SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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July 21, 2000 1222 - 1324 2000

APPLICATIONS FOR LEAVE TO APPEAL FILED

Lewis Joseph Spiterie
Lewis Joseph Spiterie

v. (27521)

Update Management Limited et al. (Ont.)
B.A. Percival, Q.C.
Benson, Percival, Brown

FILING DATE 19.6.2000

D.C.A.
Daniel L. Palamarek
Lister & Associate

v. (27913)

Her Majesty the Queen (Alta.)
Jack Watson, Q.C.
A.G. of Alberta

FILING DATE 16.5.2000

Volf Friedman et al.

v. (27930)

Minister of Citizenship and Immigration (F.C.A.)
Morris Rosenberg
A.G. of Canada

FILING DATE 16.6.2000

Ville de Beauport
Benoît Pépin
Langlois Gaudreau

c. (27935)

H.L.P. Société en commandite (Qué.)
Claude Jean
Flynn Rivard

DATE DE PRODUCTION 26.5.2000

DEMANDES D'AUTORISATION D'APPEL DÉPOSÉES

146726 Canada Inc.
Julius H. Grey
Grey Casgrain

v. (27941)

City of Montreal et al. (Que.)
Serge Barrière
Jalbert, Séguin, Verdon, Caron, Mahoney. g.p.

FILING DATE 26.5.2000

Brenda Marie Johnson-Paquette
Dougald E. Brown
Nelligan Power

v. (27966)

Her Majesty the Queen (F.C.A.)
Louis Sébastien
A.G. of Canada

FILING DATE 13.6.2000

Terry Tombran
James Lockyer
Pinkofsky, Lockyer

v. (27969)

Her Majesty the Queen (Ont.)
Michael Bernstein
A.G. for Ontario

FILING DATE 15.6.2000

Les Entreprises Ab Rimouski Inc. et Aldège Banville

c. (27970)

Sa Majesté la Reine (C.A.F.)
Stéphane Lilkoff
Ministère de la Justice

DATE DE PRODUCTION 14.6. 2000

Rony Alexander Lopez
Eric L. Teed, Q.C.
Teed & Teed

v. (27971)

Her Majesty the Queen (N.B.)
Christopher T. Titus
A.G. of New Brunswick

FILING DATE 16.6.2000

George Desnomie
Joel A. Weinstein
Aikins, MacAulay & Thorvaldson

v. (27972)

Her Majesty the Queen (F.C.A.)
Gérald L. Chartier
A.G. of Canada

FILING DATE 16.6.2000

Carol Duguid
Geoffrey T. Mullin
Wardlaw, Mullin, Carter, Thwaites & Ward

v. (27973)

Bank of Montreal (Ont.)
Joshua J. Siegel
Rubenstein, Siegel

FILING DATE 19.6.2000

Ernst Zundel
Douglas H. Christie

v. (27977)

The Attorney General of Canada, et al. (F.C.A.)
Claire A.H. le Riche
A.G. of Canada

FILING DATE 19.6.2000

Mirjana Stefanovic, Executrix of the Estate of Katrina Keljanovic
Andrew J. MacDonald
Harris & Harris

v. (27978)

Maria Sanseverino (Ont.)
Debra L. Stephens
Hughes, Dorsch, Garland, Coles, Stephens

FILING DATE 19.6.2000

The Honourable Ralph Klein, et al.
David W. Kinloch
A.G. of Alberta

v. (27980)

Barbara Decock, et al. (Alta.)
Clint R. Suntjens
Litwiniuk & Company

FILING DATE 19.6.2000

Association pour la protection des automobilistes
Jacques Castonguay
Castonguay, White, Brassard

c. (27981)

Édutile Inc. (C.A.F.)
Christopher R. Mostovac
Ravinsky Ryan

DATE DE PRODUCTION 16.6.2000

Wayne Leslie Bellegarde
E.F. Anthony Merchant, Q.C.
Merchant Law Group

v. (27821)

Her Majesty the Queen (Sask.)
W.D. Sinclair
A.G. of Saskatchewan

FILING DATE 30.6.2000

Her Majesty the Queen
W.J. Scott Bell
A.G. of British Columbia

v. (27847)

B.J.S. (B.C.)
Bruce F. Fairley
Fairley & Davis

FILING DATE 19.6.2000

Her Majesty the Queen
W.J. Scott Bell
A.G. of British Columbia

v. (27976)

B.J.S. (B.C.)
Bruce F. Fairley
Fairley & Davis

FILING DATE 19.6.2000

Hugh John MacMaster
Hillel David
Aylesworth Thompson Phelan O'Brien LLP

v. (27983)

The Corporation of the Regional Municipality of York (Ont.)
J. Murray Davison, Q.C.
Paterson, MacDougall

FILING DATE 21.6.2000

Laura Bannon
W. Danial Newton
Carrel & Partners

v. (27985)

The Corporation of the City of Thunder Bay (Ont.)
Stephen J. Wojciechowski
Eryou Barristers

FILING DATE 21.6.2000

Patrick Berry et al.
F.J.C. Newbould, Q.C.
Borden Ladner Gervais LLP

v. (27992)

Chris Pulley et al. (Ont.)
Dougald E. Brown
Nelligan Power

FILING DATE 26.6.2000

Cherie Gronnerud
Joanne C. Moser
Richmond Nychuk

v. (27993)

Harold Robert (Bud) Gronnerud (Sask.)
David A. Gerrand
Gerrand Rath Johnson

FILING DATE 26.6.2000

Golden Panda Building Products Inc. et al.
Chi-Kun Shi

v. (28000)

Bowne of Canada, Ltd. (Ont.)
Nicolette Holovaci
Banfill Holovaci

FILING DATE 29.6.2000

E.S.
Peter Lindsay

v. (27862)

Her Majesty the Queen (Ont.)
Philip Downes
A.G. for Ontario

FILING DATE 21.6.2000

Ville de Beaupré
Diane Larose
Bélanger Sauvé

c. (27938)

Station Mont Sainte-Anne Inc. (Qué.)
Richard Laflamme
Huot Laflamme

DATE DE PRODUCTION 30.6.2000

Estate of Marie Vyna Ruman
Kathleen Ruman

v. (27974)

The Municipal Corporation of the City of Yellowknife (N.W.T.)
Elizabeth Hellinga
Gullberg, Weist, MacPherson & Kay

FILING DATE 19.6.2000

D.T.A.
Sylvain Gagnon

c. (27984)

M.E.L. (Qué.)
Ginette Quintal

DATE DE PRODUCTION 5.6.2000

Syndicat national des employés municipaux de Pointe-Claire (CSN)
Serge LaVergne
Sauvé et Roy

c. (27987)

Marc Boisvert et al. (Qué.)
Marc Boisvert

DATE DE PRODUCTION 22.6.2000

Demix, Division de Ciment St-Laurent (Indépendant) Inc.
Guy Bélanger
Ross, Bélanger

c. (27988)

Communauté urbaine de Montréal et al. (Qué.)
Marie Charest
Richer, Charest

DATE DE PRODUCTION 22.6.2000

Procureur général du Canada et al.
Jean-Marc Aubry, c.r.
P. G. du Canada

c. (27989)

