SUPREME COURT COUR SUPRتME



OF CANADA DU CANADA

 BULLETIN OF BULLETIN DES

 PROCEEDINGS PROCÉDURES

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| The Bulletin, being a factual report of recorded proceedings, is produced in the language of record. Where a judgment has been rendered, requests for copies should be made to the Registrar, with a remittance of $10 for each set of reasons. All remittances should be made payable to the Receiver General for Canada. |  | Le Bulletin rassemble les procédures devant la Cour dans la langue du dossier. Quand un arrêt est rendu, on peut se procurer les motifs de jugement en adressant sa demande au registraire, accompagnée de 10 $ par exemplaire. Le paiement doit être fait à l'ordre du Receveur général du Canada. |

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May 21, 1999 773 - 858 le 21 mai 1999

**CONTENTS** **TABLE DES MATIÈRES**

|  |  |  |
| --- | --- | --- |
| Applications for leave to appeal filedApplications for leave submitted to Court since last issueOral hearing orderedOral hearing on applications for leave Judgments on applications for leaveJudgment on motionMotionsNotices of appeal filed since last issueNotices of intervention filed since last issueNotices of discontinuance filed since last issueAppeals heard since last issue and dispositionPronouncements of appeals reservedRehearingHeadnotes of recent judgmentsWeekly agendaSummaries of the casesCumulative Index ‑ LeaveCumulative Index ‑ AppealsAppeals inscribed ‑ Session beginningNotices to the Profession and Press ReleaseDeadlines: Motions before the CourtDeadlines: AppealsJudgments reported in S.C.R. | 773 - 779780 - 787--788 - 792-793 - 797798-799800 - 801802 - 804-805 - 843844845 - 856----857858- | Demandes d'autorisation d'appel déposéesDemandes soumises à la Cour depuis la dernière parutionAudience ordonnéeAudience sur les demandes d'autorisationJugements rendus sur les demandes d'autorisationJugement sur requêteRequêtesAvis d'appel déposés depuis la dernière parutionAvis d'intervention déposés depuis la dernière parutionAvis de désistement déposés depuis la dernière parutionAppels entendus depuis la dernière parution et résultatJugements rendus sur les appels en délibéré Nouvelle auditionSommaires des arrêts récentsOrdre du jour de la semaineRésumés des affairesIndex cumulatif ‑ AutorisationsIndex cumulatif ‑ AppelsAppels inscrits ‑ Session commençant leAvis aux avocats et communiqué de presseDélais: Requêtes devant la CourDélais: AppelsJugements publiés au R.C.S. |

|  |  |  |
| --- | --- | --- |
| **APPLICATIONS FOR LEAVE TO APPEAL FILED** |  | **DEMANDES D'AUTORISATION D'APPEL DÉPOSÉES** |

**Yvon Descoteaux**

Yvon Descoteaux

c. (26023)

**Le Barreau du Québec et al. (Qué.)**

François Folot

Flynn, Rivard, s.e.n.c.

DATE DE PRODUCTION 12.4.1999

**Mustafa Dadar**

Randall G. Maillet

v. (26833)

**Her Majesty the Queen (N.B.)**

James R. McAvity

A.G. of New Brunswick

FILING DATE 30.4.1999

**Natalie Charbel**

Natalie Charbel

c. (27155)

**Daniel Tzintzis et al. (Qué.)**

Marc de Wever

Lafleur Brown

DATE DE PRODUCTION 14.4.1999

**Lor Tou Vang et al.**

Gregory Lafontaine

Lafontaine & Associates

v. (27164)

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

Philip Downes

A.G. for Ontario

FILING DATE 30.4.1999

**Glengarry Bingo Association**

Donald N. Cherniawsky

Felesky Flynn

v. (27166)

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

J.E. (Ted) Fulcher

Dept. of Justice

FILING DATE 3.5.1999

**Paul David Smithson**

Paul David Smithson

v. (27253)

**Sandra Louise Smithson (Ont.)**

Sandra Louise Smithson

FILING DATE 16.4.1999

**Trent William Dryborough et al.**

Richard B. Lindsay

Lindsay Kenney

v. (27254)

**The Board of School Trustees of School District No. 43 (Coquitlam) (B.C.)**

J.D. Truscott, Q.C.

Guild Yule & Company

FILING DATE 16.4.1999

**Thomas Lo**

Nagi Ebrahim

Ebrahim, MacLeod & Gervais

v. (27255)

**Mackenzie, Gervais, s.e.n.c. et al. (Que.)**

Julie Normand

McMaster Gervais

FILING DATE 16.4.1999

**Dr. Earl Shuman**

Henry S. Brown, Q.C.

Gowling, Strathy & Henderson

v. (27256)

**The Ontario New Home Warranty Program (Ont.)**

Netanus T. Rutherford

FILING DATE 16.4.1999

**Constantin Teodorescu**

Constantin Teodorescu

c. (27257)

**Richard Barbeau (Qué.)**

Jean-Jacques Gagnon

de Grandpré Godin, avocats

DATE DE PRODUCTION 19.4.1999

**Monenco Limited and 67669 Alberta Inc.**

John R. Singleton, Q.C.

Singleton Urquhart Scott

v. (27258)

**Commonwealth Insurance Company et al. (B.C.)**

D. Barry Kirkham, Q.C.

Owen Bird

FILING DATE 19.4.1999

**Jag D. Bhaduria**

Jag D. Bhaduria

v. (27259)

**Toronto Board of Education et al. (Ont.)**

J. Paul Howard

Shibley Righton

FILING DATE 19.4.1999

**Bruce Agra Foods Inc.**

Claude R. Thomson, Q.C.

Fasken Campbell Godfrey

v. (27260)

**Trilwood Investments Limited et al. (Ont.)**

Randy A. Pepper

Osler, Hoskin & Harcourt

FILING DATE 20.4.1999

**René Pearson**

Jacques Larochelle

c. (27261)

**Sa Majesté la Reine (Qué.)**

Jacques Casgrain

Subs. du procureur général

DATE DE PRODUCTION 22.4.1999

**Maritimes and Northeast Pipeline Management Limited, a body corporate et al.**

C.D. OBrien, Q.C.

Bennett Jones Verchere

v. (27262)

**Union of Nova Scotia Indians, a body corporate et al. (F.C.A.)**

Bruce H. Wildsmith, Q.C.

FILING DATE 22.4.1999

**Bruce Douglas Peters**

Richard C.C. Peck, Q.C.

Peck and Tammen

v. (27263)

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

William F. Ehrcke, Q.C.

Min. of the A.G.

FILING DATE 22.4.1999

**Mary Martha Coady**

Mary Martha Coady

v. (27265)

**Brian John Boyle (Ont.)**

Kenneth Radnoff

Radnoff, Pearl, Slover, Swedko, Dwoskin

FILING DATE 23.4.1999

**John Gorenko et al.**

Guy Du Pont

Goodman Phillips & Vineberg

v. (27266)

**Her Majesty the Queen in right of Canada et al. (Qué.)**

Gilles Ouimet

Dept. of Justice

FILING DATE 23.4.1999

**Michael S. Buhlers**

Jeffrey Green

Green & Claus

v. (27268)

**The Superintendent of Motor Vehicles for the Province of British Columbia et al. (B.C.)**

George H. Copley, Q.C.

