification modified

January 6, 1998
Supreme Court of Canada

Application for leave to appeal filed

R.G.F. - v. - HER MAJESTY THE QUEEN (Crim.)(Alta.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

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

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

NATURE OF THE CASE

Criminal law - Evidence - Child witnesses - Competence to testify - Whether the trial judge's inquiry into the competence of the child witnesses to testify was adequate - Whether the trial judge should have allowed Crown counsel to assist in conducting the inquiry.

PROCEDURAL HISTORY

March 8, 1996
Provincial Court of Alberta (Youth Division)
(Jorgensen J.)

Conviction: sexual interference; sexual assault
Acquittal: sexual interference; sexual assault

April 24, 1997
Court of Appeal of Alberta
(Côté, Russell and Berger JJ.A.)

Applicant's appeal allowed; Respondent's appeal allowed; new trial ordered

February 3, 1998
Supreme Court of Canada

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

26432 **BEATA MICHALSKI - v. - GRAYDON OLSON AND DARIUSZ MICHALSKI - and between - DARYL DNISTRANSKY - v. - FRED N. HORNER AND GARY DNISTRANSKY - and between - GARY DNISTRANSKY - v. - FRED N. HORNER - and between - JANINA MICHALSKI - v. - GRAYDON OLSON, DARIUSZ MICHALSKI AND BEATA MICHALSKI (Man.)**

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Torts - Conflict of laws - Limitation of actions - prescription - Motor vehicles - Injured parties not resident in province where accident occurred - Actions instituted in home province of injured parties - *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [1994] 3 S.C.R. 1022 decided after statements of claim issued - Actions out of time in province where accident occurred - Whether Court of Appeal should have applied *lex loci delicti* rather than *lex fori* - Whether the Court of Appeal misdirected themselves by not providing an orderly, fair and just implementation of the new law as declared in *Tolofson* - Whether the Manitoba Court of Appeal erred in law in holding the Respondents were not estopped from raising the limitation defence.

PROCEDURAL HISTORY

March 20, 1997
Court of Queen's Bench of Manitoba (Barkman J.)

Motion dismissed

November 6, 1997
Court of Appeal of Manitoba
(Huband, Helper and Monnin JJ.A.)

Appeal allowed; summary judgment dismissing actions granted

January 5, 1998
Supreme Court of Canada

Application for leave to appeal filed

26440 **SEAMUS LEONARD, ELIZABETH LEONARD, AND KELLY LEONARD - v. - STÉPHANE HOULE, ROCH PETERSON, CONSTABLE GUY MATHIEU, INSPECTOR RON LAMOTHE, CHIEF OF POLICE THOMAS FLANAGAN, THE CORPORATION OF THE CITY OF OTTAWA, THE QUEBEC PROVINCIAL POLICE FORCE, THE HULL POLICE FORCE, PAFCO INSURANCE COMPANY LIMITED, LA RÉGIE DE L'ASSURANCE AUTOMOBILE DU QUÉBEC AND THE SUPERINTENDENT OF INSURANCE FOR THE PROVINCE OF ONTARIO** (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed without costs.

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

NATURE OF THE CASE

Torts - Conflict of laws - Motor vehicles - Applicant injured in automobile accident occurring in Quebec during police pursuit starting in Ontario - Action for damages instituted in Ontario - Action for damages arising out of bodily injury suffered when damage is caused by an automobile statute barred in Quebec by *Automobile Insurance Act*, R.S.Q.1990, c.A-25 - Whether the law of Ontario or Quebec should apply - If Quebec law governs, is the action barred by Quebec's *Automobile Insurance Act* - Whether there are any exceptions to the *lex loci delicti* rule in light of *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [1994] 3 S.C.R. 1022.

PROCEDURAL HISTORY

April 24, 1996
Ontario Court (General Division)
(Bell J.)

Summary judgment granted dismissing action against Respondent Hull Police Force; summary judgment dismissing action against Respondents Mathieu, Lamothe, Flanagan, and City of Ottawa dismissed in part

November 10, 1997
Court of Appeal for Ontario
(Brooke, Labrosse and Charron JJ.A.)

Appeal dismissed

January 12, 1998
Supreme Court of Canada

Application for leave to appeal filed

26185 **JONES WILLIAM IGNACE, SHELAGH ANNE FRANKLIN AND JAMES ALLAN SCOTT PITAWANAKWAT - v. - REGINA** (Crim.)(B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASES

Criminal law - Procedural law - Courts - Jurisdiction - Jurisdiction of courts over unceded territories.