Mario Lord et al. (Qué.)
Johanne Mainville
O'Reilly Mainville et Associés

DATE DE PRODUCTION 22.6.2000

James King
John W. Clarke
Learmonth, Dunne & Clarke

v. (27990)

Board of Commissioners of Public Utilities et al. (Nfld.)
Randall Pelletier
Board of Commissioners of Public Utilities

FILING DATE 23.6.2000

The North West Company Inc.
Harold M. Smith
Stewart McKelvey Stirling Scales

v. (27991)

Construction General Labourers et al. (Nfld.)
Douglas A. Moores, Q.C.
Moores, Andrews

FILING DATE 26.6.2000

Serge Tremblay

c. (27994)

Ville de Forestville (Qué.)
Sonia Bérubé
Cain, Lamarre, Casgrain, Wells

DATE DE PRODUCTION 26.6.2000

Dame Elham Azar
Franck Laveaux

c. (28001)

Gestion Hassake-Holdings Inc. et al. (Qué.)
Pierre Magnan
Marchand Magnan Melançon Forget

DATE DE PRODUCTION 30.6.2000

Dr. V.I. Fabrikant
Dr. V.I. Fabrikant

v. (28005)

M.A. Hyppolite (Qué.)
Josée Paquin
Côté & Ouellet

FILING DATE 4.7.2000

Mlhrali Celik
Mlhrali Celik
Oxford Building Maintenance Engineering

v. (28006)

Her Majesty the Queen in right of Ontario (Ont.)
Eugene Mazzuca
Blaney, McMurtry, Stapells, Friedman

FILING DATE 5.7.2000

Ernst Zundel
Douglas H. Christie

v. (28008)

Sabina Citron et al. (F.C.A.)
Robert P. Armstrong, Q.C.
Tory Tory DesLauriers & Binnington

FILING DATE 5.7.2000

Ernst Zundel
Douglas H. Christie

v. (28009)

Sabina Citron et al. (F.C.A.)
Robert P. Armstrong, Q.C.
Tory Tory DesLauriers & Binnington

FILING DATE 5.7.2000

Mlhrali Celik
Mlhrali Celik
Oxford Building Maintenance Engineering

v. (28010)

The St. Paul Insurance Companies formerly known as United States Fidelity & Guaranty Co. (Ont.)
William G. Woodward
Dyer, Brown

FILING DATE 7.7.2000

Gérald Larose et al.
Mario Évangéliste
Sauvé et Roy

c. (28011)

Réjean Fleury (Qué.)
Réjean Fleury

DATE DE PRODUCTION 10.7.2000

Peter John Stark
Anil K. Kapoor

v. (27975)

Her Majesty the Queen (Ont.)
Susan L. Reid
A.G. for Ontario

FILING DATE 30.6.2000

Nicholas Y. Bonamy
Nicholas Y. Bonamy

v. (28003)

Correctional Service Canada (F.C.A.)
Bruce W. Gibson
A.G. of Canada

FILING DATE 30.6.2000

Terri - Jean Bedford
David L. Corbett
Eberts Symes Street & Corbett

v. (28004)

Her Majesty the Queen (Ont.)
Scott C. Hutchison
A.G. for Ontario

FILING DATE 5.7.2000

Patrick Kelly
Clayton C. Ruby
Ruby & Edwardh

v. (28007)

Her Majesty the Queen (Ont.)
Paul S. Lindsay
A.G. for Ontario

FILING DATE 6.7.2000

Alan Emmette Simmons
John Norris
Ruby & Edwardh

v. (27979)

The United States of America (Ont.)
David Littlefield
A.G. of Canada

FILING DATE 19.6.2000

Brentwood Pioneer Holdings Ltd.
P.W. Klassen
Crease Harman & Company

v. (28013)

Provincial Agricultural Land Commission (B.C.)
J.K. McEwan
Farris Vaughan Wills & Murphy

FILING DATE 14.7.2000

Hung Quoc Hoang
Hersh Wolch
Wolch, Wilson & Dewit

v. (28014)

Her Majesty the Queen (B.C.)
Robert J. Frater
A.G. of Canada

FILING DATE 14.7.2000

JUNE 26, 2000 / LE 26 JUIN 2000

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

Bruce Curt Mulligan

v. (27726)

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

NATURE OF THE CASE

Criminal law - Sexual assault and sexual touching- Charge to jury - Whether accused entitled to have jury instructed on issue of consent where it was not raised as a defence - Whether staying of charge on which accused convicted nullifies complaint concerning breach of procedural rights where accused was absent for part of trial - Whether introduction of prejudicial evidence by Crown on cross-examination constitutes a violation of accused's s. 7 rights or a reversible error.

PROCEDURAL HISTORY

November 20, 1998 Court of Queen's Bench of Alberta (Coutu J.)	Applicant convicted of sexual assault and sexual touching
November 30, 1999 Court of Appeal of Alberta (McClung, Hunt, and Costigan JJ.A)	Appeal dismissed
March 6, 2000 Supreme Court of Canada	Application for leave to appeal, and motion for extension of time filed

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Mary Francis Cooper

v. (27880)

Robert J. Hobart and Her Majesty the Queen in Right of the Province of British Columbia

- and -

Brian William Slobogian, Onalee Robin Slobogian, Frank Biller, Michelle Marie Biller, Eron Mortgage Corporation, Eron Financial Services, Eron Investment Corporation, Eron Investment (#2) Corporation, 543219 B.C. Ltd., 509994 B.C. Ltd., 509097 B.C. Ltd., 496622 B.C. Ltd., 534170 B.C. Ltd., Rocke Wightman, Alan Samuel McLean, Curtis William Lehner, Kevin Robert Brown, Young Robert Lee, Trevor Slobogian, Lance Lindsay Coulson, Kerry Kristopher Wade Nagy, Ken Robert Jenkins, Debra Lyn Gallie, Gordon Douglas Carter, Garry Robert Dukelow, Renate Morell, Russell Jennings, Douglas Frederick Jackie, David Nairne and Ian Wragge (B.C.)

NATURE OF THE CASE

Torts - Negligence - Duty of care - Procedural law - Actions - Class proceedings - Applicant and others losing money in respect of investments made through mortgage broker licensed under *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313 - Applicant bringing action alleging that Registrar breached his duty of care and was negligent in failing to suspend mortgage broker's licence earlier and in failing to notify persons that mortgage broker was under investigation - Chambers judge certifying Applicant's action as a class proceeding - Whether a statutory regulator owes a private law duty of care to members of the investing public for alleged negligence in failing to properly oversee the conduct of an investment company licensed by the regulator.

PROCEDURAL HISTORY

March 26, June 10, 1999 Supreme Court of British Columbia (Tysoe J.)	Action certified as class proceeding
February 29, 2000 Court of Appeal for British Columbia (Southin, Huddart and Newbury JJ.A.)	Appeal allowed; action in negligence dismissed
April 28, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Eric Martin Johnston

v. (27911)

Theodora Maria Johnston and Philip Harris (Ont.)

NATURE OF THE CASE

Family law - Division of property - Whether owner of investment property entitled to claim resulting or constructive trust to make non-titled spouse a co-owner for the purposes of equalization of net family property - Procedural law - Courts - Whether Court of Appeal erred in not finding a reasonable apprehension of bias on the part of the trial judge.