Min. of the A.G.

FILING DATE 26.4.1999

**Harley Conrad**

Ronald A. Pink, Q.C.

Pink Breen Larkin

v. (27270)

**Imperial Oil Limited, a partnership of Imperial Oil Ltd. et al. (N.S.)**

Brian G. Johnston, Q.C.

McInnes Cooper & Robertson

FILING DATE 30.4.1999

**Amber Donna Abel**

Edward L. Greenspan, Q.C.

Greenspan, Henein and White

v. (27271)

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

J.B. Hawkes

Min. of the A.G.

FILING DATE 30.4.1999

**Le Syndicat national des employés de laluminium dAlma Inc.**

Jocelyn Pilote

Larouche, Lalancette, Pilote & Bouchard, s.e.n.c.

c. (27272)

**La Fédération des syndicats du secteur de laluminium Inc. et al. (Qué.)**

Sylvain Seny

Trudel, Nadeau, Lesage, Larivière et Associés

DATE DE PRODUCTION 3.5.1999

**Flexi-Coil Ltd.**

Roger T. Hughes, Q.C.

Sim, Hughes, Ashton & McKay

v. (27273)

**Bourgault Industries Ltd. (F.C.A.)**

Nicholas Fyfe, Q.C.

Smart & Biggar

FILING DATE 3.5.1999

**Russell Martel**

Rolland Russell Martel

v. (27275)

**Brian Davidson (Ont.)**

Richard B. Swan

Fasken Campbell Godfrey

FILING DATE 6.5.1999

**Michael R. Guillemette**

Michael R. Guillemette

v. (27280)

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

Robert Carvalho

Dept. of Justice

FILING DATE 7.5.1999

**Yves Bellavance**

Robert Delorme

c. (27282)

**Sa Majesté la Reine (Qué.)**

Henri-Pierre Labrie

Subs. du procureur général

DATE DE PRODUCTION 7.5.1999

**Kathleen A. Wilson, legal agent for Douglas C. Wilson and Subsea Cities Inc.**

Kathleen A. Wilson

v. (27283)

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

FILING DATE 10.5.1999

**The Canadian Red Cross Society and York Finch General Hospital**

Peter K. Boeckle

MacMillan Rooke Boeckle

v. (27284)

**Douglas Walker as Executor of the Estate of Alma Walker et al. (Ont.)**

Bonnie A. Tough

Hodgson Tough Shields DesBrisay ODonnell

FILING DATE 10.5.1999

**The Canadian Red Cross Society and the Toronto Hospital**

Peter K. Boeckle

MacMillan Rooke Boeckle

v. (27285)

**Lois Osborne as Executrix of the Estate of Ronald Charles Osborne, deceased et al. (Ont.)**

Kenneth Arenson

FILING DATE 10.5.1999

**Tivadar Galantai**

Tivadar Galantai

c. (27288)

**Sa Majesté la Reine (Qué.)**

Michel F. Denis

Bureau des subs. du Procureur général

DATE DE PRODUCTION 27.4.1999

**Frans G.A. Deroy et al.**

David G. Colford

Brisset Bishop

v. (27290)

**Holt Cargo Systems Inc. et al. (F.C.A.)**

Thomas Hart

McInnes Cooper & Robertson

FILING DATE 11.5.1999

**Ville de Sept-Îles**

Claude Bureau

c. (27291)

**Le Syndicat canadien de la Fonction publique, section locale 2589 et al. (Qué.)**

Richard Gauthier

Trudel, Nadeau, Lesage, Larivière et associés

DATE DE PRODUCTION 11.5.1999

**Victor Russell Walters**

Marvin R.V. Storrow, Q.C.

Blake, Cassels & Graydon

v. (27293)

**Northland Bank (In Liquidation) (B.C.)**

William B. McAllister, Q.C.

Boughton Peterson Yang Anderson

FILING DATE 11.5.1999

**Lewis Energy Management Inc.**

Stephen A. McArthur

McArthur - Vereschagin

v. (27294)

**Kevin MacKinnon (Ont.)**

Gary Luftspring

Goodman & Carr

FILING DATE 11.5.1999

**Her Majesty the Queen in right of Canada**

Marie Nichols, c.r.

Morris Rosenberg

c. (27295)

**Bernard Miller et al. (Qué.)**

Léonard E. Seidman

Campbell, Cohen, Seidman, Léveillé

DATE DE PRODUCTION 14.5.1999

**Braintech, Inc.**

Michael Wilhelmson

McCarthy Tétrault

v. (27296)

**John C. Kostiuk (B.C.)**

Jeffrey Scouten

FILING DATE 14.5.1999

**Her Majesty the Queen**

Deborah Carlson

Dept. of Justice

v. (27297)

**Harry Hoeppner (Man.)**

Arne Peltz

Legal Aid Manitoba

FILING DATE 14.5.1999

**Joseph Seward et al.**

Louise Mandell, Q.C.

Mandell Pinder

v. (27298)

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

Brian W. Rendell

Min. of the A.G.

FILING DATE 17.5.1999

**B.S.**

Charles Lugosi

Lugosi & Cornett

v. (27048)

**The Director of Child, Family and Community Service (B.C.)**

Robert Hamilton

Dunnaway, Jackson & Hamilton

FILING DATE 28.4.1999

**R.H.**

Mario Dionne

Dionne Nadeau

c. (27264)

**J.C. (Qué.)**

Johanne Denis

Delorme & Denis

DATE DE PRODUCTION 23.4.1999

**D.L. and L.E.**

Albert C. Peeling

Azevedo & Peeling

v. (27276)

**The Director of Children and Families (B.C.)**

G.L.F. Somers, Q.C.

Somers & Company

FILING DATE 7.5.1999

**Paul André Trudeau**

Paul André Trudeau

c. (27274)

**M.L. et al. (Qué.)**

Claude Lemire

DATE DE PRODUCTION 6.5.1999

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| --- | --- | --- |
| **APPLICATIONS FOR LEAVE** **SUBMITTED TO COURT SINCE LAST ISSUE** |  | **DEMANDES SOUMISES À LA COUR DEPUIS LA DERNIÈRE PARUTION** |

**MAY 17, 1999 / LE 17 MAI 1999**

 **CORAM:   Chief Justice Lamer and McLachlin and Iacobucci JJ. /**

**Le juge en chef Lamer et les juges McLachlin et Iacobucci**

**P.R.**

**c. (27206)**

**Sa Majesté la Reine (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Charte Canadienne ‑ Criminel - Droit criminel - Droit à une défense pleine et entière - Amnésie rétrograde - Art. 7, 10 *b*), 11 *d*) et 24 de la *Charte canadienne des droits et libertés* - Suite à une amnésie causée par un traumatisme crânien, le demandeur a perdu tout mémoire des événements entourant les infractions qui lui sont reprochées - Le demandeur présente une requête en vertu de la *Charte canadienne* alléguant quil ne peut présenter une défense pleine et entière - Arrêt des procédures ordonné par la Cour du Québec (Chambre de la jeunesse) - La Cour dappel ordonne que le procès du demandeur sinstruise devant un autre juge de la Cour du Québec (Chambre de la jeunesse) - La Cour dappel a-t-elle erré en droit en concluant quil ny avait pas ouverture dans le présent dossier à un recours en vertu de la *Charte canadienne des droits et libertés*, se basant sur la prémisse que laccusé était tout à fait en mesure de communiquer avec son procureur, de comprendre la preuve de la poursuite et de donner les instructions appropriées à son avocat? - La Cour dappel a-t-elle erré en droit en concluant que le recours à larticle 24(1) de la *Charte canadienne des droits et libertés* était prématuré?