PROCEDURAL HISTORY

| | |
|--|--|
| May 29, 1996 Supreme Court of British Columbia (Henderson J.) | Petition challenging jurisdiction over Jones William Ignace and other non-parties dismissed |
| May 9, 1997 Supreme Court of British Columbia (Josephson J.) | Application for declaration that court has no jurisdiction dismissed |
| May 20, 1997 Supreme Court of British Columbia (Josephson J.) | Ignace convicted of mischief, use of firearm in assaulting peace officer, dangerous possession of weapon, and discharging of firearm at peace officer; Franklin convicted of mischief; Pitawanakwat convicted of mischief and dangerous possession of weapon |
| July 23, 1997 British Columbia Court of Appeal (Huddart J.A.) | Application to refer appeals to a panel for summary judgment on issue of jurisdiction adjourned |
| November 6, 1997 Supreme Court of Canada (Lamer C.J., Cory, McLachlin JJ.A.) | Application for leave to appeal and ancillary motion dismissed |
| December 11, 1997 British Columbia Court of Appeal (Rowles, Prowse, Hall JJ.A.) | Cases consolidated; Appeals to proceed on jurisdictional issues only |
| February 5, 1998 British Columbia Court of Appeal (Rowles, Prowse, Hall JJ.A.) | Appeals from May 9, 1997 decision of Josephson J. dismissed |
| March 5, 1998 Supreme Court of Canada | Application for leave to appeal and Notice of Constitutional Questions filed |

26186 **HAROLD PASCAL - v. - CARL WALKER** (Crim.)(B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Criminal law - Procedural law - Courts - Jurisdiction - Jurisdiction of courts over unceded territories.

PROCEDURAL HISTORY

| | |
|---|--|
| May 29, 1996 Supreme Court of British Columbia (Henderson J.) | Petition challenging jurisdiction over Applicant and other non-parties dismissed |
| July 23, 1997 British Columbia Court of Appeal (Huddart J.A.) | Applicant's application for extension of time to appeal dismissed; Respondent's cross-application to dismiss appeal as abandoned granted |
| November 6, 1997 Supreme Court of Canada (Lamer C.J., Cory, McLachlin JJ.A.) | Application for leave to appeal dismissed |
| February 10, 1998 British Columbia Court of Appeal (Macfarlane J.A.) | Applicant's application for extension of time to file notice of appeal dismissed; Appeal dismissed as abandoned |
| March 5, 1998 Supreme Court of Canada | Application for leave to appeal and Notice of Constitutional Questions filed |

26460 **VERNA FRIDAY - v. - HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - Courts - Jurisdiction - Jurisdiction of courts over unceded territories.

PROCEDURAL HISTORY

October 30, 1995
Ontario Court (General Division) (Winkler J.)

Motion for order setting aside judgment in relation to
specific lands dismissed

December 9, 1997
Court of Appeal for Ontario
(Carthy, Osborne, Abella JJ.A.)

Appeal dismissed

March 5, 1998
Supreme Court of Canada

Application for leave to appeal filed

26467 **JAMES T. ALLARD, THORNHILL AGGREGATES LTD., MONTCALM AGGREGATES LTD., MAPLE RIDGE READY-MIX LTD., ALLARD CONTRACTORS LTD., ALBION AGGREGATE LTD. AND MAPLE RIDGE READY MIX v. CORPORATION OF THE DISTRICT OF MAPLE RIDGE AND BOARD OF VARIANCE OF THE DISTRICT OF MAPLE RIDGE** (B.C.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Administrative law - Municipal law - Jurisdiction - Judicial review - How should the use of land be determined for the purposes of deciding whether a non-conforming use has been varied? - What is the appropriate standard of review to be applied to an administrative tribunal such as a Board of Variance?

PROCEDURAL HISTORY

November 14, 1996
Supreme Court of British Columbia
(Shaw J.)

Decision of Board of Variance permitting the addition of
a ready-mix plant on the lands in question quashed and
set aside

December 9, 1997
Court of Appeal for British Columbia
(Rowles, Newbury and Braidwood JJ.A.)

Applicants' appeal dismissed

February 6, 1998
Supreme Court of Canada

Application for leave to appeal filed

26435 **MALCOLM KEITH MACNEIL v. DEBORAH ELIZABETH MACNEIL** (B.C.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Family Law - Division of property - Maintenance - Whether the majority of the Court of Appeal erred by ordering a fixed date for review of spousal support - Whether the majority of the Court of Appeal erred by ordering that the Applicant bear one-quarter of the expenses of taxes, fire insurance, and capital repairs associated with the matrimonial home - Whether the majority of the Court of Appeal erred by re-apportioning family assets in favour of the Respondent or by awarding the Respondent two-thirds of her taxable costs.

