

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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

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Adele Rosemary Breese (née Gruenke)

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Singleton Urquhart Scott

v. (21410)

Her Majesty the Queen (Man.)

R. Saull
Manitoba Deputy Minister of Justice

DATE DE PRODUCTION 10.3.1999

Stephen M. Byer et al.

Stephen M. Byer

v. (26539)

Bernardo Reyes (Que.)

David Joanisse
Heenan Blaikie, G.P.

DATE DE PRODUCTION 3.2.1999

Austin Ralph "Joe" Bunn

Robert J. Reynolds
Reynolds O'Brien Kline & Selick

v. (26918)

Her Majesty the Queen (Ont.)

Sandy Tse
A.G. of Ontario

DATE DE PRODUCTION 15.3.1999

Ronald Clement

Carl Mandrish

v. (27078)

The Attorney General for Ontario et al. (Ont.)

Susan Freeborn
A.G. for Ontario

DATE DE PRODUCTION 11.3.1999

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

The British Columbia College of Teachers

Thomas R. Berger, Q.C.
Berger & Nelson

v. (27168)

Trinity Western University et al. (B.C.)

Robert G. Kuhn
Kuhn & Company

DATE DE PRODUCTION 25.2.1999

Monica Lynn Tailleur et al.

Harry O. Moffet
Weir Bowen

v. (27169)

Joseph Sendziak et al. (Alta.)

Rose M. Carter
Bennett Jones

DATE DE PRODUCTION 1.3.1999

Dr. Phillip Godfrey Ashmore

Christopher E. Hinkson, Q.C.
Harper Grey Easton

v. (27171)

Melanie Ann Van Mol et al. (B.C.)

John D. McAlpine, Q.C.
McAlpine Gudmundseth Mickelson

DATE DE PRODUCTION 5.3.1999

Ontario Nurses' Association

Elizabeth J. McIntyre
Cavalluzzo Hayes Shilton McIntyre &
Cornish

v. (27176)

Orillia Soldiers' Memorial Hospital et al. (Ont.)

Douglas K. Gray
Hicks Morley Hamilton Stewart Storie

DATE DE PRODUCTION 15.3.1999

Fernand Gosselin

Jacques Ladouceur
Cliche, Lortie et Ladouceur

c. (27178)

Sa Majesté la Reine (Qué.)

John Tymchyk
Bureau des substituts du procureur général

DATE DE PRODUCTION 9.3.1999

O'Shanter Development Company

Robert A. Maxwell
Gardiner, Roberts

v. (27179)

Timothy Bartholomew Minott (Ont.)

James C. Morton
Steinberg Morton Frymer

DATE DE PRODUCTION 8.3.1999

Bert Moxham

David G. MacKay
MacKay & McLean

v. (27180)

Her Majesty the Queen in the Right of Canada et al. (F.C.A.)

F. William Johnson
Gerrand Rath Johnson

DATE DE PRODUCTION 17.3.1999

David Kevin Lindsay

David Kevin Lindsay

v. (27181)

The Provincial Government of Manitoba et al. (Man.)

Denis Guenette
Dept. of Justice

DATE DE PRODUCTION 11.3.1999

Hélène Mailloux et al.

Louis Masson
Joli-Coeur, Lacasse, Lemieux, Simard, St-Pierre

c. (27182)

Jean-Pierre Beltrami et al. (Qué.)

Bernard Godbout
Kronström, Desjardins

DATE DE PRODUCTION 11.3.1999

Paul MacPherson et al.

M. James O'Grady, Q.C.
O'Grady & Young

v. (27184)

Adga Systems International Inc. et al. (Ont.)

David Debenham
Yegendorf, Brazeau, Seller, Prehogan,
Wyllie

DATE DE PRODUCTION 12.3.1999

Nicholas Y. Bonamy

Nicholas Y. Bonamy
Vancouver Pre-Trial Services Centre

v. (27185)

Her Majesty the Queen (B.C.)

Barbara Burns
Dept. of Justice

DATE DE PRODUCTION 10.3.1999

The City of Edmonton

Eric F. Macklin, Q.C.
Duncan & Craig

v. (27186)

Protection Mutual Insurance Company (Alta.)

Eric Groody
Code Hunter Wittman

DATE DE PRODUCTION 12.3.1999

Derek Alchimowicz

Harvey T. Strosberg, Q.C.
Gignac, Sutts

v. (27187)

Robert Schram et al. (Ont.)

Bert Raphael, Q.C.
Paroian, Raphael, Courey, Cohen & Houston

DATE DE PRODUCTION 15.3.1999

Westar Petroleum Ltd., et al.

Frank R. Foran
Howard, Mackie

v. (27188)

Colborne Capital Corporation et al. (Alta.)

Aleck Trawick, Q.C.
Blake, Cassels & Graydon

DATE DE PRODUCTION 15.3.1999

Lynn Isert

F. Andrew Schroeder

Schroeder & Company

v. (27190)

Ma Rojwena Garcia Santos et al. (B.C.)

William N. Fritz

Fritz Lail Dougans & Shirreff

DATE DE PRODUCTION 18.3.1999

K.M.E.

Adrian F. Brooks, esq.

v. (27173)

Her Majesty the Queen (B.C.)

Dirk Ryneveld, Q.C.

Crown Counsel Office

DATE DE PRODUCTION 10.3.1999

Casimir Chciuk

Keith E. Wright

v. (27076)

Her Majesty the Queen (Ont.)

Robert Kelly

A.G. of Ontario

DATE DE PRODUCTION 1.3.1999

W.S.R.

Anil K. Kapoor

v. (27177)

Her Majesty the Queen (Ont.)

Phillip Downes

A.G. of Ontario

DATE DE PRODUCTION 9.3.1999

**APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST
ISSUE**

**DEMANDES SOUMISES À LA COUR
DEPUIS LA DERNIÈRE PARUTION**

MARCH 29, 1999 / LE 29 MARS 1999

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

Canadian Broadcasting Corporation

v. (27091)

Her Majesty The Queen (Crim.)(N.W.T.)

NATURE OF THE CASE

Criminal law - *Criminal Code*, s. 486(3) - Non-publication order - Canadian Charter of Rights and Freedoms, s. 2(b) - Freedom of the press - Whether a publication ban issued under s. 486 of the *Criminal Code* should be interpreted as surviving the death of a complainant - Whether the publication ban should be interpreted as prohibiting publication of a complainant's identity in a subsequent public proceeding - Whether s. 436(4) contravenes s. 2(b) of the Charter where the publication ban is issued at the request of the prosecutor or where it is issued by a judge *ex proprio motu*.

PROCEDURAL HISTORY

December 10, 1997
Supreme Court of the Northwest Territories
(Vertes J.)

Applicant's appeal from summary conviction and sentence dismissed; Crown's appeal from the granting of a non-suit and dismissal on a second charge allowed and new trial ordered

November 3, 1998
Court of Appeal of the Northwest Territories
(Fraser, Foisy, and Schuler JJ.A.)

Applicant's appeals dismissed

January 13, 1999
Supreme Court of Canada

Application for leave to appeal filed

Tony Khuu

v. (27068)

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

NATURE OF THE CASE

Criminal law - Defence request for witness warrant for police informant - Whether the Court of Appeal erred in finding that the trial judge did not err in denying a defence application for a witness warrant pursuant to s.698(2) of the *Criminal Code* to compel the arrest and testimony of a police informant in circumstances where informant privilege had been waived.

PROCEDURAL HISTORY

November 14, 1996 Provincial Court of Alberta (Maloney J.)	Conviction: 3 counts of trafficking narcotics
July 15, 1997 Provincial Court of Alberta (Maloney J.)	Application for a judicial stay denied
November 4, 1998 Court of Appeal of Alberta (Hetherington, Hunt, and Sulatycky JJ.A.)	Appeal dismissed
January 4, 1999 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**

Peter Owen McMaster

v. (26851)

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

NATURE OF THE CASE

Criminal Law - Evidence - Admission of hearsay evidence - Reliability of witness to hearsay evidence - The test of relevance of hearsay evidence set out in *R. v. Khan*, [1990] 2 S.C.R. 531 - Whether hearsay evidence should be excluded from evidence on the basis that the witness testifying to the hearsay is not credible or is unreliable - Whether the witness's lack of credibility is a factor to be considered by a trial judge when determining whether to admit hearsay evidence or a factor to be considered by the trier of fact when assessing the weight of the hearsay evidence or both.

PROCEDURAL HISTORY

June 9, 1993 Ontario Court (Divisional Court) (Hermiston J.)	Conviction of second degree murder; Sentence of life imprisonment without eligibility for parole for 12 years
January 14, 1998 Court of Appeal for Ontario (Brooke, Robins, and Moldaver JJ.A.)	Appeals from conviction and sentence dismissed
December 22, 1998 Supreme Court of Canada	Application for leave to appeal filed

Jean-François Têtu

c. (26892)

Camil Bouchard et Ville de Chicoutimi (Qué.)

NATURE DE LA CAUSE

Procédure civile - Procédure allégée - Procédure préalable au procès - Inscription tardive pour enquête et audition - Délai de rigueur - Demande de prolongation du délai refusée - Impossibilité d'agir - Erreur de l'avocat - Sauvegarde des droits de la partie - Le jugement de la Cour d'appel est-il discordant par rapport à l'état du droit applicable en matière d'interprétation procédurale? - *Code de procédure civile*, L.R.Q., ch. C-25 - art. 481.11 *C.p.c.*

HISTORIQUE PROCÉDURAL

Le 21 novembre 1997
Cour supérieure du Québec
(Larouche J.C.S.)

Requête du demandeur pour prolonger le délai de production de l'inscription pour enquête et audition rejetée

Le 7 juillet 1998
Cour d'appel du Québec
(Gendreau, Dussault J.J.C.A. et Letarte J.C.A. (*ad hoc*))

Appel rejeté

Le 29 septembre 1998
Cour Suprême du Canada

Demande d'autorisation d'appel déposée

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

Bruce William Silliker

v. (27053)

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

NATURE OF THE CASE

Criminal law - Trial - Charge to jury - Unanimity - Whether the trial judge properly instructed the jury - Whether the Court of Appeal erred in holding that the trial judge did not give a charge to the jury amounting to mis-direction on the question of the right to disagree in their verdict.

PROCEDURAL HISTORY

January 20, 1994
Supreme Court of British Columbia (Hutchison J.)

Conviction: Sexual interference

October 20, 1995
Court of Appeal for British Columbia
(Goldie, Finch, and Ryan J.J.A.)

Application to adduce fresh evidence denied; appeal dismissed

December 24, 1998
Supreme Court of Canada

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

Thornhill Aggregates Ltd., Montcalm Aggregates Ltd., Maple Ridge Ready-Mix Ltd.

-and-

Allard Contractors Ltd., Albion Aggregate Ltd. and Maple Ridge Ready-Mix (1993) Ltd.

v. (26818)

Corporation of the District of Maple Ridge (B.C.)

NATURE OF THE CASE

Municipal law - Does there exist any judicial discretion in a superior court to deny an injunction to a municipality which seeks to enforce its bylaws pursuant to statutory authority? - Does a municipality owe a ratepayer any duty of fairness when the municipality considers an application pursuant to statutory authority?

PROCEDURAL HISTORY

June 23, 1995 Supreme Court of British Columbia (Huddart J.)	Respondent's application for injunction to prohibit the Applicants from operating a concrete ready-mix plant granted but order suspended pending resolution of Applicants' counterclaim
December 27, 1996 Supreme Court of British Columbia (Robinson J.)	Applicants' counterclaim for an order that the municipal council of Maple Ridge consider both the Applicants' application for the amendment of the Official Community Plan and re-zoning and their application for a Temporary Industrial Use Permit dismissed
June 23, 1998 Court of Appeal for British Columbia (McEachern C.J.B.C [dissenting], and Cumming and Finch JJ.A.)	Appeals dismissed
August 31, 1998 Supreme Court of Canada	Application for leave to appeal filed

APRIL 6, 1999 / LE 6 AVRIL 1999

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

Her Majesty The Queen

v. (27134)

Vincent Edward Allan Sherlock (Crim.)(Man.)

NATURE OF THE CASE

Criminal law - Sentencing - Whether Court of Appeal erred in law in imposing its view as to the appropriate sentence where sentence imposed by trial judge was within the range of sentences imposed by other Courts of Appeal - Whether Court of Appeal erred in failing to adequately consider the need for denunciation, deterrence, and retribution with respect to drinking and driving offences - Relevance of victim impact statements to sentence.

PROCEDURAL HISTORY

August 18, 1998
Manitoba Provincial Court
(Enns J.)