**HISTORIQUE PROCÉDURAL**

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| --- | --- | --- |
| Le 15 juillet 1996Cour du Québec, Chambre de la jeunesse (Bergeron j.c.q.) |  | Ordonnance darrêt des pocédures |
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| --- | --- | --- |
| Le 25 janvier 1999Cour dappel (Michaud, Lebel et Dussault jj.c.a.) |  | Appel accueilli |
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| Le 25 mars 1999Cour suprême du Canada |  | Demande dautorisation dappel déposée |
|  |  |  |

 **Stephen M. Byer, Robert Byer, ès qualités and 2786885 Canada Inc.**

 **c. (26539)**

**Bernardo Reyes (Qué.)**

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Jugements et ordonnances - Appel - Aux termes de lart. 519 du *Code de procédure civile*, L.R.Q., ch. C-25, la Cour dappel a-t-elle lobligation de motiver ses décisions daccueillir la requête en cautionnement et daccueillir la requête en rejet dappel de lintimé? - Labsence de motifs cause-t-elle un préjudice aux demandeurs? - La Cour dappel a-t-elle erré en ordonnant aux demandeurs de fournir un cautionnement? - La Cour dappel a-t-elle erré en niant aux demandeurs la possibilité de fournir un cautionnement?

**HISTORIQUE PROCÉDURAL**

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| --- | --- | --- |
| Le 19 décembre 1997Cour supérieure du Québec (Laberge j.c.s.) |  | Action en dommages-intérêts de lintimé accueillie, bail résilié et demandeurs expulsés; demande reconventionnelle accueillie en partie |
|  |  |  |
| Le 2 mars 1998Cour dappel du Québec(Mailhot, Forget et Pidgeon jj.c.a.) |  | Requête en cautionnement de lintimé accordée: la Cour ordonne aux demandeurs de fournir la somme de 50 000$ au plus tard le 2 avril 1998 |
|  |  |  |
| Le 15 octobre 1998Cour suprême du Canada(LHeureux-Dubé, Gonthier et Bastarache jj.) |  | Demande dautorisation dappel à lencontre de la décision du 2 mars rejetée |
|  |  |  |
| Le 8 décembre 1998Cour dappel du Québec(Deschamps j.c.a.) |  | Requête des demandeurs en suspension des procédures rejetée; requête des demandeurs en annulation ou suspension ou correction du jugement du 2 mars 1998 rejetée; requête des demandeurs afin que la Cour dappel autorise lintervention de tierces parties et la prolongation du délai pour le dépôt du cautionnement ainsi que du mémoire dappel rejetée;Requête de lintimé en rejet dappel pour défaut des demandeurs de fournir le cautionnement requis accueillie |
|  |  |  |
| Le 3 février 1999Cour suprême du Canada |  | Demande dautorisation dappel déposée |
|  |  |  |

**Attorney General of British Columbia**

**v. (27045)**

**Pacific Press, a Division of Southam Inc., Garry B. Nixon (B.C.)**

**NATURE OF THE CASE**

Procedural law - Civil procedure - Whether chambers judge erred in declining to strike out statement of claim for failing to disclose a reasonable claim

**PROCEDURAL HISTORY**

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| --- | --- | --- |
| January 14, 1998Supreme Court of British Columbia (Parrett J.) |  | Applications to strike out statement of claim dismissed |
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|  November 12, 1998Court of Appeal for British Columbia(Rowles, Huddart and Braidwood JJ.A.) |  | Appeal dismissed |
|  |  |  |
| December 23, 1998Supreme Court of Canada |  | Application for leave to appeal filed |
|  |  |  |

**CORAM: LHeureux-Dubé, Gonthier and Bastarache JJ. /**

**Les juges LHeureux-Dubé, Gonthier et Bastarache**

**Fernand Gosselin**

**c. (27178)**

**Sa Majesté la Reine (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Charte canadienne - Criminel - Droit criminel ‑ Détention - Preuve - Détention arbitraire - Arrestation illégale - Exclusion de la preuve - Art. 9 et 24 (2) de la *Charte canadienne des droits et libertés* - Le demandeur a été trouvé coupable de conduite dun véhicule à moteur alors que son taux dalcoolémie dépassait la limite légale et dentrave à un agent de la paix agissant dans lexécution de son devoir - Les tribunaux de juridiction inférieure ont-ils erré en droit en déclarant que la détention du demandeur nétait pas arbitraire eu égard aux faits prouvés et en omettant dexclure la preuve obtenue, dont le certificat du technicien qualifié, conformément aux articles 9 et 24(2) de la *Charte canadienne*? - Les tribunaux de juridiction inférieure ont-ils erré en droit en omettant de déclarer que les agents de la paix nétaient pas dans lexécution de leur devoir et en omettant conséquemment de prononcer lacquittement du demandeur sur le troisième chef daccusation, soit le chef dentrave à un agent de la paix dans lexercice de son devoir?

**HISTORIQUE PROCÉDURAL**

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| Le 18 janvier 1996Cour du Québec, Chambre criminelle et pénale(St-Pierre j.c.q.) |  | Déclaration de culpabilité sur le premier et le troisième chef daccusation; ordonnance darrêt des procédures sur le deuxième chef daccusation |
|  |  |  |
| Le 19 juin 1996Cour supérieure du Québec, Chambre criminelle(St‑Julien j.c.s.) |  | Appel de la condamnation sur le premier et le troisième chefs daccusation rejeté; acquittement prononcé quant au deuxième chef daccusation |
|  |  |  |
| Le 26 février 1999Cour d'appel du Québec(Gendreau, Delisle et Letarte jj.c.a.) |  | Appel rejeté |
|  |  |  |
| Le 9 mars 1999Cour suprême du Canada |  | Demande dautorisation dappel déposée |
|  |  |  |

**La procureure générale du Québec et Gilles Belval**

**c. (27212)**

**Ghislain Noiseux et Procureur Général du Canada (Crim.)(Qué.)**

**ET ENTRE:**

**La Procureure Générale du Québec et Gilles Belval**

**c. (27212)**

**Denis Comeau et Procureur Général du Canada (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Droit constitutionnel - Législation - Procès - Procédure préalable au procès - Interprétation - Droits linguistiques - Le par. 841(3) du *Code criminel* requiert-il que les textes des formules y prévues soient imprimés dans les deux langues officielles en un format bilingue? - Dans laffirmative, le par. 841(3) viole-t-il des droits garantis par lart. 133 de la *Loi constitutionnelle de 1867* et est-il par conséquent inapplicable constitutionnellement aux poursuites devant les tribunaux du Québec? - Dans laffirmative, le par. 841(3) du *Code criminel* peut-il recevoir une interprétation atténuée voulant que les textes des formules y prévues soient imprimés dans les deux langues officielles en deux formats unilingues, pour les poursuites devant les tribunaux du Québec?