PROCEDURAL HISTORY

| | |
|---|--|
| February 9, 1996 Supreme Court of British Columbia (Robinson J.) | Order for custody, access, spousal support, child support, fixing interests in matrimonial home and reappportioning assets |
| November 6, 1997 Court of Appeal for British Columbia (Southin, Rowles, Ryan JJ.A.) | Appeal allowed in part |
| January 6, 1998 Supreme Court of Canada | Application for leave to appeal filed |

26333 **HER MAJESTY THE QUEEN BY WAY OF MANDAMUS WITH LAWRENCE R. WHITNEY
- v. - ONTARIO COURT OF JUSTICE (GENERAL DIVISION) NORTHEAST REGION MR.
JUSTICE E. LOUKIDELIS (Crim.)(Ont.)**

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

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

La requête visant à obtenir le réexamen de la demande d'autorisation d'appel est rejetée avec dépens.

6.5.1998

Before / Devant: THE REGISTRAR

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

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

Attorney General of Canada

With the consent of the parties.

v. (26534)

Wanda Marie Halpert (B.C.)

GRANTED / ACCORDÉE Time extended to April 30, 1998.

11.5.1998

Before / Devant: CORY J.

Motion for a stay of execution

Requête en vue de surseoir à l'exécution

John W. Harvey Real Estate Co. Ltd. et al.

v. (26517)

Grantley Spence et al. (Ont.)

GRANTED / ACCORDÉE

Order will go staying proceedings with respect to the judgment in this case pending the disposition of the application for leave to appeal and if the application for leave is granted pending the disposition of the appeal. The Order is conditional upon the applicants taking all reasonable steps to ensure that their assets are not further encumbered from the date of this Order.

11.5.1998

Before / Devant: CORY J.

Motion for leave to cross-examine on affidavit

Requête pour autoriser de contre-interroger sur affidavit

Thomas Bruce Baker

Opposed

v. (26562)

Monica Frieda Francis (Ont.)

GRANTED / ACCORDÉE

An Order will go:

1. permitting the respondent (plaintiff) to cross-examine the applicant (defendant) on his affidavit sworn April 7, 1998 in support of a stay of proceedings. The cross-examination is to be conducted as quickly as it can be conveniently arranged.
2. granting an extension of time of 7 days from the completion of the cross-examination for respondent to file a response to the motion for a stay of proceedings and to file a response to the leave to appeal application.

13.5.1998

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the respondent's record, factum and book of authorities

Murray Ryan

v. (25704)

The Corporation of the City of Victoria et al. (B.C.)

Requête en prorogation du délai imparti pour déposer les dossier, mémoire et cahier de jurisprudence et de doctrine de l'intimée

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to May 22, 1998.

12.5.1998

Before / Devant: THE REGISTRAR

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

Alan Christiansen

v. (26545)

Paramount Developments Corp. (Alta.)

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

GRANTED / ACCORDÉE Time extended to April 24, 1998.

29.4.1998

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to state a constitutional question

Her Majesty The Queen in Right of Canada et al.

v. (26174)

Angelo Del Zotto et al. (F.C.A.)(Ont.)

Requête pour énoncer une question constitutionnelle

Ivan S. Bloom, Q.C. and Gordon Campbell, for the motion.

David Stratas, contra.

RESERVED / EN DÉLIBÉRÉ

The motion to state a constitutional question is reserved and the motion on behalf of the appellants to file a reply factum is premature.

12.5.1998

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to state a constitutional question

Her Majesty The Queen in Right of Canada et al.

v. (26174)

Angelo Del Zotto et al. (F.C.A.)(Ont.)

Requête pour énoncer une question constitutionnelle

Ivan S. Bloom, Q.C. and Gordon Campbell, for the motion.

David Stratas, contra.

GRANTED / ACCORDÉE Notices of intention to intervene are to be filed no later than June 22, 1998.

1. Does s. 231.4 of the *Income Tax Act*, R.S.C. 1952, c. 148 as amended restrict rights guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*?

2. If so, can these restrictions be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

3. Does s. 231.4 of the *Income Tax Act*, R.S.C. 1952, c. 148 as amended restrict the right guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms*?

4. If so, can these restrictions be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

1. L'article 231.4 de la *Loi de l'impôt sur le revenu*, S.R.C. 1952, ch. 148 et ses modifications, restreint-il des droits garantis par l'art. 7 de la *Charte canadienne des droits et libertés*?