Sentence: five years imprisonment for conviction for impaired driving causing death (1 count) and three years concurrent for impaired driving causing bodily harm (3 counts); 10 year driving prohibition to take effect upon release from custody

December 9, 1998
Court of Appeal of Manitoba (Huband and Philip JJ.A.
and Kroft J.A. [dissenting in part])

Appeal allowed; sentence reduced to two and a half years' imprisonment and driving licence suspension reduced from ten to two years

February 5, 1999
Supreme Court of Canada

Application for leave to appeal filed

J. C.

v. (27109)

Her Majesty The Queen and David Edward McClure (Crim.)(Ont.)

NATURE OF THE CASE

Criminal law - Barristers and Solicitors - Should the solicitor and client privilege ever yield to the accused's right to full answer and defence - If so, in what circumstances? - What would be the appropriate test?

PROCEDURAL HISTORY

December 4, 1998
Ontario Court of Justice (General Division)
(Hawkins J.)

Application by Respondent McClure granted: order compelling production of the Applicant's civil litigation file to the Respondent

January 28, 1999
Supreme Court of Canada

Application for leave to appeal filed

Astrid Elfreda Flaska

v. (27032)

Donald Hindson, James Robertson, Lawrence Flaska (Ont.)

NATURE OF THE CASE

Property law - Estates - Executors and administrators - Compensation to executors of an estate - How should a court determine a quantum of compensation which is "fair and reasonable" pursuant to section 61 of the *Trustee Act*, R.S.O. 1990, c. T. 23 - Whether the Ontario Court of Appeal erred by reducing the importance of discretionary factors in favour of a mechanical percentage calculation of executors' compensation.

PROCEDURAL HISTORY

December 19, 1994 Ontario Court (General Division) (Boyko J.)	Application to pass estate accounts granted, subject to a revision of the compensation payable to the executors
March 3, 1995 Ontario (General Division) (Boyko J.)	Supplementary Endorsement clarifying Reasons for decision dated December 19, 1994
September 16, 1997 Divisional Court (Bell, MacLeod and Ferguson JJ.)	Appeal allowed
April 14, 1998 Court of Appeal for Ontario (Finlayson, Krever and Weiler JJ.A.)	Leave to appeal granted
October 20, 1998 Court of Appeal for Ontario (Krever, Doherty and O'Connor JJ.A.)	Appeal dismissed
December 17, 1998 Supreme Court of Canada	Application for leave to appeal filed

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

Thomas Wesley Rathwell

v. (27039)

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

NATURE OF THE CASE

Criminal Law - Defence - Automatism - Trial - Jury Instructions - Jury Instructions concerning the intent required for proof of second degree murder - Whether the trial judge's interpretation of the evidence and charge to the jury erroneously affirmed that there was evidence of intent to commit second degree murder - Whether evidence taken on a voir dire on the issue of non-insane automatism was erroneously excluded - Whether jury was entitled as a matter of common sense to draw an inference that a sane and sober person intends the natural and probable consequences of his voluntary act - Whether jury was properly instructed on the defence of provocation - Whether jury charge, taken as a whole, was confusing.

PROCEDURAL HISTORY

February 25, 1993 Ontario Court (General Division) (Meehan J.)	Conviction of second degree murder: Sentence to life imprisonment with no eligibility for parole for ten years
October 19, 1998 Ontario Court of Appeal (McKinlay, Carthy and Osborne JJ.A.)	Appeal from conviction dismissed
February 11, 1998 Supreme Court of Canada	Application for leave to appeal filed

Kambiz Mafi

v. (27090)

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

NATURE OF THE CASE

Criminal law - Evidence - Trial - Whether evidence of Applicant's financial difficulties had a prejudicial effect that outweighed its probative value - Whether there was a sufficient *nexus* between the victim's state of mind regarding the Applicant's suspected thefts and a motive to allow such character evidence to go before the jury - Whether a trial judge has a duty to hold a *voir dire* on his or her own motion when alerted to the possibility that evidence might be inadmissible - *R. v. Hodgson*, [1998] 2 S.C.R. 449 - *R. v. Wells*, [1998] 2 S.C.R. 517.

PROCEDURAL HISTORY

June 19, 1996 Supreme Court of British Columbia (Oppal J.)	Conviction on two counts of second degree murder
October 1, 1998 Court of Appeal for British Columbia (Esson, Donald, and Mackenzie JJ.A.)	Appeal dismissed
January 13, 1999 Supreme Court of Canada	Application for leave to appeal filed

Société Rodaber Ltée et Roger Bernatchez

c. (26909)

Banque Nationale du Canada

- et -

Francine Masse (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Jugements et ordonnances - Chose jugée - *Code de procédure civile*, L.R.Q., ch. C-25 - La Cour d'appel du Québec a-t-elle erré en rejetant l'action des demandeurs pour cause de chose jugée? - La chose jugée s'applique-t-elle lorsqu'une action est rejetée pour défaut de se conformer à des règles de procédure?

HISTORIQUE PROCÉDURAL

Le 12 mars 1998
Cour supérieure du Québec (Barakett j.c.s.)

Requête en irrecevabilité de l'action rejetée

Le 13 août 1998
Cour d'appel du Québec
(Gendreau, LeBel et Rousseau-Houle jj.c.a.)

Appel de l'intimée accueilli; action des demandeurs
rejetée en partie

Le 9 octobre 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

John Leonard Bennett

v. (26590)

Her Majesty the Queen (Crim)(Ont.)

NATURE OF THE CASE

Criminal law - Trial - Evidence - Impaired operation of a motor vehicle causing death - Whether the Court of Appeal erred regarding the standard of appellate review - Whether the Court of Appeal erred in failing to find that the trial judge erred in leaving for the jury's consideration a totally speculative theory which provided a means of exit supporting the conclusion that the deceased was the passenger - Whether the verdict was unreasonable or unsupported by evidence.

PROCEDURAL HISTORY

November 8, 1993
Ontario Court (General Division) (Wren J.)

Conviction: impaired operation of a motor vehicle causing
death; impaired driving

April 14, 1998
Court of Appeal for Ontario
(Finlayson, Carthy and Osborne JJ.A.)

Appeal dismissed

October 15, 1998
Supreme Court of Canada (Binnie J.)

Motion for an extension of time granted

October 30, 1998
Supreme Court of Canada

Application for leave to appeal filed

Serge Dionne

v. (27009)

Ethel Kuhlmann (Ont.)

NATURE OF THE CASE

Procedural law - Jury trial - Charge to jury - Address to jury - New evidence - Defendant admitting liability for motor vehicle accident - Applicant claiming neck and back soft tissue injuries and psychological problems as a result of accident - Respondent's address to jury focussing on evidence of Applicant's poor character - Evidence of police officer indicating that Applicant was not present at the scene of the accident - Trial judge refusing motion to discharge jury - Whether trial judge should have dismissed the jury when this evidence was adduced by the Respondent - Whether jury's zero verdict so plainly unreasonable and unjust that no jury reviewing the evidence as a whole and acting judicially could have reached it - Whether Court of Appeal should have allowed the appeal - Whether Applicant's failure to object to charge as it concerns impugned evidence, bears on the issue before the Court when a motion to withdraw the jury due to the impugned evidence is dismissed.

PROCEDURAL HISTORY

December 12, 1995 Ontario Court (Divisional Court) (Marshall J.)	Order for partial summary judgment
June 20, 1996 Ontario Court (Divisional Court) (Forestell J.)	Appellant's action dismissed
October 9, 1998 Court of Appeal for Ontario (Morden A.C.J.O., Rosenberg and Spence [<i>ad hoc</i>] JJ.A.)	Paragraph 2 of Forestell's judgment set aside and appeal dismissed
December 3, 1998 Supreme Court of Canada	Application for leave to appeal filed

APRIL 12, 1999 / LE 12 AVRIL 1999

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

Yves Gagné

c. (27064)

Sa Majesté La Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Preuve - Défense - Divulgence de la preuve - Droit à une défense pleine et entière Arrêt des procédures - La Cour d'appel a-t-elle erré en droit, en substituant, en l'absence d'erreur de droit de la part du juge de première instance, sa propre opinion à la discrétion que celui-ci avait exercée? - La Cour d'appel a-t-elle erré en droit en ignorant complètement le principe selon lequel non seulement il faut que justice soit rendue mais aussi que justice paraisse manifestement et indubitablement être rendue? - La Cour d'appel a-t-elle erré en droit en postulant qu'existait, sans le décrire ni le proposer, un autre remède également adéquat, avantageux et efficace pour assurer que justice soit faite ou tout au moins paraisse manifestement et indubitablement être rendue au demandeur?

HISTORIQUE PROCÉDURAL

Le 10 mai 1996
Cour supérieure du Québec (chambre criminelle)
(Pinard j.c.s.)

Ordonnances: arrêt des procédures et la libération
immédiate des accusés

Le 9 novembre 1998
Cour d'appel du Québec
(Fish, Otis, et Zerbisias [*ad hoc*] jj.c.a.)

Appel accueilli

Le 7 janvier 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Sangani Osuitok

v. (27102)

Her Majesty The Queen (Crim.)(N.W.T.)

NATURE OF THE CASE

Criminal law - Charge to the jury - Reasonable doubt - Whether the trial judge properly defined the concept of "reasonable doubt" in his charge to the jury - Whether charge was in accordance with *R. v. Lifchus*, [1997] 3 S.C.R. 320.

PROCEDURAL HISTORY

February 1, 1998
Supreme Court of the Northwest Territories (Vertes J.)

Conviction: sexual assault

October 14, 1998
Court of Appeal of the Northwest Territories
(Foisy, Richard, and Schuler JJ.A.)

Appeal dismissed

January 22, 1999
Supreme Court of Canada

Application for leave to appeal filed

Robert William Latimer

v. (26980)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal - Defence - Necessity - Sentence - Constitutional exemption - Should the defence of necessity have been left with the jury - Did the Court of Appeal err in interpreting the defence of necessity and in failing to ask whether necessity is determined on an objective, subjective or qualified objective basis - Should the trial judge have ruled on whether necessity would be left to the jury prior to counsels' addresses - Should the trial judge have told jury of the minimum applicable punishment - Did the trial judge fail to provide the jurors with correct and comprehensive responses to their questions - Should the trial judge have instructed the jury to decide the case on what they felt was just, if they felt that following the law would lead to an unjust result - Should the trial judge have charged the jury that they could find that the Applicant had the legal right to decide to commit suicide for his daughter as her surrogate decision maker - Did the Court of Appeal err in reversing the finding that on these facts the minimum sentence is a cruel and unusual punishment contrary to s.12 of the *Charter*, and that a constitutional exemption should be granted with respect to sentence.

PROCEDURAL HISTORY

December 1, 1997
Court of the Queen's Bench of Saskatchewan
(Noble J.)

Conviction on one count of second degree murder -
Constitutional exemption from mandatory sentence of life
imprisonment granted

November 23, 1998
Court of Appeal for Saskatchewan
(Cameron, Vancise, and Wakeling JJ.A.)

Appeal against conviction dismissed; appeal against
sentence allowed; life imprisonment without parole
eligibility for 10 years imposed

February 1, 1999
Supreme Court of Canada

Application for leave to appeal and for extension of time
filed

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

Les Laboratoires Abbott Limitée

c. (26803)

Ronald Bourque (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Exception déclinatoire - Compétence - Recours collectif - Article 164 *C.p.c.* - Article 1003 *C.p.c.* - Requête en rétractation - Les principes prévus à l'article 164 *C.p.c.* concernant l'incompétence *ratione materiae* s'appliquent-ils au stade de l'autorisation d'exercer un recours collectif? - Les principes relatifs à la juridiction exclusive de l'arbitre de grief sont-ils applicables dans le cadre de l'exercice d'un recours collectif? - La Cour supérieure du Québec a-t-elle juridiction pour décider des relations entre un employeur et ses salariés dans d'autres provinces canadiennes que le Québec au seul motif qu'ils sont tous participants dans un même régime de retraite? - La requête en rétractation de jugement est-elle le recours approprié pour se pourvoir contre un jugement d'un tribunal qui omet de trancher *in limine litis* une objection relative à sa juridiction *ratione materiae*?