PROCEDURAL HISTORY

August 25, 1998 Superior Court of Justice (Métivier J.)	Order: Petition for divorce granted to take effect on September 25th, 1998; Applicant to pay equalization payment of $93,311.00, and occupation rent of $17,700.00.
February 26, 1999 Superior Court of Justice (Métivier J.)	Fixed costs of $90,000 awarded on a party and party scale to the Respondent
March 15, 2000 Court of Appeal for Ontario (Morden, Abella, and O'Driscoll [*ad hoc*] JJ.A.)	Appeal and cross-appeal dismissed; motion for the admission of fresh evidence dismissed
May 15, 2000 Supreme Court of Canada	Application for leave to appeal filed

Privacy Commissioner of Canada

v. (27846)

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

NATURE OF THE CASE

Statutes - Interpretation - Privacy - Customs and Excise - Employment Insurance - Legislation disentitles employment insurance recipients from receiving benefits during a period in which they are absent from Canada - Pursuant to an agreement, the Department of National Revenue disclosed travellers' personal information to the Canada Employment Insurance Commission with the purpose of detecting employment insurance beneficiaries receiving benefits while out of Canada - Whether the Federal Court of Appeal erred in finding that the disclosure of "personal information" by the Department of National Revenue to the Canada Employment Insurance Commission pursuant to the Ancillary Memorandum of Understanding for data capture and release of information on travellers was authorized by section 8 of the *Privacy Act* and section 108 of the *Customs Act* - Whether in view of the restrictions on the use of personal information in the *Privacy Act*, does paragraph 108(1)(b) of the *Customs Act* provide the Minister with authority to disclose personal information to the Commission for use in an investigative data match program - Whether the Minister properly authorized the disclosure of personal information in the Traveller Declaration Forms to the Commission for use in an investigative data match program - *Privacy Act*, R.S.C., 1985, c. P-21, ss. 7, 8 - *Customs Act*, R.S.C., 1985, c. C-1, s. 108.

PROCEDURAL HISTORY

January 29, 1999 Federal Court of Canada, Trial Division (Tremblay-Lamer J.)	Court states the opinion that the disclosure of personal information by the Department of National Revenue to the Canada Employment Commission is not authorized by s. 8 of the *Privacy Act* and s. 108 of the *Customs Act*
February 9, 2000 Federal Court of Appeal (Décary, Evans and Sexton JJ.A.)	Appeal allowed; Trial Division opinion set aside, and same question answered affirmatively
April 10, 2000 Supreme Court of Canada	Application for leave to appeal filed

Deborah Smith

v. (27844)

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

NATURE OF THE CASE

Canadian Charter - Civil - Privacy - Customs and Excise - Employment Insurance - Legislation disentitles unemployment insurance recipients from receiving benefits during a period in which they are absent from Canada - The Applicant, an unemployment insurance recipient failed to inform the Canada Employment Insurance Commission of her absence from Canada - Pursuant to an agreement, the Department of National Revenue disclosed travellers' personal information to the Canada Employment Insurance Commission with the purpose of detecting employment insurance beneficiaries receiving benefits while out of Canada - Whether the disclosure by the Department of National Revenue to the Canada Employment and Insurance Commission of personal information from the Applicant's Traveller Declaration Form and the use of this information in the data match program, and subsequently, as evidence against the Applicant, contravenes the Applicant's right to be secure from unreasonable search or seizure under section 8 of the *Charter* and if so, whether the evidence should have been excluded under subsection 24(2) of the *Charter* - Whether the provision in the *Unemployment Insurance Act* which disentitles the Applicant from receiving benefits while outside of Canada infringes the Applicant's mobility rights under subsection 6(1) of the *Charter*

PROCEDURAL HISTORY

February 9, 2000 Federal Court of Appeal (Décary, Sexton and Evans JJ.A.)	Application for judicial review of a decision from the Umpire dismissed
April 10, 2000 Supreme Court of Canada	Application for leave to appeal filed

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

Fayez Nasser

v. (27879)

Monika Mayer-Nasser (also known as Monika Mayer) (Ont.)

NATURE OF THE CASE

Family law - Division of property - 23-year common-law relationship - Unjust enrichment - Applicant found to have been unjustly enriched - Whether there was unjust enrichment - Whether the Respondent was adequately compensated for her services - Whether the remedy awarded for the unjust enrichment was consistent with *Peter v. Beblow*, [1993] 1 S.C.R. 980.

PROCEDURAL HISTORY

January 21, 1998 Ontario Court (General Division) (Kiteley J.)	Titles to be adjusted due to constructive trust; titles to be adjusted and Applicant to pay Respondent $129,890 due to unjust enrichment
February 29, 2000 Court of Appeal for Ontario (Osborne A.C.J.O., Morden and Moldaver JJ.A.)	Appeal and cross-appeal dismissed

April 27, 2000
Supreme Court of Canada

Application for leave to appeal filed

Efraim Bagola

v. (27691)

Elyahu Ovadya (Ont.)

NATURE OF THE CASE

Commercial law - Partnership - Remedies - Purchase of condominium units - Application of partnership principles to the facts of the case - Whether the Court of Appeal erred in finding that the parties were partners - Whether the existence of a partnership creates an automatic obligation on each person who is a party to the partnership to contribute equally to the partnership in the absence of any agreement providing for same between those same persons - Whether there was a special arrangement outside the scope of partnership law - Whether the Court of Appeal erred in law and/or in fact.

PROCEDURAL HISTORY

April 21, 1998
Ontario Court of Justice (General Division)
(Potts J.)

Action dismissed with costs

November 9, 1999
Court of Appeal for Ontario
(Austin, Borins and MacPherson JJ.A.)

Appeal allowed with costs

January 6, 2000
Supreme Court of Canada

Application for leave to appeal filed

Me André Ronald Comeau

c. (27692)

Me Louise Comeau, ès qualités de syndic du Barreau du Québec (Qué.)

NATURE DE LA CAUSE

Droit du travail - Droit des professions - Discipline professionnelle - Interprétation des lois - Droit transitoire - La Cour d'appel a-t-elle erré en droit en privant les tribunaux judiciaires spécialisés du droit de juger toutes questions de droit transitoire et, par extension, toutes questions de procédure émanant de législations concernant les organismes sur lesquels les tribunaux judiciaires spécialisés ont juridiction - La Cour d'appel a-t-elle erré en droit en interprétant l'article 12 de la *Loi d'interprétation*, L.R.Q., ch. I-16, comme l'autorisant à appliquer *mutatis mutandis* des dispositions s'appliquant à d'autres corporations professionnelles que celle du Barreau - La Cour d'appel a-t-elle erré en droit en décidant comme elle l'a fait alors que le législateur avait décidé de créer un régime spécial pour les membres du Barreau, accusés d'un acte criminel, en référant leur cas non pas, comme pour les autres professions, à un comité de discipline, mais bien en le confiant au Bureau de l'Ordre des avocats lui-même - La Cour d'appel a-t-elle erré en généralisant la situation du requérant-appelant, alors qu'il s'agit d'un cas d'espèce : situation que le Tribunal des professions avait bien saisie?