2. Dans l'affirmative, la justification des restrictions en cause peut-elle se démontrer dans le cadre d'une société libre et démocratique, au sens de l'article premier de la *Charte canadienne des droits et libertés*?

3. L'article 231.4 de la *Loi de l'impôt sur le revenu*, S.R.C. 1952, ch. 148 et ses modifications, restreint-il le droit garanti par l'art. 8 de la *Charte canadienne des droits et libertés*?

4. Dans l'affirmative, la justification des restrictions en cause peut-elle se démontrer dans le cadre d'une société libre et démocratique, au sens de l'article premier de la *Charte canadienne des droits et libertés*?

**NOTICES OF INTERVENTION FILED
SINCE LAST ISSUE**

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

BY/PAR: Attorney General of Canada

IN/DANS: **Denis Lucien Lepage**

v. (26320)

Her Majesty The Queen (Ont.)

**NOTICE OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

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

8.5.1998

**Federation of Women Teachers' Associations of
Ontario**

v. (26431)

Ontario Human Rights Commission et al. (Ont.)

(leave)

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning May 18, 1998.
ORDRE DU JOUR pour la semaine commençant le 18 mai 1998.

| <u>Date of Hearing/ Date d'audition</u> | <u>Case Number and Name/ Numéro et nom de la cause</u> |
|---|--|
| 19/05/98 | Chippewas of Kettle and Stony Point v. Attorney General of Canada et al. (Ont.)(25795) |
| 20/05/98 | Shane John Reitsma v. Her Majesty The Queen (Crim.)(B.C.)(26305) |
| 21/05/98 | Her Majesty The Queen v. Cory Anthony Gallant (Crim.)(P.E.I.)(25922) |
| 21/05/98 | Her Majesty The Queen v. Patrick Arnold MacDougall (Crim.)(P.E.I.)(25931) |
| 22/05/98 | John Campbell et al. v. Her Majesty The Queen (Crim.)(Ont.)(25780) |

NOTE:

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

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

25795 *The Chippewas of Kettle and Stony Point v. The Attorney General of Canada et al*

Indians - Statutes - Interpretation - *Indian Act*, S.C. 1906, c.20, ss.48, 49, 50 - Whether the conduct of the Indian agent and the purchaser of reserve lands in respect of the surrender of those lands invalidates the surrender - Whether the doctrines of duress and undue influence invalidate the surrender of the reserve lands - Whether the surrender incorporated the terms upon which the surrender vote was premised - If a surrender is given in respect of a specific offer, what effect does the repudiation and termination of the offer have.

The Appellant Band had the exclusive right of use and occupation in perpetuity of approximately 80 acres reserve land. On March 30, 1927, the Band surrendered this reserve land to the federal Crown and the Crown in turn sold the land to third parties by a Crown patent, dated June 27, 1929.

In 1992, the Band sued the federal Crown, cottagers who now own the surrendered land and others for a declaration that the 1927 surrender and the 1929 Crown patent are void. The Band also sued for damages, including a claim against the federal Crown for breach of fiduciary duty. On a motion for summary judgment, Killeen J. granted summary judgment dismissing the Band's claim for declaratory relief. All parties agreed that the claim for damages for breach of fiduciary duty against the federal Crown may proceed to trial. The Court of Appeal dismissed the appeal of the summary judgment motion.

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| Origin of the case: | Ontario |
| File No.: | 25795 |
| Judgment of the Court of Appeal: | December 2, 1996 |
| Counsel: | Paul G. Vogel/Russell M. Raikes for the Appellants Charlotte A. Bell Q.C. for the Respondent Attorney General Angus L. McKenzie for the Respondent Township J.G. Cowan for the Individual Respondents G.T. Tillmann for the Respondent Bank of Montreal et al |

25795 *Les Chippewas de Kettle et Stony Point c. Le procureur général du Canada et autres*

Indiens - Législation - Interprétation - *Loi sur les Indiens*, S.C. 1906, ch. 20, art. 48, 49, 50 - La conduite de l'agent des sauvages et de l'acheteur des terres de réserve lors de la cession de ces terres annule-t-elle la cession? - Les théories de la contrainte et de l'abus d'influence annulent-elles la cession des terres de réserve? - La cession incorporait-elle les conditions sur lesquelles le vote de cession était basé? - Si une cession est faite à l'égard d'une offre particulière, quel est l'effet du rejet et de l'extinction de l'offre?

La bande appelante avait un droit exclusif et perpétuel d'utilisation et d'occupation d'environ quatre-vingt acres de terres de réserve. Le 30 mars 1927, la bande a cédé ces terres à la Couronne fédérale qui les a par la suite vendues à des tiers par voie de patente de la Couronne datée du 27 juin 1929.