HISTORIQUE PROCÉDURAL

Le 18 mars 1998 Cour supérieure du Québec (Ryan j.c.s.)	Requête de l'intimé pour l'autorisation d'exercer un recours collectif et pour être représentant accueillie
Le 9 avril 1998 Cour supérieure du Québec (Gomery j.c.s.)	Requête de la demanderesse en rétractation de jugement rejetée
Le 11 mai 1998 Cour d'appel du Québec (Robert j.c.a.)	Requête de la demanderesse pour permission d'en appeler du jugement du 18 mars 1998 rejetée
Le 11 mai 1998 Cour d'appel du Québec (Robert j.c.a.)	Requête de la demanderesse pour permission d'en appeler du jugement du 9 avril 1998 rejetée
Le 4 juin 1998 Cour d'appel du Québec (Beauregard j.c.a.)	Requête de la demanderesse pour sursis d'exécution des deux jugements du 11 mai 1998 rejetée
Le 7 août 1998 Cour suprême du Canada	Demande d'autorisation d'appel à l'encontre des deux jugements du 11 mai 1998 déposée

Adel F. Antippa

c. (26849)

Me Guy E. Dulude

- et -

Université du Québec à Trois-Rivières (Qué.)

NATURE DE LA CAUSE

Droit administratif - Droit du travail - Arbitrage - Convention collective - Contrôle judiciaire - Erreur manifestement déraisonnable - La Cour d'appel a-t-elle erré en fait en concluant que le demandeur a refusé inconditionnellement d'accepter son affectation au Centre de recherche en photobiophysique? - La Cour d'appel a-t-elle erré en fait et en droit en refusant de se prononcer sur la légalité des conditions attachées par la mise en cause à l'affectation du demandeur au Centre de recherche en photobiophysique, mais en sanctionnant néanmoins le défaut de s'y conformer? - La Cour d'appel a-t-elle erré en droit en refusant d'appliquer la Lettre d'entente No. 2 de la *Convention collective*, régissant le statut des professeurs rattachés aux centres de recherche de la mise en cause et en appliquant de préférence un document antérieur rescindé par cette Convention? - La Cour d'appel a-t-elle erré en fait et en droit en concluant que le demandeur n'a pas droit au bénéfice de la subvention octroyée par le Fonds pour la formation de chercheurs et l'aide à la recherche (F.C.A.R.) pour la période de 1988 à 1991? - Est-il de l'intérêt supérieur de la justice et du public que la Cour suprême du Canada, compte tenu des circonstances en l'espèce, statue sur les questions mixtes de droit et de fait pour déterminer si la Cour d'appel a erré sur des aspects dont l'importance dépasse le cadre du présent litige?

HISTORIQUE PROCÉDURAL

Le 13 février 1995 Cour supérieure du Québec (Gervais j.c.s.)	Requête du demandeur en évocation de la sentence arbitrale rendue le 6 juin 1994 par Me Guy Dulude, rejetée
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Le 27 mai 1998
Cour d'appel du Québec
(Brossard, Rousseau-Houle et Delisle jj.c.a.)

Appel rejeté

Le 26 août 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Paul Laberge, Maurice Laberge et Laurent Laberge

c. (26889)

Caisse de dépôt et de placement du Québec

- et -

Bureau de la publicité des droits de la circonscription foncière de Montréal (Qué.)

NATURE DE LA CAUSE

Droit commercial - Prêt - Législation - Interprétation - Par. 10(1) et (2) de la *Loi sur l'intérêt*, L.R.C. 1985, ch. I-15 - Droit d'acquitter un prêt hypothécaire par anticipation sauf s'il s'agit d'une "hypothèque sur biens-fonds consentie par une compagnie par actions ou autre personne morale" - L'exception énoncée au par. 10(2) continue-t-elle de s'appliquer à une hypothèque qui, bien que constituée à l'origine par une compagnie, ne porte désormais plus que sur le bien-fonds d'un individu, à la suite du transfert de propriété de ce bien-fonds par une compagnie à l'individu alors que ce transfert a requis l'autorisation écrite du créancier hypothécaire et est concomitant à une délégation de paiement acceptée par le délégataire créancier hypothécaire? - Dans la négative, l'offre de paiement faite conformément aux prescriptions du par. 10(1) est-elle suffisante pour être libératoire quant aux intérêts ou bien une telle offre est-elle assujettie aux formalités énoncées dans les lois provinciales? - *Potash c. Royal Trust Co.*, [1986] 2 R.C.S. 351.

HISTORIQUE PROCÉDURAL

Le 7 mars 1994
Cour supérieure du Québec
(Lesage j.c.s.)

Requête pour jugement déclaratoire rejetée; les demandeurs ne peuvent se prévaloir du par. 10(1) de la *Loi sur l'intérêt*

Le 8 juillet 1998
Cour d'appel du Québec
(LeBel, Baudouin et Chamberland jj.c.a.)

Appel rejeté

Le 28 septembre 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

Kuldip Singh Samra

v. (26976)

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

NATURE OF THE CASE

Canadian Charter - Criminal - Procedural Law - Amicus Curiae - Conflict of Interest - Trial judge appointed lawyer as amicus curiae in criminal trial - Lawyer had previously been counsel to accused in the proceedings - Lawyer discloses information learned during solicitor-client relationship - Trial judge and Crown counsel do not rely on disclosed information - Whether appointing an amicus curiae violates an accused's s. 7 Charter rights if the accused wishes to represent himself - Whether appointing an amicus curiae contravenes *R. v. Swain*, [1991] 1 S.C.R. 933 and a defendant's right to control his own defence - Whether the appointment of the accused's former counsel as amicus curiae creates a conflict of interest or jeopardizes the fairness of the trial process.

PROCEDURAL HISTORY

December 17, 1993 Ontario Court (General Division) (Then J.)	Convicted of two counts of first degree murder; Sentenced to life imprisonment without parole for 25 years
January 17, 1994 Ontario Court (General Division) (Then J.)	Convicted of attempt murder; Sentenced to life imprisonment without parole for 25 years
September 23, 1998 Court of Appeal for Ontario (McKinlay, Catzman and Rosenberg JJ.A.)	Appeal dismissed
November 30, 1998 Supreme Court of Canada	Applications for time extension and leave to appeal filed

Sun News Lal

v. (27094)

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

NATURE OF THE CASE

Canadian Charter - Criminal - Detention and search - Articulate cause - Reasonable suspicion - Information provided to a police officer described a unique vehicle and warned that its owner was to be considered armed and dangerous and a threat to a family being protected by the police officer following the slaying of two brothers in a suspected gang war - The officer spotted the vehicle within three blocks of the family's residence on a busy arterial street in Vancouver and he and his partner stopped the vehicle using specialized precautionary procedures - They searched the driver who was also the owner of the vehicle and found a loaded pistol - They arrested the driver, searched the vehicle and discovered ammunition - Whether the circumstances gave rise to articulable cause to stop, detain and search the driver - Whether detaining officer had reasonable cause to suspect that the driver was criminally implicated in the activity under investigation - Whether detaining officer relied upon a wholly conclusory statement or a totality of circumstances -

Whether Court of Appeal lowered the objective threshold for determining reasonable cause to suspect that a detainee is criminally implicated in activity under investigation.

PROCEDURAL HISTORY

December 23, 1996 Supreme Court of British Columbia (Mackenzie J.)	Convicted of unlawfully carrying a concealed weapon and possession of a restricted weapon without a registration certificate; Fined and sentenced to one day on each count, concurrent
October 22, 1998 Court of Appeal for British Columbia (Southin, Prowse and Ryan JJ.A.)	Appeal dismissed
January 22, 1999 Supreme Court of Canada	Application for leave to appeal filed

David William Lord

v. (27131)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Applicant convicted of trespassing at Kent Institution during a private family visit with an inmate - Charges arising from Applicant's refusal to comply with order that requires visitors to "stand to" for a head count - Whether Applicant's *Charter* rights infringed - Whether proper disclosure of evidence.

PROCEDURAL HISTORY

March 3, 1998 Provincial Court of British Columbia (Hoy J.)	Applicant convicted of trespassing on a federal institution contrary to S. 45 (e) of the <i>Corrections and Conditional Release Act</i> ; applicant fined \$500.00 and ordered to keep the peace and not to enter a federal institution for one year
September 30, 1998 Supreme Court of British Columbia (Williams C.J.S.C.B.C.)	Summary conviction and fine upheld; order not to enter a federal institution reduced to 6 months
December 22, 1998 Court of Appeal for British Columbia (Donald J.A., in chambers)	Application for leave to appeal denied
February 8, 1999 Supreme Court of Canada	Application for leave to appeal filed

MOTION FOR RECONSIDERATION / DEMANDE DE RÉEXAMEN

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

Les juges L'Heureux-Dubé, Gonthier et Bastarache

The GSL Group Inc. , et al. v. Her Majesty the Queen in Right of Canada (F.C.A.) (26828)

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

Ramey Ayre v. Nova Scotia Barristers' Society (N.S.)(26783)

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

APRIL 1, 1999 / LE 1 AVRIL 1999

26876 **STOJAN STONOJLOVIC - 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

Canadian Charter of Rights and Freedoms - Criminal law - Extradition - To what extent is the *Charter* available to protect Canadian citizens against *Charter* violations committed by Canadian authorities in extradition proceedings - During extradition proceedings are Canadian authorities required to obey the terms of the *Mutual Legal Assistance in Criminal Matters Treaty* with the United States - Is there a positive duty upon the Crown, when acting as agent for a foreign state to respect the fair trial rights of Canadian citizens in that foreign state - Whether the *Identification of Criminals Act* applied to these proceedings.

PROCEDURAL HISTORY

December 13, 1996 Court of Queen's Bench of Alberta (Sanderman J.)	Applicant committed for extradition
August 19, 1998 Court of Appeal of Alberta (McClung, Picard and Berger [dissenting in part] JJ.A.)	Appeal dismissed
November 20, 1998 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

27035 **ERROL McHAYLE - v. - HER MAJESTY THE QUEEN** (Crim.)(Ont.)

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 - Did lower courts err in convicting, and upholding conviction, of Applicant for impaired driving and failure to provide breath sample?

PROCEDURAL HISTORY

July 21, 1997 Ontario Court of Justice (Provincial Division) (Rice P.C.J.)	Convictions: impaired driving and failure to provide a breath sample
June 5, 1998 Ontario Court of Justice (General Division) (Hawkins J.)	Summary Conviction appeal dismissed

July 21, 1998
Court of Appeal for Ontario (Rosenberg J.A.)

Leave to appeal granted

October 27, 1998
Court of Appeal for Ontario
(Krever, Labrosse, and Weiler JJ.A.)

Appeal dismissed

December 18, 1998
Supreme Court of Canada

Application for leave to appeal filed

26964 **GEORGE ARDLEY - 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 - Regulatory offences - Statutes - Statutory interpretation - Whether the Court of Appeal erred in its interpretation of s. 61(1)(c) (definition of persons required to provide information) of the *Fisheries Act*, R.S.C., 1985, c. F-14.

PROCEDURAL HISTORY

November 22, 1996
Provincial Court of British Columbia (Gould J.)

Conviction: failing to provide records of all fishing activity as required by 61(2) of the *Fisheries Act*

July 15, 1997
Supreme Court of British Columbia (Hardinge J.)

Summary conviction appeal allowed: conviction set aside and verdict of acquittal entered

September 21, 1998
Court of Appeal for British Columbia
(McEachern C.J.B.C., Southin and Hall JJ.A.)

Appeal allowed and conviction restored

November 20, 1998
Supreme Court of Canada

Application for leave to appeal filed

27041 **MURIEL MARY RAIN - 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

Canadian Charter of Rights and Freedoms - Criminal law - Right to counsel - Whether the possibility of incarceration is enough to satisfy the requirements of "seriousness" in the assessment of the need for counsel to ensure a fair trial - Whether the Court of Appeal erred in overturning the trial judge's finding of fact that the Applicant could not have a fair trial without counsel - Whether the Court of Appeal erred in concluding that a trial judge can ensure that the accused's trial is conducted fairly in the absence of counsel - Whether the trial judge erred in concluding that there was no foundation for the evidence of the lawyer who testified as an expert and that such evidence ought to have been rejected by the trial judge.

PROCEDURAL HISTORY

June 17, 1993 Provincial Court of Alberta (Bradley P.C.J.)	Applicant referred to legal aid for the appointment of counsel
December 13, 1993 Court of Queen's Bench of Alberta (Smith J.)	Respondent's application for certiorari denied
November 14, 1994 Court of Appeal of Alberta	Respondent's application for certiorari granted; Bradley P.C.J.'s order quashed; matter returned to Provincial Court
March 21, 1995 Provincial Court of Alberta (Bradley P.C.J.)	Order that the Applicant be provided with counsel at legal aid rates
April 12, 1995 Provincial Court of Alberta (Bradley P.C.J.)	Stay of proceedings entered until the Applicant provided with funded counsel
October 28, 1996 Court of Queen's Bench of Alberta (Andrekson J.)	Respondent's appeal dismissed
October 1, 1998 Court of Appeal of Alberta (Irving, Hunt and Sulatycky JJ.A.)	Respondent's appeal allowed in part; stay of proceedings entered due to unreasonable delay
December 23, 1998 Supreme Court of Canada	Application for leave to appeal filed

26953 **ANIL JOSHI - c. - SA MAJESTÉ LA REINE** (Crim.)(Qué.)