HISTORIQUE PROCÉDURAL

Le 10 septembre 1996 Cour supérieure du Québec (Guthrie j.c.s.)	Requête en révision judiciaire d'un jugement du Tribunal des professions accueillie
Le 8 novembre 1999 Cour d'appel du Québec (Rousseau-Houle, Chamberland et Forget jj.c.a.)	Appel rejeté
Le 7 janvier 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Groupe Tremca inc. et Jagna Limited

c. (27657)

Techno Bloc inc. (C.A.F.)(Qué.)

NATURE DE LA CAUSE

Droit des professions - Avocats et procureurs - Conflit d'intérêts - La Cour d'appel fédérale a-t-elle erré en ne tenant pas compte du droit fondamental d'un justiciable de ne pas être privé sans raison valable de son droit de retenir les services de l'avocat de son choix? - La Cour d'appel fédérale a-t-elle erré en ne traitant pas de la renonciation de l'intimée à soulever le conflit d'intérêts? - La Cour d'appel fédérale a-t-elle erré en ne reconnaissant pas qu'il y avait eu renonciation à soulever le conflit d'intérêts dans le présent dossier? - *Succession MacDonald c. Martin*, [1990] 3 R.C.S. 1235.

HISTORIQUE PROCÉDURAL

Le 15 octobre 1998 Cour fédérale du Canada, Section de première instance (Blais j.)	Appel contre la décision du protonotaire accueilli: procureurs des demanderesses déclarés inhabiles à les représenter en raison d'un conflit d'intérêts
Le 10 novembre 1999 Cour d'appel fédérale (Décary, Létourneau et Noël jj.c.a.)	Appel rejeté
Le 7 janvier 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Kenneth M. Narvey

v. (27785)

The Minister of Citizenship and Immigration and Johann Dueck (F.C.A.)

NATURE OF THE CASE

Procedural law - Clarification - Clarification of Order - Inherent power of a court to clarify an order notwithstanding the absence of specific rules - Representation of a group by a non-solicitor - Did the Federal Court of Appeal err by refusing to issue clarification of its reasons in a previous decision?

PROCEDURAL HISTORY

December 21, 1998 Federal Court of Canada (Trial Division) (Noël J.)	Decision: Respondent Dueck allowed to keep his citizenship
March 16, 1999 Federal Court of Canada (Trial Division) (Noël J.)	Motions by the Coalition and the Applicant for standing to seek reconsideration of the Order and clarification of the reasons of the Trial Division, dismissed
September 3, 1999 Federal Court of Appeal (Desjardins J.)	Motion by the Coalition and the Applicant for leave to be represented by the Applicant rather than by a solicitor, and for leave for the Applicant, to act in person rather than be represented by a solicitor in that capacity, dismissed
November 5, 1999 Federal Court of Appeal (Desjardins J.)	Motion for clarification of stated reasons of September 3rd, 1999 dismissed
March 6, 2000 Supreme Court of Canada	Application for an extension of time to file a leave application and application for leave to appeal filed

CORAM: Gonthier, Binnie and Arbour JJ. /
Les juges Gonthier, Binnie et Arbour

Alexander William Hart

v. (27784)

Her Majesty the Queen (Crim.)(N.S.)

NATURE OF THE CASE

Canadian *Charter* - Criminal - Criminal law - Right to a fair trial - Right to make full answer and defence - Cross-examination of a largely unresponsive child witness - Whether the Court of Appeal erred in its characterization of the common law rule regarding the admission of evidence of a non-responsive witness, especially a non-responsive child witness - Whether the Court of Appeal erred in failing to require a proper inquiry into the fairness of the trial process by the trial judge - Whether the Court of Appeal erred in failing to conduct its own inquiry into the fairness of the trial process - If so, whether these failures violated the Applicant's *Charter* rights under ss. 7 and 11(d) - Whether the Court of Appeal erred in failing to consider the competence of counsel at trial where trial counsel had carriage of the appeal?

PROCEDURAL HISTORY

April 6, 1998 Supreme Court of Nova Scotia	Applicant convicted on two counts of sexual assault and

(MacDonald J.)	one of sexual touching contrary to ss. 271 and 151(a) of the *Criminal Code*
February 19, 1999 Nova Scotia Court of Appeal (Cromwell, Roscoe and Bateman JJ.A.)	Appeal dismissed
March 3, 2000 Supreme Court of Canada	Application for leave to appeal and motion for extension of time filed

Tai Huan Do

c. (27805)

Sa Majesté la Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit criminel - Preuve - Admissibilité de déclarations - La Cour d'appel a-t-elle commis une erreur en maintenant que le juge de première instance pouvait juger comme libre et volontaire une déclaration verbale de cinq heures sans prise de notes ni enregistrement? - La Cour d'appel a-t-elle commis une erreur en maintenant que le juge de première instance pouvait juger comme libre et volontaire qu'une déclaration verbale de cinq heures pendant la nuit, sans notes ni enregistrement, ne viole pas le droit au silence ni le droit à une défense pleine et entière de l'article 7 de la *Charte* ni le droit à l'avocat de l'article 10*b*) de la *Charte*? - La Cour d'appel a-t-elle commis une erreur en ne considérant pas que les erreurs manifestes du juge du procès l'ont empêché de saisir un aspect important de la preuve entraînant ainsi un verdict déraisonnable? - La Cour d'appel du Québec et la Cour du Québec ont-elles erré en droit en refusant la demande d'arrêt des procédures au motif du manquement du ministère public de divulguer à la défense l'identité d'un témoin à charge? - Le juge de première instance a-t-il manifestement erré en déclarant comme libre et volontaire la déclaration du demandeur au syndic de son ordre professionnel, car cette déclaration était imposée par le *Code des professions du Québec*, sous peine de sanction pénale et disciplinaire?

HISTORIQUE PROCÉDURAL

Le 31 octobre 1997 Cour du Québec (Morier j.)	Déclaration de culpabilité: un chef d'agression sexuelle et un chef d'administration d'une drogue contrairement à l'article 271(1)*a*) et 246*b*) du *Code criminel*
Le 24 janvier 2000 Cour d'appel du Québec (Rothman, Deschamps, et Nuss jj.c.a.)	Appel rejeté
Le 17 mars 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Walter Schepanow

v. (27733)

**Her Majesty the Queen in Right of Ontario,
Bohdan Zarowsky and Eugenia Karnauh (Executors of the Estate of Peter Starodub),
Mitchell Bardyn Zalucky - Ihor Bardyn, Victor Lishchyna, Yaroslav Mikitchook,
McMillan Binch - Brad Hanna, John Tamming, Markle May Phibbs - Richard Evenson,
Dundalk District Credit Union Limited, Canadian Imperial Bank of Commerce,
Bank of Montreal and Attorney General of Canada (F.C.A.) (Ont.)**

NATURE OF THE CASE

Canadian *Charter* - Civil - Section 24 relief - Procedural law - Courts - Jurisdiction - Actions found outside jurisdiction of Court - Appeal from orders declaring actions to be vexatious - Whether Federal Court of Appeal erred in refusing to consider that the Applicant's *Charter* damages tort, ground in the tort of conspiracy, was "new law" - Whether legal argument ought to have been allowed - Whether Federal Court of Appeal erred by re-inventing the "burden of proof" and the principles of fundamental justice to deny the relief sought under Section 24 of the *Charter* - Whether the Ontario Court of Appeal and the Federal Court of Appeal "vacated the field" rather than provide a recorded ruling on the Applicant's *Charter* damages tort - Whether the Federal Court, Trial Division and the Federal Court of Appeal violated the Applicant's *Charter* rights guaranteed under ss. 2, 7, 11(*d*), and 15(1) - Whether the Federal Court of Appeal finding that the Applicant was vexatious was proper given that the Ontario Court of Appeal had ruled that the Applicant's conduct and actions were not vexatious in accessing the Estates and Trust Acts.