**HISTORIQUE PROCÉDURAL**

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| --- | --- | --- |
| Le 18 juin 1991Cour municipale de Marieville (Grignon j.c.m.) |  | Dénonciations assermentées le 31 mai 1990 cassées |
|  |  |  |
| Le 22 novembre 1991Cour supérieure du Québec(Martin j.c.s.) |  | Appel des décisions de la Cour municipale portant sur la langue des dénonciations accueilli; décisions cassées et annulées; retour immédiat du dossier devant le juge Grignon ordonné |
|  |  |  |
| Le 22 février 1999Cour d'appel du Québec (Fish, Otis [dissidente], et Zerbisias [*ad hoc*] jj.c.a.] |  | Appel accueilli aux seules fins de modifier le jugement entrepris en substituant les conclusions suivantes: accueille le moyen en partie; déclare que la dénonciation déroge aux exigences de lart. 841(3) du *Code* et autorise le poursuivant à remédier à ce défaut en remettant aux intimés Noiseux et Comeau une formule de dénonciation dont le texte est imprimé dans lautre langue officielle |
|  |  |  |

Le 31 mars 1999

Cour suprême du Canada

Demande dautorisation dappel déposée

**Robert Lavigne**

**v. (27011)**

**Human Resources Development (formerly Health and Welfare Canada) and Her Majesty the Queen (F.C.A.)(Qué.)**

**NATURE OF THE CASE**

Procedural law - Costs - Whether legislation permits the Court to order costs, other than out of pockets, to lay litigants.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| December 13, 1996Federal Court of Canada, Trial Division(M. Lamy, Taxing Officer) |  | Counsel fees claimed under Part III of Tariff B disallowed  |
|  |  |  |
| January 23, 1997Federal Court of Canada, Trial Division(Morneau, Prothonotary) |  | Application by Applicant for a review of a ruling of the taxing officer disallowing all fees claimed by the Applicant under Part II of Tariff B dismissed |
|  |  |  |
| February 10, 1997Federal Court of Canada, Trial Division (Denault J.) |  | Application by Applicant for an order reversing Prothonotary Morneaus decision dismissed |
|  |  |  |
| June 8, 1998Federal Court of Appeal(Marceau, Décary and Létourneau JJ.A.) |  | Appeal dismissed |
|  |  |  |
| December 9, 1998Supreme Court of Canada |  | Application for leave to appeal and motion for extension of time filed |
|  |  |  |

**Communauté urbaine de Québec et Ville de Québec**

 **c. (26863)**

**Les Galeries de la Capitale Inc.**

**- et -**

**Bureau de révision de lévaluation foncière du Québec (Qué.)**

**NATURE DE LA CAUSE**

Droit municipal - Évaluation - Droit administratif - Contrôle judiciaire - Évaluation pour fins de taxe locative dun parc damusement intégré dans un grand centre commercial - Parc récréatif exploité à perte par les propriétaires du centre commercial - Quelle est la norme de contrôle applicable à une Cour siégeant en appel dune décision dun tribunal administratif non protégé par une clause privative, lorsque la loi prévoit un droit dappel et que le litige vise une question qui requiert lapplication de lexpertise spécialisée du tribunal? - Appartient-il à la collectivité de subventionner une exploitation commerciale déficitaire par le biais de léquivalent dune exemption de taxes?

**HISTORIQUE PROCÉDURAL**

|  |  |  |
| --- | --- | --- |
| Le 4 février 1998Cour du Québec (Chambre civile)(St-Hilaire j.c.Q.) |  | Appel de lintimée contre une décision du Bureau de révision de lévaluation foncière du Québec rejetant des plaintes déposées à légard du rôle annuel 1988 et au rôle triennal 1989-90-91 de la taxe locative dun parc damusement accueilli; décision cassée; valeur locative du parc pour ces rôles fixée à zéro |
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| --- | --- | --- |
| Le 23 juin 1998Cour dappel du Québec (LeBel, Dussault et Robert jj.c.a.) |  |  |
|  |  |  |
| Appel rejetéLe 17 septembre 1998Cour suprême du Canada |  | Demande dautorisation dappel déposée |
|  |  |  |

**CORAM: Cory, Major and Binnie JJ. /**

**Les juges Cory, Major et Binnie**

**Michel Provost**

**v. (27198)**

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

**NATURE OF THE CASE**

Criminal law - Sentence - Whether Court of Appeal for the Province of British Columbia erred in overturning the determinate sentence imposed on the Applicant.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| June 30, 1997Supreme Court of British Columbia(Paris J.) |  | Applicant declared to be a dangerous offender and sentenced to imprisonment for 10 years, upon conviction for sexual assault  |
|  |  |  |
| December 10, 1998Court of Appeal for British Columbia (Lambert, Finch and Huddart JJ.A.) |  | Determinate sentence of imprisonment for 10 years set aside and Applicant sentenced to detention in a penitentiary for an indeterminate period |
|  |  |  |
| March 19, 1999Supreme Court of Canada |  | Application for leave to appeal filed |
|  |  |  |

**Cudd Pressure Control Inc.**

**v. (27029)**

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

**NATURE OF THE CASE**

Taxation - Assessment - Business Tax - Notional expenses - Permanent establishments in Canada of foreign enterprises - U.S. corporation operates in Canada through a permanent establishment - Permanent establishment provides services to client in Canada using unique equipment owned by U.S. corporation - No rent is paid by the permanent establishment for the use of the equipment - In calculating income of permanent establishment for Canadian taxation services, whether notional rent for use of unique equipment can be deducted as an expense - Whether notional transactions should be taken into account in computing the income of a permanent establishment - Whether the tax treaty in question required notional intra-corporate transactions to be taken into account in computing the income of a non-resident person who carries on business in Canada through a permanent establishment.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| May 29, 1995Tax Court of Canada (Sarchuk J.) |  | Appeal from assessment allowed |
|  |  |  |
| October 19, 1998Federal Court of Appeal(Strayer, Robertson and McDonald JJ.A.) |  | Appeal dismissed |
|  |  |  |