CORAM: Le Juge en chef et les juges McLachlin et Iacobucci

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit criminel - Preuve - Partialité - Doute raisonnable - La Cour d'appel a-t-elle erré en droit en concluant que le demandeur avait eu droit à un procès juste et équitable au sens de l'article 11d) de la *Charte canadienne des droits et libertés* - La Cour d'appel a-t-elle erré en droit en refusant d'intervenir suite aux nombreuses erreurs de faits et d'appréciation de la preuve commises par le juge de première instance.

HISTORIQUE PROCÉDURAL

Le 14 juillet 1994
Cour du Québec (Chambre criminelle et pénale)
(Plante j.c.q.)

Déclaration de culpabilité: avoir intentionnellement
causé le feu à une résidence contrairement à l'art. 434 du
Code criminel

Le 26 octobre 1998
Cour d'appel du Québec
(LeBel, Rousseau-Houle et Robert jj.c.a.)

Appel rejeté

Le 9 novembre 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

26874 **IBRAHIM MAGDI NAIMA c. SEARS CANADA INC., SOCRATES TSEVELKOS, ROBERT
GARIÉPY ET MARTIN TÉTREAULT** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Procédure - Procédure civile - Le juge Mailhot de la Cour d'appel a-t-elle erré en concluant que l'appel du jugement de première instance rejetant la demande de remise et accueillant, par le fait même, la requête en péremption d'instance nécessite une permission d'appel? - Subsidiairement, le juge Mailhot a-t-elle erré en décidant qu'elle avait seule l'autorité pour décider si le jugement de première instance rejetant la demande de remise est bien fondé? - Subsidiairement, le juge Mailhot a-t-elle erré en refusant la permission d'appel compte tenu que la décision de première instance est mal fondée et prive le demandeur de son droit suite à la seule erreur de ses procureurs, alors même qu'il aurait été possible de remédier aux conséquences de cette erreur sans aucune injustice à l'égard des intimés, et compte tenu que les procureurs du demandeur ont fait preuve de toute la diligence voulue pour mettre ce dossier en état après le jugement de première instance?

HISTORIQUE PROCÉDURAL

Le 29 mai 1998
Cour supérieure du Québec (Tannenbaum j.c.s.)

Requête des intimés en péremption d'instance selon
l'art. 268 *C.p.c.* visant à faire déclarer l'instance périmée
accueillie

Le 26 juin 1998
Cour d'appel du Québec (Mailhot j.c.a.)

Requête pour permission d'en appeler rejetée

Le 25 septembre 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27014 **KINGSLEY LUGHAS v. THE MANITOBA PUBLIC INSURANCE CORPORATION** (Man.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural Law - Evidence - Assessments of credibility - Appeal - Bias - Civil Procedure - Torts - Motor Vehicles - Commercial Law - Insurance - Nominal Defendants - Applicant sought to name a public insurance corporation as a nominal defendant in a claim for damages resulting from an accident allegedly involving the operation of an unidentified moving motor vehicle - Applicant was required to prove that his bodily injuries were sustained by reason of the operation of an unidentified moving motor vehicle - Only Applicant and one witness testified that a motor vehicle accident had occurred - Motions judge assessed the Applicant and the witness as not credible - No other evidence to prove occurrence of an accident involving an unidentified moving motor vehicle - Application dismissed - Whether motions judge erred - Whether member of appeal court panel was biased.

PROCEDURAL HISTORY

March 30, 1998 Court of Queen's Bench of Manitoba (MacInnes J.)	Application to name Respondent as nominal defendant dismissed
October 6, 1998 Court of Appeal of Manitoba (Scott C.J., Twaddle and Lyon JJ.A.)	Appeal dismissed
December 3, 1998 Supreme Court of Canada	Application for leave to appeal filed

26978 **SACK LEE - v. - HER MAJESTY THE QUEEN** (Crim.)(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

Criminal law - Evidence - Witnesses - Whether the trial judge's warning to the jury concerning the unreliability of a key Crown witness' testimony was adequate.

PROCEDURAL HISTORY

December 11, 1996 Supreme Court of British Columbia (Kirkpatrick J.)	Conviction: first degree murder
September 17, 1998 Court of Appeal for British Columbia (Southin, Newbury and Braidwood JJ.A.)	Appeal dismissed
November 16, 1998 Supreme Court of Canada	Application for leave to appeal filed

26960 **EUGENE NIDEROST - v. - HER MAJESTY THE QUEEN** (F.C.A.) (B.C.)

CORAM: Cory, Major and Binnie 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

Procedural law - Civil procedure - Whether Federal Court of Appeal erred in dismissing appeal from order (a) striking out statement of claim and (b) dismissing action on basis that there was no reasonable cause of action.

PROCEDURAL HISTORY

November 25, 1996 Federal Court of Canada (Trial Division) (Richard J.)	Appeal from order of prothonotary striking statement of claim and dismissing action dismissed
September 23, 1998 Federal Court of Appeal (Marceau, Létourneau, and Robertson JJ.A.)	Appeal dismissed
November 13, 1998 Supreme Court of Canada	Application for leave to appeal filed

26972 **GEORGE McCaULEY, JAMES WARREN, AND JAMES McLAUGHLIN ON THEIR BEHALF AND ON BEHALF OF ALL MEMBERS OF THE TORONTO FIRE DEPARTMENT PENSIONERS' ASSOCIATION WHO HAVE A FINANCIAL INTEREST REMAINING IN THE BENEVOLENT FUND - v. - MARK FITZSIMMONS, MARK McKINNON, AND MIKE FIGLIOLA, ON THEIR BEHALF AND ON BEHALF OF ALL MEMBERS OF TORONTO FIRE FIGHTERS' ASSOCIATION, LOCAL 113, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AND MIKE DAILLY, JOHN STEVENSON, AND BERNIE CASSIDY AS TRUSTEES OF THE TORONTO FIRE FIGHTERS' BENEVOLENT FUND** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs to Local 113.

La demande d'autorisation d'appel est rejetée avec dépens à Local 113.

NATURE OF THE CASE

Labour law - Compensation - Commercial Law - Contracts - Property law - Trusts and trustees - A trade union local had established a voluntary retirement benefit fund for its members - The fund became technically insolvent and the issue was how to equitably distribute the fund between retired members and present members - The application judge held that the retired members had priority on the basis of contract but this was overturned by the Court of Appeal - Whether the Court of Appeal erred in so doing.

PROCEDURAL HISTORY

February 20, 1997
Ontario Court of Justice (General Division)
(Gotlib J.)

Application allowed; counter-application dismissed; order that fund be wound up and that retired members be paid their entitlements in priority to present members

September 16, 1998
Court of Appeal for Ontario
(Brooke, Austin, and Borins JJ.A.)

Appeal allowed; cross-appeal dismissed; order set aside; order that fund be wound up in accordance with scheme of distribution to be determined by master in reference

November 12, 1998
Supreme Court of Canada

Application for leave to appeal filed

26506 **GEORGE HINES - v. - ONTARIO HUMAN RIGHTS COMMISSION AND CITY OF TORONTO** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal as well as all ancillary motions are dismissed with costs to City of Toronto.

La demande d'autorisation d'appel et toutes requêtes accessoires sont rejetées avec dépens à City of Toronto.

NATURE OF THE CASE

Canadian *Charter* - Civil - Civil Rights - *Human Rights Code*, R.S.O.1990, c.H.19 s.34(1)(a) and (b) - Statutes - Interpretation - Labour law - Labour relations - Whether the Court of Appeal erred in denying leave to appeal.

PROCEDURAL HISTORY

June 3, 1997
Ontario Court (Divisional Court)
(Boland, Bell and Corbett JJ.)

Application for judicial review dismissed

February 24, 1998
Court of Appeal for Ontario
(McKinlay and Austin JJ.A., Dunnet J. [ad hoc])

Motion for leave to appeal dismissed

April 2, 1998
Supreme Court of Canada
(Gonthier J.)

Decision on motion to extend time to file and serve application for leave to November 1, 1998 deferred to panel seized with leave application

October 30, 1998
Supreme Court of Canada

Application for leave to appeal filed

December 14, 1998
Supreme Court of Canada (Binnie J.)

Motion to add City of Toronto as new party granted

26921 **GILBERT L. GAUDET - v. - WAYNE BARRETT AND MARLENE BARRETT** (N.S.)

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

Barristers and solicitors - Duties - Fiduciary duties - Breach of fiduciary duties - Conflict of interest - Non-disclosure - Property law - Real Property - Remedies - Residential real estate transaction - Action commenced against solicitor and other defendants - Assessment of damages - Joint and several liability - Whether there must be a causal connection between a breach of fiduciary duty and the damages recovered by a party - When a fiduciary breaches his duty can he be held jointly and severally liable for damages resulting from the breach of a separate contract.

PROCEDURAL HISTORY

July 4, 1997
Provincial Court of Nova Scotia (Anderson J.)

Respondents' action allowed; crossclaims dismissed; CIBC's counterclaim allowed

August 28, 1998
Supreme Court of Nova Scotia, Appeal Division
(Cromwell, Jones, and Pugsley JJ.A.)

Applicant's appeal allowed in part; Respondents' cross-appeal allowed; Respondents' appeal allowed in part; action for negligent misrepresentation against CIBC allowed

October 30, 1998
Supreme Court of Canada

Application for leave to appeal filed

December 4, 1998
Supreme Court of Canada (Binnie J.)

Applicant's motion for an extension of time granted

26974 **JOHN FOLKES - v. - GREENSLEEVES PUBLISHING LIMITED, SIGNET RECORDS INC., VIRGIN RECORDS (CANADA) INC., NORTHRIDGE MUSIC COMPANY, GLOBAL MUSIC LTD, ESTATE OF HENRY MANCINI, ORVILLE BURRELL, CECIL CAMPBELL (ALSO KNOWN AS PRINCE BUSTER)** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal and the ancillary motion are dismissed with costs.

La demande d'autorisation d'appel et la requête accessoire sont rejetées avec dépens.

NATURE OF THE CASE

International Law - Conflict of Laws - Forum Conveniens - Property Law - Copyright - Music - Application of test of forum conveniens to a copyright action commenced in Ontario - United Kingdom held to be the forum conveniens - Appropriateness of the test and results - Whether decision requires an English Court to try a Canadian infringement action or to re-try issues already decided - Whether the Court of Appeal misapprehended evidence and arguments.

PROCEDURAL HISTORY

March 25, 1997 Ontario Court (General Division) (Somers J.)	Action stayed
September 10, 1998 Court of Appeal for Ontario (McKinlay, Carthy and Rosenberg JJ.A.)	Appeal dismissed
November 12, 1998 Supreme Court of Canada	Application for leave to appeal filed

27018 **JOSEPH REED - v. - HER MAJESTY THE QUEEN** (Crim.)(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

Charter - Criminal - Criminal Law - Crown counsel's discretion to stay prosecutions commenced by private informations - Judicial power to review prosecutor's discretion - Whether a decision to stay a prosecution interfered with religious freedom.

PROCEDURAL HISTORY

January 23, 1998 Supreme Court of British Columbia (Josephson J.)	Petition for <i>mandamus</i> dismissed
September 21, 1998 Court of Appeal for British Columbia (Hollinrake, Braidwood, and Mackenzie JJ.A.)	Appeal dismissed
November 20, 1998 Supreme Court of Canada	Application for leave to appeal filed

26979 **APOTEX INC. - v. - BAYER AKTIENGESELLSCHAFT AND MILES CANADA INC.** (Ont.)

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

Property law - Patents - Patented medicines - Compulsory licences - Interpretation - What is the threshold of inventive ingenuity required for the grant of a patent in Canada and in what manner is this threshold a matter of national importance - What are the appropriate principles of interpretation applicable to contracts whose very existence and terms are imposed by statutory authority, and in what manner is the proper interpretation a matter of national importance.

PROCEDURAL HISTORY

January 30, 1995 Ontario Court of Justice (General Division) (Lederman J.)	Action allowed; Applicant ordered to pay royalties due and owing under compulsory licences
September 25, 1998 Court of Appeal for Ontario (McKinlay and Moldaver JJ.A., Cumming J. (<i>ad hoc</i>))	Appeal dismissed, cross-appeal allowed
November 24, 1998 Supreme Court of Canada	Application for leave to appeal filed

APRIL 8, 1999 / LE 8 AVRIL 1999

26962 **BRADLEY RICHARD GIBB - v. - HER MAJESTY THE QUEEN** (Crim.)(Sask.)