PROCEDURAL HISTORY

October 5, 1998 Federal Court of Canada, Trial Division (McKeown J.)	Motions by Respondents granted: Applicant's action dismissed (*note: there are five separate orders dismissing the action following separate motions by four individual respondents and a group of the other respondents - see p. 110-119)
August 18, 1999 Federal Court of Appeal (Décary, Linden and Rothstein JJ.A.)	Motions by Respondents granted: Applicant's appeals quashed
December 6, 1999 Federal Court of Appeal (Rothstein J.A.)	Application by Applicant for an order setting aside the orders quashing his appeals dismissed
December 7, 1999 Federal Court of Appeal (Linden, Rothstein and Malone JJ.A.)	Application by Respondent Her Majesty the Queen for an order quashing the Applicant's appeal granted
February 1, 2000 Supreme Court of Canada	Application for leave to appeal filed

Jamshid Farhadi

v. (27955)

The Minister of Citizenship & Immigration (F.C.A.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Immigration law - Judicial review - Natural and fundamental justice - Determination that the Applicant constituted a danger to the public in Canada - Removal decision made by an expulsions officer - What is nature and scope of the protection against torture afforded to persons under Canadian law? - What is the manner in which societal and individual interests are assessed in the context of the principles of fundamental justice under s. 7 and in the context of the establishment of a justification for a *Charter* right infringement under section 1 of the *Charter of Rights*.

PROCEDURAL HISTORY

March 20, 1998 Federal Court of Canada (Trial Division) (Gibson J.)	Application for judicial review of the May 31, 1996, danger opinion dismissed; Application for judicial review of January 30, 1997, removal decision made by an expulsions officer allowed
May 12, 2000 Federal Court of Appeal (Strayer, Isaac and Sexton JJ.A.)	Appeal allowed
June 5, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Thierry Van Doosselaere, Frans G.A. de Roy, as trustees in bankruptcy of Antwerp Bulkcarriers, N.V.

v. (27905)

Holt Cargo Systems Inc., Container Applications International Inc. (Que.)

NATURE OF THE CASE

International Law - Commercial Law - Conflict of Laws - Bankruptcy - To which Canadian court a request for assistance made by a foreign bankruptcy court should be addressed - Whether judgments of Canadian courts exercising bankruptcy jurisdiction should be paramount where bankruptcy matters are involved, regardless of which Canadian court is first seized - Appropriate judicial response to a request for assistance from a foreign bankruptcy court seeking to adopt a "universal" approach to an international bankruptcy.

PROCEDURAL HISTORY

June 28, 1996 Superior Court of Quebec (Guthrie J.S.C.)	Motions to review, rescind, vary or set aside in part an *ex parte* order and motion to shorten the notice of presentation granted
March 14, 2000 Court of Appeal of Québec (Gendreau, Proulx, and Robert J.C.A.)	Appeal allowed
May 12, 2000 Supreme Court of Canada	Application for leave to appeal filed

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JULY 4, 2000 / LE 4 JUILLET 2000

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

Jean-Guy Fournier

v. (27881)

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

NATURE OF THE CASE

Criminal Law - Evidence - Admissibility of involuntary statements - Defence of dissociation - Trial Court ruling statements involuntary and inadmissible as to whether accused committed the murder but admissible as evidence of the accused's state of mind - Whether statements ruled involuntary can be used to determine whether an accused person possessed the requisite intent for murder.

PROCEDURAL HISTORY

February 26, 1998 Supreme Court of British Columbia (Rowan J.)	Conviction: second degree murder (two counts)
March 2, 2000 Court of Appeal of British Columbia (McEachern C.J., Hall, and Saunders JJ.A.)	Appeal against conviction dismissed
April 28, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Earl Francis Penfold

v. (27794)

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

NATURE OF THE CASE

Canadian *Charter* - Criminal - Unlawful search and seizure (s. 8) - Detention - Excessive force - Search warrant not issued to particular person but to police force at a city - Police dog used in course of search - *Charter* found to be breached and evidence gathered as result of search found to be inadmissible - Whether search warrant issued pursuant to s. 11 of the *Controlled Drugs and Substance Act* is invalid if it is not issued to a named peace officer - Alternatively, whether s. 11 of *Controlled Drugs and Substances Act*, in so far as it relates to searches of dwelling houses, is inconsistent with s. 8 of the *Charter* - Whether physical force used by the police, in particular having a police dog attack the applicant, did not constitute excessive force in the circumstances - Whether, even assuming excessive force, the evidence obtained via the search should not be excluded pursuant to s. 24(2) of the *Charter*.

PROCEDURAL HISTORY

April 12, 1999 Court of Queen's Bench of Alberta (Bielby J.)	Order excluding evidence obtained in violation of the Applicant's rights under s. 8 of the *Charter*
January 14, 2000 Court of Appeal of Alberta (Calgary) (Fraser C.J. and Hunt and Forsyth JJ.A.)	Appeal allowed; new trial ordered
March 9, 2000 Supreme Court of Canada	Application for leave to appeal filed

Russell Kalashnikoff

v. (27803)

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

NATURE OF THE CASE

Criminal law - Narcotics - Evidence - Hearsay - Standard of proof - Where an accused is charged with trafficking in cocaine, whether Crown must prove that substance is in fact cocaine - Whether it is proper to forego the usual rules for the admissibility of hearsay evidence in a criminal trial because it would be inconvenient and expensive to abide by the usual rules - Whether the onus and standard of proof in a criminal proceeding require that the Crown establish beyond a reasonable doubt that the evidence it tenders in Court is that same evidence that was seized by the police in the course of the investigation?

PROCEDURAL HISTORY

November 5, 1998 Provincial Court of British Columbia (Howard P.C.J.)	Applicant convicted of one count of trafficking in a narcotic
March 2, 2000 Court of Appeal for British Columbia (McEachern C.J.B.C., Southin, and Donald JJ.A.)	Appeal dismissed
March 16, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Greater Europe Mission (Canada)

v. (27696)

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

NATURE OF THE CASE

Taxation - Assessment - *Excise Tax Act*, R.S.C., 1985, c. E-15, Part IX- Charities - Whether s. 260 of the GST legislation is incapable of literal application and is ambiguous, such that it must be interpreted having regard to the scheme of that legislation as it relates to exported services and goods and the intent of Parliament - Whether services received by a charity in Canada are capable of being "exported" within the meaning of s. 260(1)(c) - Whether services received by a charity in Canada and which directly support the charity's overseas charitable activities are "exported" within the meaning of s. 260(1)(c) - Whether services received by a charity in Canada in the course of exporting property overseas are "exported" within the meaning of s. 260(1)(c) - Whether services performed outside Canada in the course of administering an overseas charitable activity are for "charitable purposes outside Canada" within the meaning of s. 260(1)(c).