En 1992, la bande a intenté une poursuite contre la Couronne fédérale, les propriétaires de chalets qui sont maintenant propriétaires des terres cédées et d'autres personnes afin d'obtenir un jugement déclaratoire portant que la cession de 1927 et la patente de la Couronne de 1929 sont nulles. La bande a également intenté une poursuite en dommages-intérêts, y compris une poursuite contre la Couronne fédérale pour violation de son obligation de fiduciaire. Saisi d'une requête en jugement sommaire, le juge Killeen a prononcé un jugement sommaire rejetant la demande de jugement déclaratoire de la bande. Toutes les parties ont convenu que la poursuite en dommages-intérêts pour violation de l'obligation de fiduciaire intentée contre la Couronne pouvait suivre son cours. La Cour d'appel a rejeté l'appel de la requête en jugement sommaire.

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| Origine : | Ontario |
| N° du greffe : | 25795 |
| Arrêt de la Cour d'appel : | Le 2 décembre 1996 |
| Avocats : | Paul G. Vogel/Russell M. Raikes pour les appelants Charlotte A. Bell, c.r., pour le procureur général intimé Angus L. McKenzie pour la municipalité intimée J. G. Cowan pour les particuliers intimés G. T. Tillmann pour la Banque de Montréal intimée et autres |

26305 *Shane John Reitsma v. Her Majesty The Queen*

Criminal law - Trial - Evidence - Identification - Whether the verdict should be set aside on the basis that it is unreasonable or unsupported by the evidence.

On January 16, 1996, the complainant, Mr. Carter, returned home, opened the door and encountered an intruder with whom he spoke to briefly. The day following the break-in, he was shown a photo line-up. After viewing the line-up, he picked the picture of the Appellant and wrote that he could not be 100 per cent sure from the photo, but felt that he could identify the individual in person.

At trial, 11 months later, Mr. Carter positively identified the Appellant as the intruder. The only other people in the courtroom at that time were the judge, court staff, counsel and the Appellant. Mr. Carter was examined and cross-examined as to how he was able to identify Mr. Reitsma at trial when he had been unable to positively identify him as the intruder in the photo line-up.

The only issue at trial was identification. The trial judge considered the evidence as a whole and was satisfied that Mr. Reitsma was the intruder. On appeal, the majority of the Court of Appeal dismissed the appeal. Rowles J.A. dissented holding that the verdict could not reasonably be supported by the evidence.

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| Origin of the case: | British Columbia |
| File No.: | 26305 |
| Judgment of the Court of Appeal: | October 23, 1997 |
| Counsel: | Michael J. Munro for the Appellant Robert A. Mulligan for the Respondent |

26305 *Shane John Reitsma c. Sa Majesté la Reine*

Droit criminel - Procès - Preuve - Identification - Le verdict devrait-il être annulé pour le motif qu'il est déraisonnable ou non justifié par la preuve?

Le 16 janvier 1996, le plaignant, M. Carter, est revenu chez-lui, a ouvert la porte et s'est trouvé face à un intrus avec qui il a parlé brièvement. Le lendemain de l'effraction, on lui a montré une série de photos. Après l'avoir examinée, il a indiqué la photo de l'appelant et a écrit qu'il ne pouvait être sûr à 100 pour 100, mais qu'il croyait qu'il pourrait identifier l'individu en personne.

Au procès, 11 mois plus tard, M. Carter a identifié positivement l'appelant comme étant l'intrus. Les seules autres personnes dans la salle d'audience à ce moment-là étaient le juge, le personnel de la cour, les avocats et l'appelant. M. Carter a été interrogé et contre-interrogé quant à savoir comment il était capable d'identifier M. Reitsma au procès alors qu'il avait été incapable de l'identifier positivement, dans la série de photos, comme étant l'intrus.

La seule question litigieuse au procès était l'identification. Le juge du procès a examiné la preuve dans son ensemble et a été convaincu que M. Reitsma était l'intrus. La Cour d'appel à la majorité a rejeté l'appel interjeté. Le juge Rowles, dissident, a conclu que le verdict ne pouvait être raisonnablement justifié par la preuve.

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|---------------------------|---|
| Origine: | Colombie-Britannique |
| N° du greffe: | 26305 |
| Arrêt de la Cour d'appel: | Le 23 octobre 1997 |
| Avocats: | Michael J. Munro pour l'appelant Robert A. Mulligan pour l'intimée |

25922 *Her Majesty The Queen v. Cory Anthony Gallant*

Canadian Charter of Rights and Freedoms - Criminal law - Procedural law - Trial - Trial within a reasonable time - Whether the right to be tried within a reasonable time includes the right to be sentenced within a reasonable time - Whether, in the alternative, the right has been violated when most of the delay occurred after the plea of guilty while the Respondent was awaiting sentence - Whether, in the alternative, the appropriate remedy is a stay of proceedings.