December 16, 1998

Supreme Court of Canada

Application for leave to appeal filed

**Gerald W. Veinot**

**v. (27047)**

**Reginald A. Veinot, M. Carmon Veinot and**

 **Nina L. Veinot, Adminstratrix of the Estate of**

**Maurice Clinton Veinot (N.S.)**

**NATURE OF THE CASE**

Property law ‑ Estates - Real property - Remedies - Constructive and resulting trust - Farmer dying intestate - Two sons having spent their adult lives working, improving and running farming operation - Third son having made less substantial contribution of work to the farm - Trial judge awarding 35% share of net value of estate to each of two sons who worked the land, and 5% share to third son; remainder of estate to be divided in accordance with *Intestate* *Succession Act*, R.S.N.S. 1989, c. 236 - Whether Court of Appeal erred in law by in affirming trial judges findings in law with respect to conflicting doctrines of constructive and resulting trust and implied partnership, and in disregarding the Intestate Succession Act ans Matrimonial Property Act, R.S.N.S. 1989, c.275 - Whether Court of Appeal failed to apply appropriate standard of appellate review - Whether Court of Appeal failed to apply the appropriate test for objection on the basis of judicial bias.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| February 13, 1998Supreme Court of Nova Scotia (Trial Division)(Goodfellow J.) |  | Order awarding 35% of net estate to each of two Respondents, 5% to the Applicant, and the remainder to the estate of the intestate (25%) |
|  |  |  |
| October 29, 1998Nova Scotia Court of Appeal (Pugsley, Chipman, and Flinn JJ.A.) |  | Appeal dismissed |
|  |  |  |

December 24, 1998

Supreme Court of Canada

Application for leave to appeal filed

**Abbott Laboratories, Limited and Abbott Laboratories**

**v. (27051)**

**Nu‑Pharm Inc. and the Minister of Health Canada (F.C.A.)**

**NATURE OF THE CASE**

Property law - Patents - Construction - Evidence - Can extrinsic patents be tendered without proof as evidence of their contents - Can extrinsic and later filed patents be used to construe the patent at issue - Can a presumption of lack of obviousness of one process be drawn from the issuance of one or more extrinsic patents on other processes - Can the Federal Court of Appeal disregard all evidence apart from the disputed evidence contained in the extrinsic patents?

**PROCEDURAL HISTORY**

February 11, 1998

Federal Court (Trial Division)

(Lutfy J.)

Application to prohibit the Minister of National Health from issuing a Notice of Compliance to the Respondent granted

September 28, 1998

Federal Court of Appeal

(Desjardins, Linden and Létourneau JJ.A.)

Appeal allowed; order set aside

November 26, 1998

Supreme Court of Canada

Application for leave to appeal filed

|  |  |  |
| --- | --- | --- |
| **JUDGMENTS ON APPLICATIONS****FOR LEAVE** |  | **JUGEMENTS RENDUS SUR LES DEMANDES D'AUTORISATION** |

**MAY 17, 1999 / LE 17 MAI 1999**

**27208 CAMCO INC. and GENERAL ELECTRIC COMPANY - v. - WHIRLPOOL CORPORATION and INGLIS LIMITED** (F.C.A.)

CORAM: Major, Bastarache and Binnie JJ.

The application for leave to appeal is granted.

La demande dautorisation dappel est accordée.

**NATURE OF THE CASE**

Property law - Patents - Construction - Validity - Double patenting - Obviousness - Whether the Federal Court of Appeal erred in failing to find that the trial judge failed to properly construe the patents in issue - Whether the Federal Court of Appeal erred by failing to correctly enunciate and apply the principles governing claim construction - Whether the Federal Court of Appeal erred in law by importing the term rigid into the claims of Canadian Patents No. 1,049,803 and1,045,401 to modify the term vanes - Whether the Federal Court of Appeal erred in law by failing to correctly enunciate and apply the principles governing the doctrine of double patenting - Whether the Federal Court of Appeal erred in law in concluding that the claims of Canadian Patent No. 1,049,803 were not double patented by the claims of Canadian Patent No. 1,095,734 - Whether the Federal Court of Appeal erred in law in concluding that Canadian Patent No. 1,095,734 was valid.

**PROCEDURAL HISTORY**

August 18, 1997

Federal Court of Canada (Trial Division)

(Cullen J.)

Respondents Canadian patents 1,049,803 and 1,095,734 valid; latter patent infringed; Respondents to elect between profits and damages; permanent injunction against Applicants with respect to latter patent; Applicants counterclaim dismissed

January 22, 1999

Federal Court of Appeal

(Stone, Létouneau and Sexton JJ.A.)

Appeal dismissed with costs March 23, 1999

March 23, 1999

Supreme Court of Canada

Application for leave to appeal filed

**27209 MAYTAG CORPORATION, MAYTAG LIMITED AND MAYTAG QUEBEC INC. - v. - WHIRLPOOL CORPORATION and INGLIS LIMITED** (F.C.A.)

CORAM: Major, Bastarache and Binnie JJ.

The application for leave to appeal is granted.

La demande dautorisation dappel est accordée.

**NATURE OF THE CASE**

Property law - Patents - Construction - Validity - Double patenting - Obviousness - Whether the Federal Court of Appeal erred in failing to find that the trial judge failed to properly construe the patents in issue - Whether the Federal Court of Appeal erred by failing to correctly enunciate and apply the principles governing claim construction - Whether the Federal Court of Appeal erred in law by importing the term rigid into the claims of Canadian Patents No. 1,049,803 and1,045,401 to modify the term vanes - Whether the Federal Court of Appeal erred in law by failing to correctly enunciate and apply the principles governing the doctrine of double patenting - Whether the Federal Court of Appeal erred in law in concluding that the claims of Canadian Patent No. 1,049,803 were not double patented by the claims of Canadian Patent No. 1,095,734 - Whether the Federal Court of Appeal erred in law in concluding that Canadian Patent No. 1,095,734 was valid.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| September 9, 1997Federal Court of Canada, Trial Division(Hugessen J.) |  | Respondents Canadian patent 1,095,734 valid and infringed; permanent injunction against Applicants with respect to patent; Respondents to elect between profits and damages; Applicants counterclaim dismissed |
|  |  |  |
| January 22, 1999Federal Court of Appeal(Stone, Létouneau and Sexton JJ.A.) |  | Applicants appeal dismissed |
|  |  |  |
| March 23, 1999Supreme Court of Canada |  | Application for leave to appeal filed |
|  |  |  |

**MAY 20, 1999 / LE 20 MAI 1999**

**27024 FRED THOMPSON - 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 dautorisation dappel est rejetée.

**NATURE OF THE CASE**

Criminal Law - Defence - Honest belief in consent - Evidence - Hearsay evidence - Whether there was an air of reality to the Applicants defence of honest belief in consent? - Whether the Court of Appeal erred in law in not setting aside a conviction for sexual assault after finding error in the admissibility of hearsay evidence at trial?