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* - Criminal - Criminal law - Evidence - Parole - Applicant at large and in breach of the terms and conditions of his unescorted temporary absence from the Saskatoon Correctional Centre - Applicant arrested for robbery - Applicant made voluntary inculpatory statements to parole officer - *Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 134 directs an offender released on parole to “comply with any instructions” of his parole officer - Whether the Applicant was under a legal obligation to answer any inquiries made by his parole officer - Whether his statement was made in breach of the privilege against self-incrimination embodied in the *Charter*, s. 7 - Whether the Court of Appeal erred in applying *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154, to the statement made by the Applicant to his parole officer.

PROCEDURAL HISTORY

February 5, 1998 Court of Queen's Bench of Saskatchewan (Laing J.)	Acquitted on the charge of bank robbery
October 7, 1998 Court of Appeal of Saskatchewan (Tallis, Cameron, and Gerwing JJ.A.)	Appeal allowed; new trial ordered
December 7, 1998 Supreme Court of Canada	Application for leave to appeal filed

APRIL 15, 1999 / LE 15 AVRIL 1999

26984 **SANDRA KIM KROFCHAK-SMILLIE - v. - MELBOURNE JAMES SMILLIE** (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The applications for extension of time to file an application for leave to appeal and to file a reply are granted. The application for leave to appeal is dismissed.

Les demandes de prorogation du délai pour produire une demande d'autorisation d'appel et pour déposer une réplique sont accueillies. La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter - Civil - Family Law - Divorce - Whether an appellate court's decision that they were not persuaded that there was a proper basis for setting aside a divorce judgment improperly dismissed questions of law that could have been be appealed to the Court of Appeal or violated s. 15 of the *Charter*.

PROCEDURAL HISTORY

December 12, 1997 Ontario Court (General Division) (Thompson J.)	Divorce granted; joint custody ordered
October 5, 1998 Court of Appeal for Ontario (Morden A.C.J., Rosenberg J.A. and Spence J. (<i>ad hoc</i>))	Appeal dismissed
February 5, 1999 Supreme Court of Canada	Application for leave to appeal filed

26984 **SANDRA KIM KROFCHAK-SMILLIE - v. - MELBOURNE JAMES SMILLIE** (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The motion for an extension of time to file a supplementary reply is dismissed.

La demande de prorogation du délai pour déposer une réplique supplémentaire est rejetée.

NATURE OF THE CASE

Canadian Charter - Civil - Family Law - Divorce - Whether an appellate court's decision that they were not persuaded that there was a proper basis for setting aside a divorce judgment improperly dismissed questions of law that could have been appealed to the Court of Appeal or violated s. 15 of the *Charter*.

PROCEDURAL HISTORY

December 12, 1997 Divorce granted; joint custody ordered
Ontario Court (General Division) (Thompson J.)

October 5, 1998 Appeal dismissed
Court of Appeal for Ontario (Morden A.C.J., Rosenberg
J.A. and Spence J. (*ad hoc*))

February 5, 1999 Application for leave to appeal filed
Supreme Court of Canada

26775 **SHARON ROUNDS, CLARENCE ROUNDS, GLEN ROUNDS, 533253 ONTARIO LIMITED
AND LAKESIDE ELEVATORS RETAIL LIMITED - v. - HER MAJESTY THE QUEEN IN
THE RIGHT OF CANADA** (F.C.A.) (Ont.)

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

Commercial law - Bankruptcy law - Procedural law - Torts - Trespass - Warrant of Seizure under the *Bankruptcy Act*, R.S.C. 1970, c. B-3. R.C.M.P. officers attending upon the property of former bankrupt to assist in the seizure of farm machinery pursuant to a warrant of execution - Officers entering premises before issuing demand required by the warrant - Whether the execution of a warrant under the *Bankruptcy Act* is subject to the same scrutiny of procedure as the execution of a warrant under the *Criminal Code* or the common law - Whether a demand provision in a warrant for the seizure of property issued *ex parte* under the *Bankruptcy Act* requires that reasonable notice be given to the party who will be the subject of the seizure.

PROCEDURAL HISTORY

December 11, 1995 Applicants awarded nominal damages of \$100 for
Federal Court of Canada, Trial Division (Heald J.) trespass; all other causes of action dismissed

May 7, 1998
Federal Court of Appeal
(Stone, Linden and Robertson JJ.A.)

Appeal dismissed

September 28, 1998
Supreme Court of Canada
(Bastarache J.)

Order striking out parts of application for leave and extending time for serving and filing an amended application for leave to October 14, 1998

October 14, 1998
Supreme Court of Canada

Application for leave to appeal filed

27036 **EDMONTON JOURNAL, A DIVISION OF SOUTHAM INC. - v. - ATTORNEY GENERAL OF ALBERTA** (Alta.)

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

Canadian Charter of Rights and Freedoms, s. 2(b) - Freedom of the press - Non-publication order - Whether a ban on the publication of a witness's name infringed freedom of the press guaranteed under s. 2(b) of the Charter.

PROCEDURAL HISTORY

October 22, 1998
Court of Queen's Bench of Alberta (Sanderman J.)

Publication ban on witness's name granted

December 18, 1998
Supreme Court of Canada

Application for leave to appeal filed

24.3.1999

Mattel Canada Inc. v. Her Majesty the Queen (F.C.A.)(27174)

MAJOR J.:

UPON APPLICATION by the applicant Mattel Canada Inc.;

AND UPON CONSENT of the respondent Her Majesty the Queen;

AND HAVING READ the material filed and upon it appearing that certain business and trade secrets of the applicant are part of the record and referred to as confidential material, and upon it appearing that there is no public interest in such confidential information, and upon it appearing that such confidential information and exhibits were treated as such in the Federal Court of Appeal;

IT IS HEREBY ORDERED THAT the same order as obtained in the Federal Court of Appeal be granted and that the confidential contents of those documents be treated as such.

There is no order made with respect to the non-confidential material.

26.3.1999

Before / Devant: THE REGISTRAR

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

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

John Carlos Terceira

v. (26546)

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

GRANTED / ACCORDÉE Time extended to February 24, 1999 to file the factum, to March 12, 1999 to file the record and to March 22, 1999 to file the book of authorities.

26.3.1999

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the appellant's factum, record and book of authorities; and motion for an order accepting appellant's record as printed

Requête en prorogation du délai imparti pour déposer le mémoire, le dossier et le cahier de jurisprudence et de doctrine de l'appellant; requête sollicitant une ordonnance portant acceptation du dossier de l'appellant tel qu'il est imprimé

Her Majesty the Queen

v. (26948)

Frederick Alexander Brooks (Crim.)(Ont.)

GRANTED / ACCORDÉES Time extended to file the factum and record to March 12, 1999, and to file the book of authorities to March 16, 1999. Appellant's record accepted as printed.

26.3.1999

Before / Devant: LE REGISTRAIRE

**Motion to extend the time in which to serve and file
the appellant's record and factum**

**Requête en prorogation du délai imparti pour
signifier et déposer le dossier et le mémoire de
l'appelante**

Thérèse Blais Pelletier

c. (26928)

Sa Majesté la Reine (Crim.)(Qué.)

GRANTED / ACCORDÉE Délai prorogé au 15 avril 1999.

29.3.1999

Before / Devant: MAJOR J.

Motion for directions

Requête pour obtenir des directives

Mattel Canada Inc.

v. (27174)

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

GRANTED / ACCORDÉE

It is hereby directed that paragraphs 6, 7, 37, 38 and 39 being trade secrets shall be segregated from the Applicant's Memorandum of Argument and filed separately, and will be under seal in this Court.

29.3.1999

Before / Devant: CORY J.

Motion to extend time and for leave to intervene

Requête en prorogation de délai et en autorisation d'intervenir

BY/PAR: Workers' Compensation Board of Saskatchewan and the United Association of Injured and Injured Workers, Vernon Injured Workers Support Group, Canadian Injured Workers Prince George, Northern Vancouver Island Brain Trauma Society and Ontario Network of Injured Workers' Group

IN/DANS: Workers' Compensation Board of British Columbia, et al.

v. (25784)

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

GRANTED / ACCORDÉE

IT IS HEREBY ORDERED THAT:

1. The motion for an extension of time and for leave to intervene of the applicant Workers' Compensation Board of Saskatchewan 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 15 minutes.
2. The motion for an extension of time and for leave to intervene of the applicants United Association of Injured and Injured Workers, Vernon Injured Workers Support Group, Canadian Injured Workers Prince George, Northern Vancouver Island Brain Trauma Society and Ontario Network of Injured Workers' Groups is granted, the applicants shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 15 minutes.

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

Pursuant to Rule 18(6), each of the interveners shall pay to the appellants and respondent any additional disbursements occasioned to the appellants and respondent by the interventions. There shall be no other costs to or against the interveners.

29.3.1999

Before / Devant: MAJOR J.

Motion to extend time and for leave to intervene

Requête en prorogation de délai et en autorisation d'intervenir

BY/PAR: Criminal Lawyers' Association

IN/DANS: Antonio Goncalves

v. (26924)

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

GRANTED / ACCORDÉE The application by the Criminal Lawyers' Association for an extension of time and leave to intervene on the question of whether a determination of the reasonableness of a verdict is a question of law is granted; the applicant shall be entitled to serve and file a factum not to exceed 30 pages in length and to present oral argument not to exceed 15 minutes.

30.3.1999

Before / Devant: THE DEPUTY REGISTRAR

Motion to extend the time in which to serve and file the applicant's reply

Requête en prorogation du délai imparti pour signifier et déposer la réplique de la requérante

Her Majesty the Queen

v. (27050)

Marie-Suzanne Caouette (Crim.)(Que.)

GRANTED / ACCORDÉE Time extended to March 5, 1999.

31.3.1999

Before / Devant: CORY J.

Motion for a stay of execution

Requête en vue de surseoir à l'exécution

British Columbia College of Teachers

v. (27168)

Trinity Western University, et al. (B.C.)

GRANTED / ACCORDÉE On consent, Order will go staying the Order of the British Columbia Court of Appeal dated 30 December 1998 pending the disposition of the application for leave or if leave is granted pending the disposition of the appeal.

1.4.1999

Before / Devant: THE DEPUTY REGISTRAR

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

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

Thomas Bruce Baker

v. (26562)

Monica Frieda Francis (Ont.)

GRANTED / ACCORDÉE Time extended to March 8, 1999.

1.4.1999

Before / Devant: THE DEPUTY REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le mémoire en réplique de l'appelante

65302 British Columbia Ltd. (formerly Veekens Poultry Farms Ltd.)

v. (26352)

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

GRANTED / ACCORDÉE Time extended to March 29, 1999.

6.4.1999

Before / Devant: BASTARACHE J.

Motion to extend time and for leave to intervene

Requête en prorogation de délai et en autorisation d'intervenir

BY/PAR: Attorney General of Canada, the Attorney General of Ontario, the Attorney General of Québec, the Criminal Lawyers' Association (Ontario), the Association in Defence of the Wrongly Convicted ("AIDWYC") and The Innocence Project

IN/DANS: Her Majesty the Queen

v. (26570)

John Biniaris (Crim.)(B.C.)

and between

Aaron Joseph Molodowic

v. (26645)

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

GRANTED / ACCORDÉE

IT IS HEREBY ORDERED THAT:

- a) The motion for an extension of time and for leave to intervene of the applicant Attorney General of Canada is granted, the applicant shall be entitled to serve and file a single factum not to exceed 20 pages in length and to present a single oral argument not to exceed 15 minutes;
- b) The motion for leave to intervene of the applicant Attorney General of Ontario is granted, the applicant shall be entitled to serve and file a single factum not exceed 30 pages in length and to present a single oral argument not to exceed 15 minutes;
- c) The motion for an extension of time and for leave to intervene of the applicant Attorney General of Québec is granted, the applicant shall be entitled to serve and file a single factum not exceed 20 pages in length and to present a single oral argument not to exceed 15 minutes;
- d) The motion for an extension of time and for leave to intervene of the applicant Criminal Lawyers' Association (Ontario) is granted, the applicant shall be entitled to serve and file a single factum not exceed 30 pages in length and to present a single oral argument not to exceed 15 minutes;
- e) The motions for an extension of time and for leave to intervene of the applicants Association in Defence of the Wrongly Convicted ("AIDWYC") and The Innocence Project are granted, the applicants shall be entitled to serve and file a single joint factum not exceed 30 pages in length and to present a single oral argument not to exceed 15 minutes;

The interveners shall serve and file their factums no later than May 31, 1999.