PROCEDURAL HISTORY

October 23, 1996 Tax Court of Canada (Hamlyn J.T.C.C.)	Applicant's appeals from assessments made under the *Excise Tax Act* dismissed with one set of costs awarded to Respondent
November 10, 1999 Federal Court of Appeal (Strayer, Robertson, and Rothstein JJ.A.)	Appeal dismissed without costs
January 10, 2000 Supreme Court of Canada	Application for leave to appeal filed

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World Relief Canada

v. (27694)

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

NATURE OF THE CASE

Taxation - Assessment - *Excise Tax Act*, R.S.C., 1985, c. E-15, Part IX - Charities - Whether s. 260 of the GST legislation is incapable of literal application and is ambiguous, such that it must be interpreted having regard to the scheme of that legislation as it relates to exported services and goods and the intent of Parliament - Whether services received by a charity in Canada are capable of being "exported" within the meaning of s. 260(1)(c) - Whether services received by a charity in Canada and which directly support the charity's overseas charitable activities are "exported" within the meaning of s. 260(1)(c) - Whether services received by a charity in Canada in the course of exporting property overseas are "exported" within the meaning of s. 260(1)(c) - Whether services performed outside Canada in the course of administering an overseas charitable activity are for "charitable purposes outside Canada" within the meaning of s. 260(1)(c).

PROCEDURAL HISTORY

October 18, 1996 Tax Court of Canada (Hamlyn J.T.C.C.)	Applicant's appeal from assessment made under the *Excise Tax Act* dismissed with one set of costs awarded to the Respondent
November 10, 1999 Federal Court of Appeal (Strayer , Robertson and Rothstein JJ.A.)	Appeal dismissed without costs
January 10, 2000 Supreme Court of Canada	Application for leave to appeal filed

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

Joan Mohammed

v. (27690)

Her Majesty the Queen in Right of Canada as represented by Treasury Board (F.C.A.)

AND BETWEEN:

Rose O'Hagan, Susan Field, Janice Nachtegaele, Edith Nelson

v. (27690)

Attorney General of Canada (Solicitor General-Correctional Service of Canada) (F.C.A.)

AND BETWEEN:

Ross Robert Boutilier

v. (27690)

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

NATURE OF THE CASE

Labour Law - Statutes - Interpretation - Collective agreement - Grievance - Administrative procedure for redress - Whether grievances with human rights aspects may be referred to adjudication under the *Public Service Staff Relations Act* - *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35, ss. 91, 92 - *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.

PROCEDURAL HISTORY

October 30, 1995 Public Service Staff Relations Board (A.S. Burke, Board Member)	File O'Hagan: Grievances dismissed for lack of jurisdiction
April 15, 1997 Public Service Staff Relations Board (P.Chodos, Deputy Chairperson)	File Mohammed: Grievance dismissed for lack of jurisdiction
June 4, 1997 Public Service Staff Relations Board (Y. Tarte, Chairperson)	File Boutilier: Grievance allowed
June 16, 1998 Federal Court of Canada, Trial Division (Cullen J.)	File Mohammed: Application for judicial review dismissed
November 13, 1998 Federal Court of Canada, Trial Division (McGillis J.)	File Boutilier: Application for judicial review allowed
January 11, 1999 Federal Court of Canada, Trial Division (Wetston J.)	File O'Hagan: Application for judicial review dismissed
December 2, 1999 Federal Court of Appeal (Stone, Linden, and Sexton JJ.A.)	Appeals dismissed
January 5, 2000 Supreme Court of Canada	File Mohammed: Application for leave to appeal filed
January 31, 2000 Supreme Court of Canada	File O'Hagan: Application for leave to appeal filed
January 31, 2000 Supreme Court of Canada	File Boutilier: Application for leave to appeal filed

Lévesque Automobile Limitée

c. (27730)

Adéodat Denis et Me Robert Levac (Qué.)

NATURE DE LA CAUSE

Droit du travail - Employeur et employé - Plainte de congédiement sans cause juste et suffisante - La Cour d'appel a–t-elle erré en modifiant la décision du juge de la Cour supérieure sans faire état d'aucune erreur de la part de ce dernier dans sa décision qui, à l'aide de raisons spécifiques, cassait celle du Commissaire du travail? - La Cour d'appel a-t-elle erré en ordonnant à la demanderesse de réintégrer l'employé dans son emploi malgré la fermeture de l'entreprise? - La Cour d'appel a-t-elle erré en retournant le dossier au Commissaire pour qu'il dispose de la question de l'indemnité étant donné l'erreur manifestement déraisonnable quant à la somme à payer mais tout en déterminant à l'avance ladite somme? - La Cour d'appel a-t-elle erré en ne faisant aucunement état des allégations de l'employeur du non-respect des règles de justice naturelle par le Commissaire quant à l'empêchement de l'employeur de présenter une preuve et quant à l'attitude cavalière et non respectueuse et empreinte de partialité de la part du Commissaire?

HISTORIQUE PROCÉDURAL

Le 5 février 1996 Cour supérieure du Québec (Barakett j.c.s)	Requête en révision judiciaire accueillie; décision du Commissaire général du travail cassée; plainte de congédiement en vertu de l'art. 124 de la *Loi sur les normes du travail* rejetée
Le 3 décembre 1999 Cour d'appel du Québec (Rousseau-Houle, Thibault et Biron [*ad hoc*] jj.c.a.)	Pourvoi accueilli en parti
Le 31 janvier 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Elio Cannella, Kelly Ann Kennedy, Anita Patel, Lenino Siciliano (by his litigation guardian Massimo Siciliano) and Monica Wright

v. (27705)

The Toronto Transit Commission and the City of Toronto (Ont.)

NATURE OF THE CASE

Canadian Charter - Civil - Right to equality - Public transportation - Respondent Transit Commission operating Wheel-Trans, a specialized door-to-door service for persons unable to use conventional transit - Applicants found by Commission to be ineligible for Wheel-Trans under new criteria adopted in 1996 - Divisional Court dismissing Applicants' motion to quash Commission's decision - Whether Divisional Court erred in failing to find that Applicants suffered an infringement of their rights under s. 15 and/or s. 7 of the *Canadian Charter of Rights and Freedoms*.

PROCEDURAL HISTORY

June 18, 1999 Ontario Superior Court of Justice (Divisional Court)	Application for an order quashing the Respondent Toronto

(Southey, Coo and J. Macdonald JJ.)	Transit Commission's decision denying eligibility for services dismissed
November 19, 1999 Court of Appeal for Ontario (Finlayson, Weiler and Moldaver JJ.A.)	Motion for leave to appeal dismissed
January 14, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Rashid Aziz

v. (27824)

United Used Auto & Truck Parts Ltd., VECW Industries Ltd., Seiler Holdings Ltd. and United Used Auto Parts (Storage Div.) Ltd., Ernst & Young Inc., Canadian Western Bank, Century Services Inc., Royal Bank of Canada, Clarica Life Insurance Company, City of Surrey, Her Majesty the Queen in Right of Canada, International Union of Operating Engineers and Local 115 (B.C.)