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| February 5, 1997Court of Queen's Bench of Alberta (Langston J.) |  |  |
|  |  |  |
| Conviction: sexual assaultNovember 30, 1998Court of Appeal of Alberta (Calgary)(Hetherington, Irving and Picard JJ.A.) |  | Appeal from conviction dismissed |
|  |  |  |
| February 10, 1999Supreme Court of Canada |  | Application for leave to appeal filed |
|  |  |  |

**27088 DENIS RUSSEL MCCULLOUGH - v. - HER MAJESTY THE QUEEN** (Crim.)(Ont.)

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 dautorisation dappel est rejetée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Whether the Court of Appeal for Ontario erred in holding that the decision in *Regina v. Chaulk*, [1990] 3 S.C.R. 1303, concerning the constitutionality of former s. 16(4) of the *Criminal Code,* was determinative of the Applicants constitutional challenge to ss. 16(2) and (3) of the current *Code* given the recent enactment of Part XX.1 of the *Code* - Whether the Applicant, because of his history as a patient in state-run mental health facilities under the authority of Lieutenant Governors warrant, is entitled to a constitutional exemption, pursuant to s. 24(1) of the *Charter of Rights and Freedoms,* from the application of the presumption of sanity at his trial.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| November 10, 1992Ontario Court of Justice (General Division)(Soublière J.) |  | Convictions: Escape from lawful custody; forcible confinement; possession of a weapon; sexual assault with a weapon; and uttering a death threat |
|  |  |  |

July 9, 1998

Court of Appeal for Ontario

(McMurtry C.J.O., Labrosse, and Abella JJ.A.)

Appeal dismissed

January 19, 1999

Supreme Court of Canada

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

**27133 ROGER DALE PATERSON v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: LHeureux-Dubé, Gonthier and Bastarache JJ.

The motion 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 dautorisation dappel est rejetée.

**NATURE OF THE CASE**

Criminal law - Charge to jury - Rolled-up charge - Defences - Automatism - Intent - Common sense inference - Second degree murder - Jury empanelling procedure - Challenge for cause - Whether the trial judge erred in failing to allow prospective jurors to be asked about bias against homosexuals - Whether the trial judge erred in imposing a publication ban on names of witnesses - Whether the trial judge erred regarding the admissibility of witnesses statements - Whether the trial judge adequately instructed the jury on the defences put forth by the Applicant - Whether the trial judge was obligated to give the jury a rolled-up charge putting forth the Applicants multiple defences - Whether the trial judge adequately instructed the jury on the common sense inference.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| April 12, 1995Supreme Court of British Columbia (Low J.) |  | Conviction: second degree murder |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| January 27, 1998Court of Appeal for British Columbia(McEachern C.J.B.C., Cumming and Hollinrake JJ.A.) |  | Appeal from conviction dismissed |
|  |  |  |
| February 8, 1999Supreme Court of Canada |  | Application for leave to appeal and motion for an extension of time filed |
|  |  |  |

**26936 2897041 CANADA INC. v. IMMOBILIÈRE NATGEN INC.** (Que.)

CORAM: LHeureux-Dubé, Gonthier and Bastarache JJ.

The application for leave to appeal is dismissed with costs.

La demande dautorisation dappel est rejetée avec dépens.

**NATURE OF THE CASE**

Civil Code - Loan - Leases - Assignment of rentals - Art. 1571 *Civil Code of Lower Canada*, S.C. 1865, c. 41 - Acceptance of assignment - Did the Lessee accept that all rental payments due by it under a lease agreement would be paid to the Lessors first ranking hypothecary creditor? - Declaratory judgment by the Superior Court declaring that an assignment of rentals in favour of the Lessors second ranking hypothecary creditor had priority over the assignment of rentals to the first ranking hypothecary creditor - Judgment reversed by the Court of Appeal, assignment of rentals in favour of first ranking hypothecary creditor held to have priority.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| March 31, 1993Superior Court of Quebec (Forget J.) |  | Declaratory judgment in favour of the Applicant |
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| --- | --- | --- |
| August 26, 1998Court of Appeal of Quebec(Deschamps, Pidgeon and Philippon (*ad hoc*) JJ.C.A.) |  |  |
|  |  |  |
| Appeal allowedOctober 26, 1998Supreme Court of Canada |  | Application for leave to appeal filed |
|  |  |  |

**27027 RONALD COUGHLIN v. WILLIAM F. COMERY AND FLEURY COMERY** (Ont.)

CORAM: LHeureux-Dubé, Gonthier and Bastarache JJ.

The application for leave to appeal is dismissed with costs.

La demande dautorisation dappel est rejetée avec dépens.

**NATURE OF THE CASE**

Torts - Negligence - Solicitor-client relationship - Standard of care - Scope of retainer agreement - What is the standard of care of a lawyer to a client - The scope of a lawyers intake consultation - Whether a lawyer who is consulted in respect of an injury and potential rights under a disability policy owes a duty to his client in respect of the potential rights in tort law - Did the lower courts dispose of this case properly.

**PROCEDURAL HISTORY**

|  |  |  |
| --- | --- | --- |
| March 8, 1996Ontario Court of Justice (General Division) (Hoilett J.) |  | Applicants action dismissed |
|  |  |  |
| October 13, 1998Court of Appeal for Ontario(Finlayson, Catzman and Abella JJ.A.) |  | Appeal and cross-appeal dismissed |
|  |  |  |
| December 11, 1998Supreme Court of Canada |  | Application for leave to appeal filed |
|  |  |  |

**26838 LOVEY CRIDGE - v. - LAWRENCE PIERCE** (B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

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

La requête visant à obtenir le réexamen de la demande dautorisation dappel est rejetée.

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| --- | --- | --- |
| **MOTIONS** |  | **REQUÊTES** |

4.5.1999

Before / Devant: CHIEF JUSTICE LAMER

**Motion by the appellant to state a constitutional question**

K.L.W.

 v. (26779)

Winnipeg Child and Family Services (Man.)

**Requête de lappelante pour énoncer une question constitutionnelle**

**GRANTED / ACCORDÉE**

Notices of intention to intervene are to be filed no later than June 14, 1999.

1. Is s. 21(1) of *The Child and Family Services Act*, S.M. 1985‑86, c. C‑80, as amended, in whole or in part inconsistent with, or infringe or deny rights guaranteed by, s. 7 of the *Canadian Charter of Rights and Freedoms*?

2. If the answer to the foregoing question is yes, is s. 21(1) of *The Child and Family Services Act*, S.M. 1985‑86, c. C‑80 as amended demonstrably justified pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms*?

[traduction]

1. Le paragraphe 21(1) de la *Loi sur les services à lenfant et à la famille*, L.M. 1985‑86, ch. C‑80 et ses modifications, est‑il, en totalité ou en partie, incompatible avec les droits garantis par lart. 7 de la *Charte canadienne des droits et libertés*, ou y porte‑t‑il atteinte?

2. Dans laffirmative, la justification du par. 21(1) de la *Loi sur les services à lenfant et à la famille*, L.M. 1985‑86, ch. C‑80 et ses modifications, peut‑elle se démontrer conformément à larticle premier de la *Charte canadienne des droits et libertés*?