6.4.1999

Before / Devant: CORY J.

Motion for an order to seal Volume 2 of the Joint Appeal Book

Requête en vue d'obtenir une ordonnance de mise sous scellés du volume 2 du dossier d'appel conjoint

Ministry of Finance

v. (27191)

John Higgins, Inquiry Officer, and John Doe, Requester (Ont.)

GRANTED / ACCORDÉE

The Court of Appeal for Ontario ordered Volume 2 of the Joint Appeal Book from the Court of Appeal of Ontario sealed. On consent of the parties Order will go sealing Volume 2 of the Joint Appeal Book pending the disposition of this appeal or until further order of this Court.

1.4.1999

Before / Devant: BASTARACHE J.

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

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

156036 Canada Inc.

v. (27158)

Les Pétroles Therrien Inc. (Que.)

REFERRED / RÉFÉRÉE

Étant donné que la demande d'autorisation d'appel est présentée en même temps que la demande de prorogation de délai, je suis d'avis de référer le tout au panel qui doit entendre la demande d'autorisation d'appel, suivant la pratique actuelle de la Cour en la matière.

7.4.1999

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le dossier, le mémoire et le cahier de jurisprudence et de doctrine de l'appelant

Norman Groot, et al.

v. (26929)

Her Majesty the Queen, et al. (Crim.)(Ont.)

GRANTED / ACCORDÉE

Time extended to serve and file the appellant's record to February 12, 1999, to serve and file the factum to March 22, 1999, and to serve and file the book of authorities to April 6, 1999.

7.4.1999

Before / Devant: THE REGISTRAR

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

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

Phillip Godfrey Ashmore

v. (27171)

Melanie Ann Van Mol, et al. (B.C.)

GRANTED / ACCORDÉE Time extended to May 3, 1999.

7.4.1999

Before / Devant: BASTARACHE J.

Motion by the Respondent to extend the time in which to serve and file a motion for rehearing

Requête de l'intimé visant à proroger le délai imparti pour signifier et déposer la demande de nouvelle audition

Her Majesty the Queen

v. (26493)

Steve Brian Ewanchuk (Crim.)(Alta.)

GRANTED / ACCORDÉE Time extended to April 23, 1999.

7.4.1999

Before / Devant: BASTARACHE J.

Motion to extend the time in which to serve and file the leave application and for an order waiving the \$50.00 filing fee

Joseph Benard

v. (27175)

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

GRANTED / ACCORDÉE Time extended to June 18, 1999.

8.4.1999

Before / Devant: THE REGISTRAR

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

Her Majesty the Queen

v. (26755)

Elaine Trombley (Crim.)(Ont.)

GRANTED / ACCORDÉE Time extended to April 7, 1999.

8.4.1999

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai pour déposer et signifier une réponse

Yves Plamondon

c. (22477)

Sa Majesté la Reine (Crim.)(Qué.)

GRANTED / ACCORDÉE Délai prorogé au 9 mars 1999.

Requête en prorogation du délai imparti pour signifier et déposer la demande d'autorisation et requête visant à être dispensé des honoraires de dépôt de 50,00 \$

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

Motion to extend the time in which to serve and file a response

8.4.1999

Before / Devant: THE REGISTRAR

Motion by the Applicant for an order accepting the argument as filed notwithstanding that the line spacing does not comply with the Rules

Requête du requérant en vue d'obtenir une ordonnance acceptant l'argumentation déposée en dépit du fait que l'interligne n'est pas conforme aux Règles

Huor Chieu

v. (27107)

Minister of Citizenship and Immigration (F.C.A.)

DISMISSED / REJETÉE

9.4.1999

Before / Devant: LE REGISTRAIRE

Requête pour cesser d'occuper

Motion to withdraw as solicitor

Sa Majesté La Reine

c. (27159)

Bernard Palin (Crim.)(Qué.)

GRANTED / ACCORDÉE La requête pour obtenir une ordonnance autorisant Me Stéphan Beaudin de cesser d'occuper pour l'intimé est accordée.

9.4.1999

Before / Devant: THE REGISTRAR

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

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

Fred Thompson

v. (27024)

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

GRANTED / ACCORDÉE Time extended to March 26, 1999.

9.4.1999

Before / Devant: THE REGISTRAR

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

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

Denis Russel McCullough

v. (27088)

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

GRANTED / ACCORDÉE Time extended to March 18, 1999.

12.4.1999

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the respondent's response and motion for leave to cross-appeal

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimée et requête en autorisation de former un appel incident

Bennett Jones Verchere, et al.

v. (27138)

Western Canadian Shopping Centres Inc., et al. (Alta.)

GRANTED / ACCORDÉE Time extended to March 19, 1999

12.4.1999

Before / Devant: BASTARACHE J.

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

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

David Kevin Lindsay

v. (27223)

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

DISMISSED / REJETÉE

The applicant provides no valid explanation for the delay. The material filed indicates that the application for leave to appeal has no reasonable chance of success.

13.4.1999

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the appellants’ factum and record

Requête en prorogation du délai imparti pour signifier et déposer le mémoire et le dossier des appelants

Public School Boards’ Association of Alberta, et al.

v. (26701)

Attorney General of Alberta, et al. (Alta.)

GRANTED / ACCORDÉE Time extended to 60 days following date of order setting the constitutional questions and the order determining the respondents motion for directions on costs and lengthy factum.

13.4.1999

Before / Devant: THE REGISTRAR

Motion to file a revised motion to intervene

Requête pour déposer une demande d’autorisation d’intervenir révisée

BY/PAR: Ontario Public School Boards Association

IN/DANS: Public School Boards’ Association of Alberta, et al.

v. (26701)

Attorney General of Alberta, et al. (Alta.)

GRANTED / ACCORDÉE

IT IS HEREBY ORDERED THAT:

1. The filing of revised material in support of the OPSBA’s application for intervention changing existing references to “subsection 17(2)” of the *Alberta Act* to “subsection 17(1)” be allowed.
2. The filing of revised material by the Attorney General of Alberta in response to OPSBA’s application within seven day from this order *Rules* be allowed.
3. In the circumstances, the Attorney General of Alberta be entitled to reasonable disbursements under Schedule B of the *Tariff of Fees*.

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

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

16.3.1999

Lingeswaran Krishantharajah

v. (27192)

Her Majesty the Queen (Ont)

AS OF RIGHT

26.3.1999

Patrick Charlebois

c. (27213)

Sa Majesté la Reine (Qué.)

DE PLEIN DROIT

7.4.1999

Friedmann Equity Developments Inc.

v. (26971)

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

**NOTICE OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

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

12.4.1999

Glenna Jean Jensen et al.

v. (27149)

Jean-Paul Chretien (B.C.)

(leave)

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning April 19, 1999.
ORDRE DU JOUR pour la semaine commençant le 19 avril 1999.

<u>Date of Hearing/ Date d'audition</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
1999/04/19	Motions - Requêtes
1999/04/20	65302 British Columbia Ltd. (formerly Veekens Poultry Farms Ltd.) v. Her Majesty the Queen (FC) (Civil) (By Leave) 26352
1999/04/21	Gilles Poulin c. Serge Morency et Associés Inc. (QC) (Civile) (Autorisation) 26340
1999/04/22	Tremblay & Compagnie Syndics et Gestionnaires Ltée, et al. c. Sous-ministre du Revenu du Québec, et al. (QC) (Civile) (Autorisation) 26272
1999/04/23	Her Majesty the Queen v. Elaine Trombley (Ont.) (Criminal) (As of Right) 26755

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.

26352 65302 *British Columbia Ltd. (Formerly Veekens Poultry Farms Ltd.) v. Her Majesty The Queen*

Taxation - Assessment - Business tax - Deductions - Whether a levy on chickens kept in excess of the Appellant's quota was deductible - Whether the Court of Appeal correctly asked whether an expense that meets the purpose of s.18(1)(a) of the *Income Tax Act* should none the less be denied as offending a test of morality or public policy.

The Appellant carries on an egg producing poultry farm in British Columbia. In 1992, the Appellant changed its name from Veekens Poultry Farms Ltd. to 65302 British Columbia Ltd. From 1984 to 1989, Mr. Laurentius Franciscus Veeken was the director, shareholder and secretary of Veekens Poultry Farms Ltd. Pursuant to an audit inspection in 1988 by the B.C. Egg Marketing Board (the "Board"), it was determined that the Appellant was over quota. By an invoice dated June 20, 1988, the Appellant was required to pay an over quota-levy of \$269,629.69 for the years 1984 through 1988 by the Board under the British Columbia Egg Marketing Board Standing Order, paragraph 6(e). An inspector directed the Appellant to dispose of the extra layers and it complied. In 1988, the Appellant agreed to pay the levy over time with interest. In its 1988 taxation year, it claimed the levy as a business expense and a loss carry back of \$61,876 for its 1985 taxation year (the net of the 1988 profit of \$200,166 less the over-quota levy) under s.111 of the *Income Tax Act*. In the 1989 taxation year, the Appellant deducted interest expense in the amount of \$9,704.50 for interest paid on the levy and legal expenses of \$3,766 incurred for representation in respect of the over-quota levy.

The Appellant was required to pay the Board a levy of 7¢ per layer per week for its quota of 33,680 layers. The Minister admitted that the within-quota levy was deductible on income account for income tax purposes. The over-quota levy was 5¢ per layer per day in 1984 and part of 1985, and 8¢ per layer per day for the remainder of 1985 and 1986, 1987 and 1988. It was admitted that the purpose of the over-quota levy was to eliminate any profit resulting from keeping excess layers. The Appellant was reassessed in respect of the 1985, 1988 and 1989 taxation years by Notices of Reassessment dated November 14, 1991 which, *inter alia*, disallowed the deduction on income amount for the over-quota levy, and disallowed all four claims relating to it.

Counsel for both parties agreed that all the claims would follow the result with respect to the levy. The trial judge allowed the appeal from the Minister's assessments, finding that the over-quota levies were business deductions. The Court of Appeal allowed the Minister's appeal.

Origin of the case:	Federal Court of Appeal
File No.:	26352
Judgment of the Court of Appeal:	November 5, 1997
Counsel:	S. Kim Hansen for the Appellant Max Weder for the Respondent

26352 *65302 British Columbia Ltd. (Anciennement Veekens Poultry Farms Ltd.) c. Sa Majesté la Reine*

Impôt — Cotisation — Taxe professionnelle — Déductions — L'appelante pouvait-elle déduire la taxe qui lui était imposée pour dépassement de son quota de poulets? — La Cour d'appel s'est-elle correctement demandé si une dépense qui répond à l'objet de l'alinéa 18(1)a) de la *Loi de l'impôt sur le revenu* devait quand même être écartée parce qu'elle contrevient au critère de moralité ou d'intérêt public?

L'appelante exploite une ferme avicole productrice d'oeufs en Colombie-Britannique. En 1992, l'appelante a changé sa raison sociale Veekens Poultry Farms Ltd. pour 65302 British Columbia Ltd. De 1984 à 1989, M. Laurentius Franciscus Veeken en était le directeur, l'actionnaire et le secrétaire. À la suite d'une inspection comptable menée en 1988, le B.C. Egg Marketing Board (la Commission) a déterminé que l'appelante dépassait son quota. Par une facture datée du 20 juin 1988, la Commission a imposé à l'appelante une taxe sur dépassement de quota de 269 629,69 \$ pour les années 1984 à 1988 en vertu de l'alinéa 6e) de la British Columbia Egg Marketing Board Standing Order. Un inspecteur a enjoint à l'appelante de se défaire des pondeuses excédentaires, ce qu'elle a fait. En 1988, l'appelante a accepté de payer la taxe sur une certaine période avec intérêt. Pour son année d'imposition 1988, elle a demandé la déduction de la taxe comme dépense d'entreprise et un report sur des années antérieures d'une perte de 61 876 \$ pour son année d'imposition 1985 (soit la différence nette entre le profit de 200 166 \$ de 1988 et le montant de la taxe sur dépassement de quota) en vertu de l'article 111 de la *Loi de l'impôt sur le revenu*. Pour l'année d'imposition 1989, l'appelante a déduit une dépense d'intérêt de 9 074,50 \$ sur le solde impayé de la taxe sur dépassement de quota et des frais juridiques de 3 766 \$ engagés aux fins de représentation touchant la taxe sur dépassement de quota.