NATURE OF THE CASE

Commercial law - Creditor and debtor - Priorities - Cured lenders obtaining order to sell mortgaged lands of operating business - Stay of execution enforcement proceedings granted under *Companies' Creditors Arrangement Act* - Application to set aside the *ex parte* Initial Stay Order dismissed and priority granted with respect to certain expenses of Monitor and Petitioners - Application to set aside the *ex parte* Initial Stay Order dismissed - Whether a court has jurisdiction to grant priority to funding for a reorganization under the *CCAA* ahead of secured creditors without their consent.

PROCEDURAL HISTORY

November 8, 1999 Supreme Court of British Columbia (Tysoe J.)	Order: Application for an *ex parte* order under the *Companies' Creditors Arrangement Act* staying all execution enforcement proceedings against the Respondents granted
November 19, 1999 Supreme Court of British Columbia (Tysoe J.)	Order: Application to set aside the *ex parte* Initial Stay Order dismissed
January 27, 2000 Court of Appeal of British Columbia (Rowles, Prowse, and Mackenzie JJ.A.)	Appeal dismissed
March 27, 2000 Supreme Court of Canada	Application for leave to appeal filed

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**CORAM: Gonthier, Binnie and Arbour JJ. /
Les juges Gonthier, Binnie et Arbour**

Clément Mukoko Mbaka Mankwe

c. (27791)

Sa Majesté la Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Procès - Procédure - Récusation motivée - Préjugés raciaux - La Cour d'appel a-t-elle erré en décidant que le demandeur n'a pas établi, par le biais de la connaissance d'office, l'existence de possibilité réaliste de préjugés dans la communauté à l'encontre des personnes de race noire ? - La Cour d'appel a-t-elle erré en décidant que le demandeur n'a pas démontré qu'il n'avait pas eu droit à l'assistance d'un avocat conformément à l'article 10*b*) de la *Charte canadienne des droits et libertés* et que, conséquemment, la preuve obtenue suite à cette violation n'avait pas à être exclue en vertu du par. 24(2) de la *Charte* ?

HISTORIQUE PROCÉDURAL

Le 19 septembre 1997 Cour supérieure du Québec (Hébert j.c.s.)	Requête en récusation pour cause rejetée
Le 11 janvier 2000 Cour d'appel du Québec (Rothman, Deschamps et Otis jj.c.a.)	Appel rejeté
Le 13 mars 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Dr. Arif Hayat

v. (27698)

Faculty of Dentistry, University of Toronto (Ont.)

NATURE OF THE CASE

Administrative law - Judicial review - Colleges & universities - Did the Court of Appeal owe a greater degree of judicial deference the Divisional Court's decision in judicial review? - What is the appropriate standard of review of a tribunal that exercises a statutory power of decision when it defines the scope of its jurisdiction? - Did the Tribunal act without jurisdiction or err in law when it decided that in reaching its decision, it was not bound to require compliance with the terms of the grading policy, and that it could approve of a change in the methods of evaluation that was not permitted by the Policy? - Was it manifestly unfair to require that the Applicant successfully complete a further evaluation process, after he had successfully completed the announced and established evaluations?

PROCEDURAL HISTORY

May 5, 1998 Academic Appeals Committee of the Governing Council of the University of Toronto (Scan, Coleman, Grisé, Lomic, and Robins)	Decision: Respondent was within its rights to schedule the written examination which was set in accordance with the information sheet distributed to the first year orthodontic residents

December 14, 1998 Ontario Court of Justice - Divisional Court (Rosenberg, Haley, and Forestell JJ .)	Action in judicial review allowed: Committee decision quashed; Writ of *mandamus* issued compelling University to confer a diploma in orthodontics to Applicant
November 10, 1999 Court of Appeal for Ontario (Doherty, Charron, Borins JJ.A.)	Appeal allowed: judgment of Divisional Court set aside and decision of Committee restored
January 10, 2000 Supreme Court of Canada	Application for leave to appeal filed

The Friends of the West Country Association

v. (27644)

Minister of Fisheries and Oceans and
Director, Marine Programs, Canadian Coast Guard (F.C.A.)

NATURE OF THE CASE

Administrative law - Judicial review - Statutes - Interpretation - Whether the Court of Appeal erred in concluding that a federal environmental assessment should focus on a consideration of environmental effects that are within federal jurisdiction - Whether the Court of Appeal erred in determining that s.15 of the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37, as amended, does not require an environmental assessment to consider all interdependent parts of a project - Whether the Court of Appeal erred in refusing to rule on the Applicant's arguments concerning s. 15(1) of *CEAA*, based on its finding that the Applicant was required to cross-appeal - Whether the Court of Appeal erred in interpreting s. 16(3) of the *CEAA* in a manner that confers discretion on federal authorities to disregard cumulative environmental effects which otherwise fall within the mandatory requirements of s. 16(1)(a).

PROCEDURAL HISTORY

July 7, 1998 Federal Court of Canada, Trial Division (Gibson J.)	Order: application for judicial review allowed
October 12, 1999 Federal Court of Appeal (Linden, Rothstein, and McDonald JJ.A.)	Appeal dismissed, matter remitted to the Canadian Coast Guard for redetermination in accordance with lower court and appellate reasons
December 13, 1999 Supreme Court of Canada	Application for leave to appeal filed

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John Hollick

v. (27699)

The City of Toronto (Ont.)

NATURE OF THE CASE

Procedural law - Action - Application for Certification of Act as a Class Proceeding - *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 5 - Whether the Court of Appeal erred in law in denying certification - Whether the Court of Appeal erred in concluding that this case raised no "common issues" - Whether a class action for environmental pollution is inherently unmanageable - Whether the Court of Appeal erred in failing to follow the case law - Whether the claim for public nuisance by definition is appropriate for a class action - Whether the court has a discretion to deny certification on grounds other than those expressly stated in s. 5 of the *Act*.

PROCEDURAL HISTORY

March 30, 1998 Ontario Court of Justice (General Division) (Jenkins J.)	Motion for certification as a class action granted with fixed costs
December 17, 1998 Ontario Court of Justice (Divisional Court) (O'Leary, Flinn, and Sedgwick JJ.)	Appeal allowed; cross-appeal dismissed
December 15, 1999 Court of Appeal for Ontario (Carthy, Goudge, and Feldman JJ.A)	Appeal dismissed
January 11, 2000 Supreme Court of Canada	Application for leave to appeal filed

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JULY 10, 2000 / LE 10 JUILLET 2000

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

Konrad Kovacevic

v. (27886)

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

NATURE OF THE CASE

Criminal law - Reasonable doubt - Whether the Court of Appeal erred in law in concluding that the instruction that the learned trial judge gave to the jury on the meaning of reasonable doubt was correct and in accordance with this Court's decision in *Regina v. Lifchus*, [1997] 3 S.C.R. 320 - Whether there are conflicting appellate court decisions on the issue of the "inarticulate juror" instruction - Whether the "in the system" doctrine as set out by the Court in *Regina v. Wigman*, [1987] 1 S.C.R. 246 and *Regina v. Thomas*, [1990] 1 S.C.R. 713 applies.

PROCEDURAL HISTORY

June 17, 1996 Supreme Court of British Columbia (Low J.)	Applicant convicted on charges of incest, indecent assault and gross indecency
March 8, 2000 Court of Appeal for British Columbia (Esson, Rowles, Newbury, Braidwood and Hall JJ.A.)	Appeal dismissed
May 3, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Frederick W. L. Black

v. (27837)

Her Majesty the Queen (Crim.)(N.S.)