The Respondent was charged on April 19, 1995 with two counts of break and enter. He appeared before Plamondon J. on April 24, 1995 and entered a plea of guilty to both charges. A pre-sentence report was requested and the matter was adjourned for sentencing. In the interim, Plamondon J. became ill, and the case was adjourned indefinitely. On April 15, 1996, Plamondon J. resigned his position. On May 22, 1996, the case was assigned to Fitzgerald J. On September 24, 1996, Fitzgerald J. granted the Respondent's application for a stay of proceedings.

The Appellant's appeal to the Court of Appeal was dismissed.

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| Origin of the case: | Prince Edward Island |
| File No.: | 25922 |
| Judgment of the Court of Appeal: | January 28, 1997 |
| Counsel: | Valerie A. Moore for the Appellant Kent Brown Q.C. for the Respondent |

25922 *Sa Majesté la Reine c. Cory Anthony Gallant*

Charte canadienne des droits et libertés — Droit criminel — Droit procédural — Procès — Procès dans un délai raisonnable — Le droit d’être jugé dans un délai raisonnable inclut-il le droit à la détermination de la peine dans un délai raisonnable? — Subsidiairement, le droit a-t-il été violé par le retard survenu en majeure partie après le plaidoyer de culpabilité et alors que l’intimé attendait de recevoir sa peine? — Subsidiairement, l’arrêt des procédures est-il le redressement approprié?

Le 19 avril 1995, l’intimé a été inculpé sous deux chefs d’accusation d’introduction par effraction. Il a comparu devant le juge Plamondon le 24 avril 1995 et a plaidé coupable aux deux chefs. Un rapport présentenciel a été demandé et l’affaire a été ajournée aux fins de la détermination de la peine. Entre-temps, le juge Plamondon est tombé malade et l’affaire a été ajournée indéfiniment. Le 15 avril 1996, le juge Plamondon a démissionné de sa charge. Le 22 mai 1996, l’affaire a été confiée au juge Fitzgerald. Le 24 septembre 1996, le juge Fitzgerald a accueilli la demande d’arrêt des procédures de l’intimé.

L’appel de l’appelante a été rejeté.

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|---------------------------|--|
| Origine: | Île-du-Prince-Édouard |
| N° du greffe: | 25922 |
| Arrêt de la Cour d’appel: | Le 28 janvier 1997 |
| Avocat: | Valerie A. Moore pour l’appelante Kent Brown, c.r., pour l’intimé |

25931 *Her Majesty the Queen v. Patrick Arnold MacDougall*

Canadian Charter of Rights and Freedoms - Criminal law - Procedural law - Trial - Trial within a reasonable time - Whether the right to be tried within a reasonable time includes the right to be sentenced within a reasonable time.

The Respondent was charged on December 2, 1994 with one count of indecent assault alleged to have been committed in 1973. The Respondent appeared in Provincial Court on February 13, 1995 before Plamondon J., and entered a plea of not guilty. On April 5, 1995, the Respondent changed his plea to guilty, and a pre-sentence report was requested. On July 14, 1995, the case was adjourned indefinitely because Plamondon J. was ill. On April 15, 1996, Plamondon J. resigned his position. On May 22, 1996, the case was assigned to Fitzgerald J. to preside at the sentencing hearing. On September 24, 1996, Fitzgerald J. granted the Respondent a stay of proceedings due to an alleged violation of s. 11(b) of the *Charter*.

The Appellant's appeal to the Court of Appeal was dismissed.

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| Origin of the case: | Prince Edward Island |
| File No.: | 25931 |
| Judgment of the Court of Appeal: | January 28, 1997 |
| Counsel: | Valerie A. Moore for the Appellant W. Kent Brown Q.C. for the Respondent |

25931 *Sa Majesté la Reine c. Patrick Arnold MacDougall*

Charte canadienne des droits et libertés - Droit criminel - Droit procédural - Procès - Procès dans un délai raisonnable - Le droit d'être jugé dans un délai raisonnable comprend-il le droit de recevoir sa peine dans un délai raisonnable?