L'appelante devait verser à la Commission une taxe hebdomadaire de 7 cents par pondeuse à l'égard de son quota de 33 680 pondeuses. Il a été reconnu par le ministre que cette taxe était déductible du compte de produits aux fins de l'impôt sur le revenu. La taxe sur dépassement de quota était de 5 cents par pondeuse par jour pour 1984 et une partie de 1985, et de 8 cents par pondeuse par jour pour le reste de 1985 et pour les années 1986, 1987 et 1988. Il a été reconnu que le but de cette taxe sur dépassement de quota était d'éliminer tout profit résultant du nombre excédentaire de pondeuses. L'appelante a fait l'objet, à l'égard des années d'imposition 1985, 1988 et 1989, de nouvelles cotisations qui lui ont été signifiées par des avis datés du 14 novembre 1991 et qui, entre autres choses, refusaient que soit déduite du compte de produits la taxe sur dépassement de quota et refusaient les quatre déductions qui s'y rapportaient.

Les avocats des deux parties ont accepté que le règlement de toutes les déductions suivrait celui de la déduction de la taxe. En première instance, le juge a accueilli l'appel interjeté des cotisations du ministre, concluant que la taxe sur dépassement de quota était déductible à titre de dépense d'entreprise. La Cour d'appel a fait droit à l'appel du ministre.

Origine : Cour d'appel fédérale

N° du greffe : 26352

Arrêt de la Cour d'appel : Le 5 novembre 1997

Avocats : S. Kim Hansen pour l'appelante
Max Weder pour l'intimée

26340 *Gilles Poulin v. Serge Morency et Associés Inc. et al.*

Commercial law—Procedure—Bankruptcy—Civil procedure—Exemption from seizure —Registered retirement savings plan— Transfer of money from Quebec government employees' retirement plan to self-directed RRSP.

The Appellant made contributions to the Quebec government employees' retirement plan (RREGOP) between 1981 and November 30, 1990, when he left his job. On December 20, 1990, he purchased a self-directed registered retirement savings plan (RRSP). On January 21, 1991, he asked the government of Quebec's *Commission administrative des régimes de retraite et d'assurances* (CARRA) [retirement and insurance plan administrative board] to transfer the \$55,982 he held in the RREGOP to his RRSP. On May 15, 1991, he purchased a self-directed fixed-term pension plan and designated his sister as beneficiary. The funds in both the initial and the fixed-term plans were invested in Canadian securities.

In February 1992, the Appellant was informed that his RRSP might not be exempt from seizure, but he made no changes to his RRSP. In February 1993, he withdrew \$4,950 from his RRSP. In April 1993, the Appellant made an assignment in bankruptcy, leading the Respondent trustee to claim \$99,145 held by the receiver.

The Superior Court held that the RREGOP contributions and interest that had accrued on those contributions were exempt from seizure, but held that the Appellant's personal contributions to the RRSP were subject to seizure.

The Respondent trustee appealed to the Quebec Court of Appeal, which allowed the appeal, reversed the trial judgment and held that the securities forming the Appellant's RRSP were subject to seizure. Rousseau-Houle J.A. would have dismissed the appeal.

ISSUE

1. Whether the Court of Appeal erred in its interpretation of section 222 of the *Act respecting the Government and Public Employees Retirement Plan*, R.S.Q., c. R-10, and the combined effect of that section and section 553(7) of the *Code of Civil Procedure*, R.S.Q., c. C-25, by holding that the Appellant's contributions to the Government and Public Employees Retirement Plan and the interest thereon were subject to seizure after they were transferred to a registered retirement savings plan.

Origin of the case:	Quebec Court of Appeal
File No.:	26340
Judgment of the Court of Appeal:	September 2, 1997
Counsel:	Mireille Arseneault for the Appellant Daniel O'Brien for the Respondent

26340 *Gilles Poulin c. Serge Morency et Associés Inc. et al.*

Droit commercial - Procédure - Faillite - Procédure civile - Insaisissabilité - Régime enregistré d'épargne-retraite - Somme provenant du régime de retraite des employés du gouvernement

L'appelant cotise au régime de retraite des employés du gouvernement (RREGOP) de 1981 jusqu'au 30 novembre 1990, date où il quitte son emploi. Le 20 décembre 1990, il adhère à un régime enregistré d'épargne-retraite (REER) autogéré. Par la suite, le 21 janvier 1991, il demande à la Commission administrative des régimes de retraite et d'assurances du gouvernement du Québec (CARRA) de transférer les sommes qu'il détient dans le RREGOP (55 982\$) à son REER. Le 15 mai 1991, il adhère à un régime autogéré de rente à terme fixe et désigne sa soeur à titre de bénéficiaire. Tant sous le régime initial que sous le régime à terme fixe, les fonds sont investis dans des valeurs mobilières canadiennes.

En février 1992, l'appelant est avisé que son REER pourrait ne pas être insaisissable, mais il maintient tel quel son régime. En février 1993, il retire 4 950\$ de son REER. En avril 1993, l'appelant fait cession de ses biens et le syndic intimé réclame au fiduciaire la remise des sommes ainsi détenues (99 145\$).

La Cour supérieure déclare que les sommes provenant du RREGOP ainsi que les intérêts accrus sur ces sommes étaient insaisissables alors que celles provenant de la contribution personnelle de l'appelant étaient saisissables.

L'intimée interjette appel à la Cour d'appel du Québec, qui accueille l'appel, infirme le jugement de première instance et déclare que les valeurs constituant le régime enregistré d'épargne-retraite que possède l'appelant chez la mise en cause sont saisissables. Le juge Rousseau-Houle aurait rejeté l'appel.

QUESTION EN LITIGE

1. La Cour d'appel a-t-elle erré dans son interprétation de l'article 222 de la *Loi sur les régimes de retraite des employés du gouvernement et des organismes publics*, L.R.Q., ch. R-10 et de son effet combiné avec l'article 553(7) du *Code de procédure civile*, L.R.Q., ch. C-25, en concluant que les sommes cotisées par l'appelant dans le régime de retraite des employés du gouvernement et des organismes publics et les intérêts s'y rapportant sont saisissables suite à leur transfert dans un régime enregistré d'épargne retraite?

Origine: Cour d'appel du Québec

No du greffe: 26340

Arrêt de la Cour d'appel: Le 2 septembre 1997

Avocats: Mireille Arseneault, procureur de l'appelant
Daniel O'Brien, procureur de l'intimée

26272 *In the matter of the bankruptcy of: Nolisair International Inc., Richter & Associés Inc. v. Deputy Minister of Revenue of Quebec - and - In the matter of the bankruptcy of: Sécurité Saglac (1992) Inc., Tremblay & Compagnie Syndics et Gestionnaires Ltée v. Deputy Minister of Revenue of Quebec et al.*

Commercial law—Taxation—Bankruptcy—Statutes—Interpretation—Deemed trust—Source deductions—Tax liability—Proper test for deemed trust.

Sécurité Saglac (1992) Inc. (Saglac) and Nolisair International Inc. (Nolisair) became bankrupt in on January 22, 1993, and March 19, 1993, respectively. In each bankruptcy, the Respondent Deputy Minister of Revenue of Quebec filed a proof of claim to the entire estate of the bankrupts. The claim was based on a deemed trust in the Respondent's favour under subsection 67(3) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, and section 20 of the *Act respecting the Ministère du Revenu*, R.S.Q., c. M-31. The respective trustees in bankruptcy rejected the proofs of claim because they were of the view that the requirements for a deemed trust had not been met. The Respondent appealed to the Superior Court.

Banford J. allowed the Respondent's appeal in the Saglac case and held that there was a deemed trust in the Respondent's favour over the bankrupt's entire estate. He also held that, in statutory interpretation, the Court could not be bound by a Department of Finance Information Bulletin. Durand J. dismissed the Respondent's appeal in the Nolisair case and held that there was no deemed trust in the Respondent's favour over the bankrupt's entire estate.

The two ensuing appeals were considered together by the Court of Appeal. Chamberland J.A., writing for the majority, held there was a deemed trust. His reasons in the Saglac case apply to both cases, as the dissenting reasons of Fish J.A. in the Nolisair case.

ISSUES

1. Does s. 20 of the *Act respecting the Ministère du Revenu* create a statutory trust over a bankrupt's entire estate where the bankrupt did not keep the amounts owed the Deputy Minister separate from the bankrupt's other assets (a statutory trust that is supposedly "sans tracing")?
2. Whether, in the case of a bankruptcy, the Deputy Minister can claim a supposedly "sans tracing" statutory trust in the Deputy Minister's favour based on subsection 67(3) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3.
3. In the alternative, whether subsection 67(3) of the *BIA* has retroactive effect.

Origin of both cases:	Quebec Court of Appeal
File No.:	26272
Judgments of the Court of Appeal:	September 9, 1997
Counsel:	Eugène Cozoliij for the Appellant René Bourassa for the Respondent

26272 *Dans l'affaire de la faillite de : Nolisair International Inc., Richter & Associés Inc. c. Le Sous-ministre du Revenu du Québec - et - Dans l'affaire de la faillite de : Sécurité Saglac (1992) Inc., Tremblay & Compagnie Syndics et Gestionnaires Ltée c. Le Sous-ministre du Revenu du Québec et al.*

Droit commercial - Droit fiscal - Faillite - Législation - Interprétation - Fiducie réputée - Retenues à la source - Dette fiscale - Critères d'application d'une fiducie réputée.

Sécurité Saglac (1992) Inc. (ci-après "Saglac") et Nolisair International Inc. (ci-après "Nolisair") font respectivement faillite le 22 janvier 1993 et le 19 mars 1993. Dans les deux cas, l'intimé, le sous-ministre du Revenu du Québec a déposé une preuve de réclamation de biens en invoquant l'existence en sa faveur d'une fiducie présumée portant indistinctement sur l'ensemble des actifs de la faillie en application du paragraphe 67(3) de la *Loi sur la faillite et l'insolvabilité*, L.R.C. (1985), chap. B-3, et de l'article 20 de la *Loi sur le ministère du revenu*, L.R.Q., chap. M-31. Les syndics respectifs de Saglac et de Nolisair ont rejeté les preuves de réclamation de l'intimé parce qu'ils estimaient que les conditions requises à l'existence d'une fiducie présumée n'étaient pas respectées. L'intimé a donc porté chacun des dossiers en appel.

Dans le dossier Saglac, le juge Banford de la Cour supérieure accueille l'appel de l'intimé et conclut à l'existence en sa faveur d'une fiducie présumée portant indistinctement sur l'ensemble des actifs de la faillie. Il conclut également que la Cour ne peut être liée par un bulletin d'information du ministère des Finances servant à interpréter une loi.

Dans le dossier Nolisair, le juge Durand de la Cour supérieure rejette l'appel de l'intimé et conclut que l'intimé ne bénéficie d'aucune fiducie présumée sur l'ensemble de l'actif de la faillie.

En Cour d'appel, les dossiers sont réunis et cette dernière rend un jugement à la majorité de ses juges. Le juge Chamberland, au nom de la majorité, se prononce en faveur de l'existence d'une fiducie présumée. Ses motifs se retrouvent dans le dossier Saglac auxquels il renvoie dans le dossier Nolisair. Les motifs du juge Fish, dissident, sont rendus dans le dossier Nolisair auxquels il renvoie dans le dossier Saglac.

QUESTIONS EN LITIGE

1. L'article 20 de la *Loi sur le ministère du Revenu* crée-t-il une fiducie légale portant indistinctement sur l'ensemble des actifs d'un failli lorsque les sommes dues au Sous-ministre n'ont pas été tenues par le failli séparément de ses autres actifs (fiducie légale dite "sans tracing")?
2. Le Sous-ministre peut-il se prévaloir du paragraphe 67(3) *Loi sur la faillite et l'insolvabilité*, L.R.C. (1985), chap. B-3 pour invoquer en sa faveur une fiducie légale dite "sans tracing" dans le cadre d'une faillite?
3. Subsidiairement, le paragraphe 67(3) *L.F.I.* a-t-il une portée rétroactive?

Origine des deux affaires:	Cour d'appel du Québec
No du greffe:	26272
Arrêts de la Cour d'appel:	Le 9 septembre 1997
Avocats:	Eugène Cozoliij, procureur de l'appelant René Bourassa, procureur de l'intimée

26755 *Her Majesty The Queen v. Elaine Trombley*

Criminal law - Evidence - Trial - Charge to the jury - Defence of self-defence - Whether the majority of the Court of Appeal erred in holding that the trial Judge's Charge to the Jury with respect to the application of s. 34(2) of the *Criminal Code of Canada* resulted in an ambiguous direction as to the availability of the defence of self-defence - Alternatively, whether even if the charge was ambiguous regarding the application of s. 34(2), the Respondent's evidence would, if believed, have fallen within the parameters of s. 34(1) of the *Criminal Code*.