11.5.1999

Before / Devant: LE REGISTRAIRE ADJOINT

**Requête en prorogation du délai imparti pour signifier et produire la réponse de lintimée**

Jean Piché

 c. (27237)

Sa Majesté La Reine (Qué.)

**Motion to extend the time in which to serve and file the respondents response**

**GRANTED / ACCORDÉE** Délai prorogé au 8 juin 1999.

12.5.1999

Before / Devant: THE DEPUTY REGISTRAR

**Motion to extend the time in which to serve and file the response of the respondent, Robert Schram**

Derek Alchimowicz

 v. (27187)

Robert Schram, et al. (Ont.)

**Requête en prorogation du délai imparti pour signifier et déposer la réponse de lintimé Robert Schram**

**GRANTED / ACCORDÉE** Time extended to April 30, 1999.

12.5.1999

Before / Devant: BASTARACHE J.

**Motion for leave to intervene**

BY/PAR: Criminal Lawyers Association

IN/DANS: Her Majesty the Queen

v. (26339)

Thomas Andrew Bunn (Crim.)(Man.)

and

Her Majesty the Queen

v. (26462)

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

and

Her Majesty the Queen

v. (26377)

R.A.R. (Crim.)(Man.)

and

Her Majesty the Queen

v. (26329)

**Requête en autorisation dintervention**

L.F.W. (Crim.)(Nfld.)

and

Her Majesty the Queen

v. (26376)

Jeromie Keith D. Proulx (Crim.)(Man.)

**DISMISSED / REJETÉE**

14.5.1999

Before / Devant: THE DEPUTY REGISTRAR

**Motion to extend the time in which to serve and file the appellants factum, record and book of authorities**

Mark Edward Russell

 v. (26699)

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

**Requête en prorogation du délai imparti pour signifier et déposer le mémoire, le dossier et le cahier de jurisprudence et de doctrine de lappelant**

**GRANTED / ACCORDÉE** Time extended to April 30, 1999.

17.5.1999

Before / Devant: CORY J.

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

Arthur Kennedy Ross

 v. (27286)

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

**Requête en prorogation du délai imparti pour signifier et déposer la demande dautorisation**

**GRANTED / ACCORDÉE** Time extended to August 16, 1999.

17.5.1999

Before / Devant: CORY J.

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

Ernest Dwayne Sangwais

 v. (27287)

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

**Requête en prorogation du délai imparti pour signifier et déposer la demande dautorisation**

**GRANTED / ACCORDÉE** Time extended to July 14, 1999.

18.5.1999

Before / Devant: CORY J.

**Motions for extension of time and leave to intervene**

BY/PAR: Attorney General of New Brunswick, Attorney General of Alberta and the Council of Canadians with Disabilities (CCD)

IN/DANS: Terry Grismer (Estate)

v. (26481)

British Columbia Council of Human Rights, et al. (B.C.)

**Requêtes en prorogation de délai et en autorisation d'intervenir**

**GRANTED / ACCORDÉES**

IT IS HEREBY ORDERED THAT:

The motion for an extension of time and for leave to intervene of the applicant Attorney General of New Brunswick is granted, the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 10 minutes.

The motion for an extension of time and for leave to intervene of the applicant Attorney General of Alberta is granted, the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 10 minutes.

The motion for an extension of time and for leave to intervene of the applicant Council of Canadians with Disabilities (CCD) is granted, the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 10 minutes.

The interveners shall not be entitled to adduce further evidence or otherwise to supplement the record apart from their factum and oral submissions.

Pursuant to Rule 18(6), each of the interveners shall pay to the appellant and respondents any additional disbursements occasioned to the appellant and respondents by the interventions.

|  |  |  |
| --- | --- | --- |
| **NOTICE OF APPEAL FILED SINCE LAST ISSUE** |  | **AVIS DAPPEL DÉPOSÉS DEPUIS LA DERNIÈRE PARUTION** |

19.5.1999

**Sa Majesté la Reine**

 **c. (26939)**

**Renaud Lévesque (Qué.)**

|  |  |  |
| --- | --- | --- |
| **NOTICE OF DISCONTINUANCE FILED SINCE LAST ISSUE** |  | **AVIS DE DÉSISTEMENT DÉPOSÉS DEPUIS LA DERNIÈRE PARUTION** |

14.5.1999

**OShanter Development Company**

**v. (27179)**

**Timothy Bartholemew Minott (Ont.)**

(leave)

14.5.1999

**Laurier Henri**

 **c. (27245)**

**Victoire Henri Qué.)**

(demande dautorisation)

|  |  |  |
| --- | --- | --- |
| **APPEALS HEARD SINCE LAST ISSUE AND DISPOSITION** |  | **APPELS ENTENDUS DEPUIS LA DERNIÈRE PARUTION ET RÉSULTAT** |

17.5.1999

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

**Her Majesty the Queen in Right of Newfoundland, et al.**

 **v. (26362)**

**Andrew Wells (Nfld.)**

John B. Laskin, Reg Locke and Andrew E. Bernstein, for the appellants.

Gillian D. Butler, Q.C., Stacy L. Feltham and Kenneth S. Purchase, for the respondent.

**RESERVED / EN DÉLIBÉRÉ**

Motion filed by the Appellants for an order extending the time to file a supplementary book of authorities granted.

**Nature of the case:**

Constitutional Law - Division of Powers - Administrative Law - Statutory office abolished and statutory office holder dismissed without compensation following enactment of replacement Act - Office holder not appointed to replacement board - Whether the majority of the Court of Appeal erred in holding that no distinction exists between the Legislature and the Executive, which undermines the supremacy of the Legislature in matters within its constitutional competence - Whether the majority erred in declining to follow *Reilly v. The King* [1934] A.C. 176 (P.C.) - Whether duty of fairness arises - Whether the office holder has a right to damages.

**Nature de la cause:**

Droit constitutionnel - Répartition des compétences - Droit administratif - Abolition dun poste créé par la loi et renvoi du titulaire du poste sans indemnisation après adoption dune nouvelle loi - Titulaire du poste non nommé dans le poste de remplacement - La Cour dappel à la majorité a-t-elle commis une erreur en statuant quil ny a, entre le pouvoir législatif et le pouvoir exécutif, aucune distinction qui mine la suprématie du pouvoir législatif dans des matières qui relèvent de sa compétence constitutionnelle? - La Cour dappel à la majorité a-t-elle commis une erreur en refusant de suivre *Reilly c. The King*, [1934] A.C. 176 (C.P.)? - Lobligation dagir avec équité est-elle en cause? - Le titulaire du poste a-t-il droit à des dommages-intérêts?

19.5.1999

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

**Her Majesty the Queen**

 **v. (26854)**

**W.J.F. (Crim.)(Sask.)**

Daryl Rayner, for the Appellant.