L'intimé a été accusé le 2 décembre 1994 sous un chef d'attentat à la pudeur qui aurait été commis en 1973. L'intimé a comparu en Cour provinciale le 13 février 1995 devant le juge Plamondon et a inscrit un plaidoyer de non-culpabilité. Le 5 avril 1995, l'intimé a remplacé son plaidoyer par un plaidoyer de culpabilité, et un rapport présentenciel a été demandé. Le 14 juillet 1995, l'affaire a été ajournée indéfiniment parce que le juge Plamondon était malade. Le 15 avril 1996, le juge Plamondon a démissionné de ses fonctions. Le 22 mai 1996, le dossier a été confié au juge Fitzgerald pour qu'il préside l'audience pour la détermination de la peine. Le 24 septembre 1996, le juge Fitzgerald a accordé à l'intimé un arrêt des procédures à cause d'une violation alléguée de l'al. 11b) de la *Charte*.

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| Origine: | Île-du-Prince-Édouard |
| N° du greffe: | 25931 |
| Arrêt de la Cour d'appel: | Le 28 janvier 1997 |
| Avocats: | Valerie A. Moore pour l'appelante W. Kent Brown, c.r., pour l'intimé |

25780 *John Campbell and Salvatore Shirose v. Her Majesty The Queen*

Criminal law - Abuse of process - Stay of proceedings - Reverse sting operation - Whether the reverse sting operation was an abuse of process warranting a stay of proceedings - Disclosure - Solicitor-client privilege - Whether there was a solicitor-client relationship between an RCMP officer and a lawyer with the Crown law office who advised him concerning the reverse sting operation - Whether material regarding communications between the RCMP officer and the Crown lawyer ought to have been disclosed - Whether the Crown proved the conspiracy charged - Whether the Appellants' sentences should have been reduced as a result of the "illegal" police conduct.

In November 1991, the RCMP launched a "reverse sting" operation that involved RCMP agents posing as large scale hashish vendors. Using the help of an informant, the RCMP contacted two groups through the Appellant Shirose. The RCMP attempted to negotiate a sale of their hashish with each of these groups. The Appellant Campbell became involved in the negotiations as financier. He was alleged to be the leader of a huge illegal narcotics operation. The deal eventually materialized in January 1992 leading to the arrest of the Appellants and charges of conspiracy to traffic in hashish and conspiracy to possess hashish for the purpose of trafficking.

At trial, the Appellants attempted to subpoena a lawyer from the Department of Justice in Toronto to testify as to communications that had occurred between himself and an RCMP officer. The trial judge ruled that the communications were protected by solicitor-client privilege and set aside the subpoena.

After the Appellants were found guilty, they moved for a stay of proceedings on the basis of an abuse of process. The application was denied. The Appellants were convicted. Their appeal to the Ontario Court of Appeal was dismissed.

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|----------------------------------|---|
| Origin of the case: | Ontario |
| File No.: | 25780 |
| Judgment of the Court of Appeal: | January 17, 1997 |
| Counsel: | Alan D. Gold for the Appellant Campbell Irwin Koziobrocki for the Appellant Shirose Fergus O'Donnell for the Respondent |

25780 *John Campbell et Salvatore Shirose c. Sa Majesté la Reine*

Droit criminel - Abus de procédure - Arrêt des procédures - Vente par agent d'infiltration - La vente par agent d'infiltration constitue-t-elle un abus de procédure justifiant un arrêt des procédures? - Divulgateion - Secret professionnel de l'avocat - Y a-t-il relation d'avocat à client entre un agent de la GRC et un avocat du ministère de la Justice qui l'a conseillé relativement à la vente par agent d'infiltration? - La documentation concernant les communications entre l'agent de la GRC et l'avocat aurait-elle dû être divulguée? - Le ministère public a-t-il prouvé le complot reproché? - Les peines imposées aux appelants auraient-elles dû être réduites en conséquence de la conduite « illégale » de la police?

En novembre 1991, la GRC a lancé une opération de vente par agent d'infiltration dans laquelle des agents de la GRC prétendaient être des vendeurs de hachisch sur une grande échelle. Avec l'aide d'un informateur, la GRC a contacté deux groupes par l'intermédiaire de l'appelant Shirose. La GRC a tenté de négocier une vente de hachisch avec chacun de ces groupes. L'appelant Campbell a été impliqué dans les négociations à titre de bailleur de fonds. On a allégué qu'il était le leader d'une vaste opération illégale en matière de stupéfiants. L'entente s'est finalement matérialisée en janvier 1992, ce qui a entraîné l'arrestation des appelants et le dépôt d'accusations de complot en vue de faire le trafic de hachisch et de complot en vue d'avoir la possession de hachisch pour en faire le trafic.