The Respondent and the deceased lived together for three years in a common law relationship. It was a stormy one and the evidence was clear that the Respondent was regularly subjected to abuse. On the evening of April 23, 1993, the deceased did not come home from work, but went from tavern to tavern consuming a considerable amount of alcohol. The Respondent found him in a bar drinking with two women, gave him the keys to the apartment and went off on her own to other taverns.

The Respondent testified that she returned to the apartment, decided that they should no longer live together and took the dresser drawers containing the deceased's clothing and placed them on a table in the dining room in contemplation that he would pack and leave. She knew he would be angry and put a paring knife in her pocket. When he returned, there was a confrontation in which he broke a dining room chair. At one point she put the knife on a table, but put the knife back into her pocket as his anger increased. The deceased used insulting language and grabbed her blouse and ripped it. The deceased threw her against the wall and they struggled. He was 6'3" tall and weighed 225 lbs; she was 5'2" tall and weighed 110 lbs. The Respondent reached into her pocket, removed the knife and stabbed the deceased. She testified that he would have killed her if he had got her to the ground and that she didn't mean to kill him or to hurt him badly. The Respondent went to a neighbour for assistance and the police were called.

The Respondent was charged with second degree murder and after a trial before a judge and jury, she was convicted of the included offence of manslaughter. In his charge to the jury, the trial judge, in explaining s. 34(1) of the *Criminal Code*, added the words "even if" or "even though". However, a few lines later these words were not used. The defence of self-defence was rejected by the jury. On appeal, the majority of the Court of Appeal held that the verdict should be set aside and a new trial directed on a charge of manslaughter. Finlayson J.A. dissented and would have dismissed the appeal as to conviction.

Origin of the case:	Ontario
File No.:	26755
Judgment of the Court of Appeal:	June 29, 1998
Counsel:	Susan Kyle for the Appellant Marie Henein for the Respondent

26755 *Sa Majesté la Reine c. Elaine Trombley*

Droit criminel - Preuve - Procès - Exposé au jury - Légitime défense - La Cour d'appel à la majorité a-t-elle commis une erreur en concluant que l'exposé du juge du procès au jury relativement à l'application du par. 34(2) du *Code criminel* du Canada constituait une directive ambiguë quant à la possibilité d'invoquer la légitime défense? - Subsidiairement, même si l'exposé était ambigu relativement à l'application du par. 34(2), le témoignage de l'intimée, s'il était cru, tombait-il sous le coup du par. 34(1) du *Code criminel*?

L'intimée et la victime ont été conjoints de fait pendant trois ans. Leur relation était tumultueuse et la preuve a montré clairement que l'intimée faisait régulièrement l'objet de violence. Le soir du 23 avril 1993, la victime n'est pas entrée chez elle après le travail, mais est passée d'un débit de boisson à l'autre, consommant une quantité considérable d'alcool. L'intimée l'a trouvée dans un bar, en train de boire avec deux femmes, lui a remis les clés de l'appartement et est allée dans d'autres débits de boisson par ses propres moyens.

L'intimée a témoigné qu'elle est retournée à l'appartement, a décidé qu'ils ne vivraient plus ensemble et a retiré les tiroirs de la commode contenant les vêtements de la victime et les a placés sur une table dans la salle à manger pour qu'il fasse ses bagages et s'en aille. L'intimée savait que la victime serait en colère et a mis un couteau à légumes dans sa poche. Lorsque la victime est revenue, il y a eu un affrontement au cours duquel il a brisé une chaise de la salle à manger. À un certain moment, l'intimée a mis le couteau sur une table, mais l'a remis dans sa poche quand la colère de la victime a augmenté. La victime a employé un langage insultant et a empoigné le chemisier de l'intimée et l'a déchiré. La victime a projeté l'intimée contre le mur et ils se sont battus. La victime mesurait six pieds et trois pouces et pesait 225 livres; l'intimée mesurait cinq pieds et deux pouces et pesait 110 livres. L'intimée a sorti le couteau de sa poche et a frappé la victime. Elle a témoigné que la victime l'aurait tuée si elle avait réussi à la faire tomber par terre et qu'elle ne voulait ni tuer ni blesser sérieusement la victime. L'intimée est allée chercher de l'aide chez un voisin et la police a été appelée.

L'intimée a été accusée de meurtre au deuxième degré et, après un procès devant un juge et un jury, elle a été reconnue coupable de l'infraction incluse d'homicide involontaire coupable. Dans son exposé au jury, le juge du procès, expliquant le par. 34 (1) du *Code criminel* a ajouté les mots [TRADUCTION] " même si " ou [TRADUCTION] " bien que ". Cependant, un peu plus loin, il n'a pas employé ces mots. Le jury a rejeté la défense de légitime défense. La Cour d'appel à la majorité a conclu que le verdict devait être annulé et que la tenue d'un nouveau procès devait être ordonnée sur une accusation d'homicide involontaire coupable. Le juge Finlayson, dissident, aurait rejeté l'appel quant à la déclaration de culpabilité.

Origine:	Ontario
N° du greffe:	26755
Arrêt de la Cour d'appel:	Le 29 juin 1998
Avocats:	Susan Kyle pour l'appelante Marie Henein pour l'intimée

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

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

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

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

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<i>Bond v. Novak</i> (B.C.), 26811	474(99)	
<i>Bracklow v. Bracklow</i> (B.C.), 26178, *04 25.3.99	1744(98)	507(99)
<i>British Columbia Government and Service Employee's Union v. Government of British Columbia</i> (B.C.), 26274	361(99)	
<i>Campbell (John) v. The Queen</i> (Crim.)(Ont.), 25780	881(98)	
<i>Children's Foundation v. Bazley</i> (B.C.), 26013	1542(98)	
<i>Davis v. The Queen</i> (Crim.)(Nfld.), 26441	410(99)	
<i>Delisle c. Attorney General of Canada</i> (Qué.), 25926	1544(98)	
<i>Des Champs v. Conseil des écoles séparées catholiques de langue française de Prescott-Russell</i> (Ont.), 25898	1788(98)	
<i>Dobson v. Dobson</i> (N.B.), 26152	1995(98)	
<i>FBI Foods Ltd. v. Cadbury Schweppes Inc.</i> (B.C.), 25778, *04 28.1.99	716(98)	163(99)
<i>Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd.</i> (B.C.), 26415	409(99)	
<i>Gladue v. The Queen</i> (Crim.)(B.C.), 26300	1996(98)	
<i>J.G. v. Minister of Health and Community Services</i> (N.B.), 26005	1787(98)	
<i>Jones v. Smith</i> (B.C.), 26500, *01 25.3.99	507(99)	507(99)
<i>Judges of the Provincial Court of Manitoba v. The Queen in right of the Province of Manitoba</i> (Man.), 24846	92(98)	
<i>L.C. v. Mills</i> (Crim.)(Alta.), 26358	129(99)	
<i>Law v. Minister of Human Resources Development</i> (F.C.A.)(B.C.), 25374, *01 25.3.99	93(98)	506(99)
<i>Lepage v. The Queen</i> (Crim.)(Ont.), 26320	1026(98)	
<i>Liew v. The Queen</i> (Crim.)(Alta.), 26676	504(99)	
<i>M.J.B. Entreprises Ltd. v. Defence Construction (1951) Ltd.</i> (Alta.), 25975	1744(98)	
<i>Marshall v. The Queen</i> (N.S.), 26014	1743(98)	
<i>Minister of Justice v. Burns</i> (Crim.)(B.C.), 26129	504(99)	
<i>N.H.v. H.M.</i> (B.C.), 26555, *03 17.2.99	314(99)	
<i>Orlowski v. Director, Forensic Psychiatric Institute</i> (Crim.)(B.C.), 25751	1026(98)	

<i>Pearson c. La Reine</i> (Crim.)(Qué.), 24107	1995(98)	
<i>Poliquin c. Perron-Malenfant</i> (Qué.), 26451	473(99)	
<i>R. c. B.G.</i> (Crim.)(Qué.), 26226	219(99)	
<i>R. v. Campbell</i> (Alta.), 24831	92(98)	
<i>R. v. Ewanchuk</i> (Crim.)(Alta.), 26493, *03 25.2.99	1579(98)	362(99)
<i>R. c. Kabbabe</i> (Crim.)(Qué.), 25858	1965(98)	
<i>R. c. Jolivet</i> (Crim.)(Qué.), 26646	360(99)	
<i>R. v. Monney</i> (Crim.)(Ont.), 26404	1965(98)	
<i>R. v. Stone</i> (Crim.)(B.C.), 26032	1091(98)	
<i>R. v. Sundown</i> (Crim.)(Sask.), 26161, *01 25.3.99	1742(98)	506(99)
<i>R. v. Warsing</i> (Crim.)(B.C.), 26303	1054(98)	
<i>R. v. White</i> (Crim.)(B.C.), 26473	1789(98)	
<i>R. in Right of Canada v. Del Zotto</i> (Crim.)(Ont.), 26174, *04 21.1.99	131(99)	132(99)
<i>Royal Bank of Canada v. W. Got & Associates Electric Ltd.</i> (Alta.), 26081	1889(98)	
<i>Ryan v. Corporation of the City of Victoria</i> (B.C.), 25704, *04 28.1.99	1027(98)	163(99)
<i>Starr v. The Queen</i> (Crim.)(Man.), 26514	1964(98)	
<i>Stone v. The Queen</i> (Crim.)(B.C.), 25969	1091(98)	
<i>Taylor-Jacobi v. Boy's and Girl's Club of Vernon</i> (B.C.), 26041	1543(98)	
<i>Thomas v. The Queen</i> (Crim.)(B.C.), 25943	1054(98)	
<i>United Food and Commercial Workers International Union, Local 1288P v. Alisco Building Products Ltd.</i> (N.B.), 26203	312(99)	
<i>United Food and Commercial Workers Local 1518 v. Kmart Canada Ltd.</i> (B.C.), 26209	312(99)	
<i>Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue</i> (F.C.A.)(B.C.), 25359, *01 28.1.99	354(98)	163(99)
<i>Winko v. Director, Forensic Psychiatric Institute</i> (Crim.)(B.C.), 25856	1026(98)	
<i>Winters v. Legal Services Society</i> (Crim.)(B.C.), 26180	1964(98)	

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 : April 19, 1999

Service : March 29, 1999
Filing : April 5, 1999
Respondent : April 12, 1999

Motion day : May 3, 1999

Service : April 12, 1999
Filing : April 19, 1999
Respondent : April 26, 1999

Motion day : June 7, 1999

Service : May 17, 1999
Filing : May 24, 1999
Respondent : May 31, 1999

DÉVANT 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 : 19 avril 1999

Signification : 29 mars 1999
Dépôt : 5 avril 1999
Intimé : 12 avril 1999

Audience du : 3 mai 1999

Signification : 12 avril 1999
Dépôt : 19 avril 1999
Intimé : 26 avril 1999

Audience du : 7 juin 1999

Signification : 17 mai 1999
Dépôt : 24 mai 1999
Intimé : 31 mai 1999

DEADLINES: APPEALS

DÉLAIS: APPELS

The Spring Session of the Supreme Court of Canada will commence April 19, 1999.

La session du printemps de la Cour suprême du Canada commencera le 19 avril 1999.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Judgments reported in [1998] 3 S.C.R. Part 4

R. v. Campbell, [1998] 3 S.C.R. 533

R. v. Pearson, [1998] 3 S.C.R. 620

R. v. Thomas, [1998] 3 S.C.R. 535

R. v. Warsing, [1998] 3 S.C.R. 579

R. v. White, [1998] 3 S.C.R. 534

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

Jugements publiés dans [1998] 3 R.C.S. Partie 4

R. c. Campbell, [1998] 3 R.C.S. 533

R. c. Pearson, [1998] 3 R.C.S. 620

R. c. Thomas, [1998] 3 R.C.S. 535

R. c. Warsing, [1998] 3 R.C.S. 579

R. c. White, [1998] 3 R.C.S. 534

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 1998 -

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

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

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

- 1999 -

JANUARY - JANVIER						
S D	M L	T M	W M	T J	F V	S S
					H 1	2
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10	11	12	13	14	15	16
17	M 18	19	20	21	22	23
24	25	26	27	28	29	30
31						

FEBRUARY - FÉVRIER						
S D	M L	T M	W M	T J	F V	S S
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28						

MARCH - MARS						
S D	M L	T M	W M	T J	F V	S S
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21	22	23	24	25	26	27
28	29	30	31			

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

MAY - MAI						
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23	H 24	25	26	27	28	29
30	31					

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

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:



18 sitting weeks / semaines séances de la cour

81 sitting days / journées séances de la cour

9 motion and conference days / journées requêtes, conférences

3 holidays during sitting days / jours fériés durant les sessions