David W. Andrews, for the Respondent.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Criminal law - Evidence - Trial - Procedural law - Child witness - Whether the trial judge was correct in holding that it was necessary for the Crown to tender evidence to explain the reason why a child witness would not answer questions put to her before permitting out of court statements made by the child to be introduced into evidence pursuant to *R. v. Khan* [1990] 2 S.C.R. 531 - Whether the trial judge was correct in finding that the requirement of necessity had not been established when a child witness is unresponsive and avoids answering questions put to her.

**Nature de la cause:**

Droit criminel Preuve Procès Droit procédural Témoignage denfant Le juge du procès a‑t‑il eu raison de statuer que le ministère public devait présenter une preuve expliquant pourquoi une enfant assignée comme témoin ne répondrait pas aux questions qui lui étaient posées, avant de permettre que des déclarations extrajudiciaires faites par lenfant ne soient présentées en preuve conformément à larrêt *R. c. Kahn*, [1990] 2 R.C.S. 531 Le juge du procès a‑t‑il eu raison de conclure quil navait pas été satisfait au critère de nécessité, lors de son témoignage, lenfant se montrait vague et refusait de répondre aux questions qui lui étaient posées?

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| **PRONOUNCEMENTS OF APPEALS RESERVED** **Reasons for judgment are available** |  | **JUGEMENTS RENDUS SUR LES APPELS EN DÉLIBÉRÉ****Les motifs de jugement sont disponibles** |

**MAY 20, 1999 / LE 20 MAI 1999**

**25838 THE ATTORNEY GENERAL FOR ONTARIO -v.- M. -and- H. -and- THE FOUNDATION FOR EQUAL FAMILIES, THE WOMENS LEGAL EDUCATION AND ACTION FUND (LEAF), EQUALITY FOR GAYS AND LESBIANS EVERYWHERE (EGALE), THE ONTARIO HUMAN RIGHTS COMMISSION, THE UNITED CHURCH OF CANADA, THE EVANGELICAL FELLOWSHIP OF CANADA, THE ONTARIO COUNCIL OF SIKHS, THE ISLAMIC SOCIETY OF NORTH AMERICA, FOCUS ON THE FAMILY and REAL WOMEN OF CANADA** (Ont.)

CORAM: The Chief Justice and L'Heureux-Dubé, Gonthier, Cory, McLachlin,

Iacobucci, Major, Bastarache and Binnie JJ.

The appeal and the cross‑appeal are dismissed with solicitor‑and‑client costs to both M. and H. in the proceedings before this Court, Gonthier J. dissenting on the appeal. The constitutional questions are answered as follows:

Question 1: Does the definition of "spouse" in s. 29 of the *Family Law Act*, R.S.O. 1990, c. F.3, infringe or deny s. 15(1) of the *Canadian Charter of Rights and Freedoms*?

Answer:   Yes. Gonthier J. would answer no.

Question 2: If the answer to Question 1 is "yes", is the infringement or denial demonstrably justified in a free and democratic society pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms*?

Answer:   No. Gonthier J. would find it unnecessary to answer the question.

Le pourvoi principal et le pourvoi incident sont rejetés avec dépens sur la base procureur-client dans notre Cour en faveur de M. et de H. Le juge Gonthier est dissident quant au pourvoi principal. Les questions constitutionnelles recoivent les réponses suivantes:

Question 1: Est-ce que la définition de conjoint à lart. 29 de la *Loi sur le droit de la famille*, L.R.O. 1990, ch. F.3, a pour effet de nier les droits garantis au par. 15(1) de la *Charte canadienne des droits et libertés* ou dy porter atteinte?

Réponse: Oui. Le juge Gonthier répondrait non.

Question 2: Si la réponse à la question 1 est oui, est-ce que cette négation ou atteinte est justifiée dans le cadre dune société libre et démocratique au sens de larticle premier de la *Charte canadienne des droits et libertés*?

Réponse: Non. Le juge Gonthier estime inutile de répondre à cette question.

**25708 HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN AFFAIRS CANADA and THE ATTORNEY GENERAL OF CANADA - and - BATCHEWANA INDIAN BAND - v. - JOHN CORBIÈRE, CHARLOTTE SYRETTE, CLAIRE ROBINSON and FRANK NOLAN, each on their own behalf and on behalf of all non-resident members of the Batchewana Band - and - ABORIGINAL LEGAL SERVICES OF TORONTO INC., CONGRESS OF ABORIGINAL PEOPLES, LESSER SLAVE LAKE INDIAN REGIONAL COUNCIL, NATIVE WOMENS ASSOCIATION OF CANADA and UNITED NATIVE NATIONS SOCIETY OF BRITISH COLUMBIA** (F.C.A.) (Ont.)

CORAM: The Chief Justice and LHeureux-Dubé, Gonthier, Cory,

McLachlin, Iacobucci, Major, Bastarache and Binnie JJ.

The appeal is dismissed and the remedy is modified by striking out the words and is ordinarily resident on the reserve in s. 77(1) of the *Indian Act* and suspending the implementation of the declaration of invalidity for 18 months, with costs to the respondents. The restated constitutional questions are answered as follows:

Question 1. Do the words and is ordinarily resident on the reserve contained in s. 77(1) of the *Indian Act*, R.S.C., 1985, c. I-5, contravene s. 15(1) of the *Canadian Charter of Rights and Freedoms*, either generally or with respect only to members of the Batchewana Indian Band?

Answer: Yes, in their general application.

Question 2. If the answer to question 1 is in the affirmative, is s. 77(1) of the *Indian Act* demonstrably justified as a reasonable limit pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms*?

Answer: No.

Le pourvoi est rejeté et la réparation est modifiée en supprimant les mots et réside ordinairement sur la réserve employés au par. 77(1) de la *Loi sur les Indiens*, et en suspendant la prise deffet de la déclaration dinvalidité pour 18 mois, avec dépens en faveur des intimés. Les questions constitutionnelles reformulées reçoivent les réponses suivantes:

Question 1. Les mots et réside ordinairement sur la réserve figurant au par. 77(1) de la *Loi sur les Indiens*, L.R.C. (1985), ch. I-5, contreviennent-ils au par. 15(1) de la *Charte canadienne des droits et libertés*, soit de façon générale, soit uniquement en ce qui concerne les membres de la bande indienne de Batchewana?

Réponse: Oui, dans leur application générale.

Question 2. Si la réponse à la question 1 est affirmative, le par. 77(1) de la *Loi sur les Indiens* est-il une limite raisonnable dont la justification peut se démontrer en vertu de larticle premier de la *Charte canadienne des droits et libertés*?

Réponse: Non.

**26416 JEAN VICTOR BEAULAC - v. - HER MAJESTY THE QUEEN - and - THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF QUEBEC, THE COMMISSIONER OF OFFICIAL LANGUAGES, ASSOCIATION DES JURISTES DEXPRESSION FRANÇAISE DE LONTARIO and ASSOCIATION DES JURISTES DEXPRESSION FRANÇAISE DU MANITOBA** (Crim.) (B.C.)

CORAM: The Chief Justice and LHeureux-Dubé, Gonthier, Cory,

McLachlin, Iacobucci, Major, Bastarache and Binnie JJ.