Au procès, les appelants ont tenté d'assigner un avocat du ministère de la Justice à Toronto à comparaître pour témoigner relativement aux communications qu'il a eues avec un agent de la GRC. Le juge du procès a décidé que les communications étaient protégées par le secret professionnel de l'avocat et il a annulé l'assignation.

Après avoir été reconnus coupables, les appelants ont demandé un arrêt des procédures sur le fondement d'un abus de procédure. La demande a été rejetée. Les appelants ont été déclarés coupables. La Cour d'appel de l'Ontario a rejeté leur appel.

| | |
|---------------------------|---|
| Origine: | Ontario |
| N° du greffe: | 25780 |
| Arrêt de la Cour d'appel: | Le 17 janvier 1997 |
| Avocats: | Alan D. Gold pour l'appelant Campbell Irwin Koziobrocki pour l'appelant Shirose Furgus O'Donnell pour l'intimée |

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

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

Motion day : June 1, 1998

Service : May 25, 1998

Filing : May 15, 1998

Respondent : May 8, 1998

DEVANT LA COUR:

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

Audience du : 1 juin 1998

Signification : 25 mai 1998

Dépôt : 15 mai 1998

Intimé : 8 mai 1998

DEADLINES: APPEALS

The Spring Session of the Supreme Court of Canada will commence April 27, 1998.

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

1. WHERE NOTICE OF APPEAL FILED BEFORE OCTOBER 29, 1997:

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

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

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

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

2. WHERE NOTICE OF APPEAL FILED ON OR AFTER OCTOBER 29, 1997:

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

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

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

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

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

In all cases, 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.

DÉLAIS: APPELS

La session de printemps de la Cour suprême du Canada commencera le 27 avril 1998.

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:

1. SI L'AVIS D'APPEL EST DÉPOSÉ AVANT LE 29 OCTOBRE 1997:

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

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

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

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

2. SI L'AVIS D'APPEL EST DÉPOSÉ LE 29 OCTOBRE 1997 OU APRÈS CETTE DATE:

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

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

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

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

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

Dans tous les cas, 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.

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

Judgments reported in [1998] 1 S.C.R. Part 2

Canderel Ltd. v. Canada, [1998] 1 S.C.R. 147

Hall v. Quebec (Deputy Minister of Revenue), [1998] 1 S.C.R. 220

Ikea Ltd. v. Canada, [1998] 1 S.C.R. 196

R. v. Bisson, [1998] 1 S.C.R. 306

R. v. Dixon, [1998] 1 S.C.R. 244

R. v. McQuaid, [1998] 1 S.C.R. 285

R. v. Robart, [1998] 1 S.C.R. 279

R. v. Skinner, [1998] 1 S.C.R. 298

R. v. Smith, [1998] 1 S.C.R. 291

Toronto College Park Ltd. v. Canada, [1998] 1 S.C.R. 183

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

Jugements publiés dans [1998] 1 R.C.S. Partie 2

Canderel Ltée c. Canada, [1998] 1 R.C.S. 147

Hall c. Québec (Sous-ministre du Revenu), [1998] 1 R.C.S. 220

Ikea Ltd. c. Canada, [1998] 1 R.C.S. 196

R. c. Bisson, [1998] 1 R.C.S. 306

R. c. Dixon, [1998] 1 R.C.S. 244

R. c. McQuaid, [1998] 1 R.C.S. 285

R. c. Robart, [1998] 1 R.C.S. 279

R. c. Skinner, [1998] 1 R.C.S. 298

R. c. Smith, [1998] 1 R.C.S. 291

Toronto College Park Ltd. c. Canada, [1998] 1 R.C.S. 183

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

REVISED

- 1997 -

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

| NOVEMBER - NOVEMBRE | | | | | | |
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| S D | M L | T M | W M | T J | F V | S S |
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| 30 | 24 | 25 | 26 | 27 | 28 | 29 |

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

- 1998 -

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

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

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

| APRIL - AVRIL | | | | | | |
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| S D | M L | T M | W M | T J | F V | S S |
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| 5 | 6 | 7 | 8 | 9 | H 10 | 11 |
| 12 | H 13 | 14 | 15 | 16 | 17 | 18 |
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| 26 | 27 | 28 | 29 | 30 | | |

| MAY - MAI | | | | | | |
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| 17 | H 18 | 19 | 20 | 21 | 22 | 23 |
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| JUNE - JUIN | | | | | | |
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| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | | | | |

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:



17 sitting weeks / semaines séances de la cour
78 sitting days / journées séances de la cour
7 motion and conference days /
journées requêtes, conférences
3 holidays during sitting days /
jours fériés durant les sessions