NATURE OF THE CASE

Criminal law - Procedure - Appeal of interlocutory decisions - Whether the Nova Scotia Court of Appeal erred by failing to apply the *Canadian Charter of Rights and Freedoms* in relation to the *Criminal Code* in a clear case of abuse of process of police powers and an abuse in the process of the administration of justice.

PROCEDURAL HISTORY

October 6, 1999 Nova Scotia Supreme Court (Kennedy C.J.S.C.)	Motion for disclosure of additional information and documentation dismissed
February 1, 2000 Nova Scotia Court of Appeal (Freeman, Roscoe, and Bateman JJ.A.)	Application to quash the notice of appeal allowed
April 3, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Daigeun Rhee

v. (27863)

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

NATURE OF THE CASE

Criminal law - Whether the majority of the Court of Appeal erred in law in finding that the learned trial judge had not committed reversible error in his definition of reasonable doubt to the jury - Whether the Court of Appeal erred in law in regards to the issue of the retroactivity of "incremental" changes in the law - Whether the Court of Appeal, by refusing to follow appellate authority from Ontario, effectively created a "dual standard" for jury charges in Canada contrary to the principles of fundamental justice enshrined in section 7 of the *Canadian Charter of Rights and Freedoms*.

PROCEDURAL HISTORY

February 28, 1997 Supreme Court of British Columbia (Lowry J.)	Conviction: 1 count of attempted murder, 1 count of assault causing bodily harm
March 8, 2000 Court of Appeal of British Columbia (Esson J.A., Rowles J.A.[*dissenting*], Newbury J.A. [*dissenting*] Braidwood and Hall JJ.A)	Appeal dismissed
April 18, 2000 Supreme Court of Canada	Notice of appeal as of right filed
May 8, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Royal Donald McCormack

v. (27793)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Statutes - Interpretation - Whether the warrantless search of the Applicant's apartment was authorized by s. 11(7) of the *Controlled Drugs and Substances Act*, R.S.C. 1996, c. 19 - *R. v. Silveira*, [1995] 2 S.C.R. 297.

PROCEDURAL HISTORY

August 31, 1998 Provincial Court of British Columbia (Stone P.C.J.)	Conviction: unlawfully possessing cocaine for the purpose of trafficking; possession of a restricted weapon (2 counts)
January 25, 2000 Court of Appeal for British Columbia (Ryan, Saunders, Proudfoot, JJ.A.)	Appeal dismissed
March 8, 2000 Supreme Court of Canada	Application for leave to appeal filed

Molson Breweries, A Partnership

v. (27839)

John Labatt Limited and Labatt Brewing Company Limited (F.C.A) (Ont.)

NATURE OF THE CASE

Property law - Trade marks - Registrability - Distinctiveness - The word "EXPORT" found not to be distinctive of the Applicant's brewed alcoholic beverage - Whether the word "EXPORT" was correctly seen as not registrable by the Court of Appeal - Whether the Court of Appeal should have considered whether the word "EXPORT" possesses a separate significance for trade-mark purposes, notwithstanding the fact that it is displayed with the house mark "MOLSON" - Whether the Court of Appeal should have given weight to an admission against interest by the Respondents - Whether the Court of Appeal should have given weight to the Applicant's uncontradicted evidence of acquired distinctiveness - Whether that evidence was self-serving - Whether the Court of Appeal should have deferred to the lower court's findings of fact on the question of acquired distinctiveness.

PROCEDURAL HISTORY

June 25, 1998 Federal Court of Canada, Trial Division (Tremblay-Lamer J.)	Appeal from Registrar of Trade-marks' decision not to allow registration granted
February 3, 2000 Federal Court of Appeal	Appeal allowed

(Isaac [dissenting], Létourneau and Rothstein JJ.A.)

April 3, 2000
Supreme Court of Canada

Application for leave to appeal filed

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

Robert Blaine Tews

v. (27734)

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

NATURE OF THE CASE

Criminal Law - Evidence - Waiver of *voir dire* - Whether the Court of Appeal erred in holding that the Applicant's statements to the police be admitted as evidence without the necessity of a waiver directly from the accused - Whether the Court of Appeal erred in holding that there was no obligation on the Crown to establish on the record that the Applicant waived the right to have a *voir dire* to determine the voluntariness of the Applicant's statement

PROCEDURAL HISTORY

June 26, 1997
Court of Queen's Bench of Manitoba
(Hewak C.J.)

Conviction: three counts of first degree murder
Sentence: life imprisonment with no eligibility for parole for twenty-five years

March 17, 1999
Court of Appeal of Manitoba
(Scott C.J., Helper and Monnin JJ.A.)

Appeal from conviction dismissed

January 18, 2000
Supreme Court of Canada

Motion for extension of time filed

April 7, 2000
Supreme Court of Canada

Application for leave to appeal filed

Her Majesty the Queen

v. (27788)

Jacques Cinous (Crim.)(Que.)

NATURE OF THE CASE

Criminal law - Trial - Instructions to the jury - Self-defence - Whether the Court of Appeal erred in deciding that the principles established in *R. v. Lavallée*, [1990] 1 S.C.R. 852 apply in circumstances where a person intentionally kills another in the absence of an assault, and in the presence of a clear opportunity to flee, thus allowing the claim of self-defence in section 34(2) to excuse a pre-emptive strike - Whether the Court of Appeal erred in the test to be applied in determining whether there was an air of reality sufficient to ground the defence of self-defence.

PROCEDURAL HISTORY

October 21, 1995 Superior Court of Quebec (Viau J.S.C.)	Conviction: second degree murder
January 6, 2000 Court of Appeal of Québec (Montréal) (Gendreau, Deschamps and Biron [*ad hoc*] JJ.A.)	Appeal allowed and a new trial ordered on a charge of second degree murder
March 6, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Réjean Vachon

c. (27703)

Caisse Desjardins Lachine/St-Pierre (Qué.)

NATURE DE LA CAUSE

Procédure - Droit commercial - Procédure civile - Chose jugée - Appel à caractère abusif ou dilatoire - Obligation de conseil et de loyauté d'une caisse populaire - La Cour d'appel a-t-elle erré en droit en concluant à un appel abusif ou dilatoire? - La Cour d'appel a-t-elle erré en droit en concluant qu'il y avait chose jugée? - La Cour d'appel a-t-elle erré en droit en refusant de considérer l'entente du 30 mai 1997 du simple fait que le demandeur était en défaut? - *Code de procédure civile*, L.R.Q., ch. C-25, art. 165(1) et 501(5).

HISTORIQUE PROCÉDURAL

Le 13 septembre 1999 Cour supérieure du Québec (Downs j.c.s.)	Action en dommages-intérêts du demandeur rejetée sur une requête en irrecevabilité présentée par l'intimée
Le 15 novembre 1999 Cour d'appel du Québec (Beauregard, Thibault, Denis jj.c.a)	Requête de l'intimée pour rejet d'appel accueillie; appel rejeté
Le 14 janvier 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Sidbec-Dosco (ISPAT) Inc.

c. (27716)

Commission des lésions professionnelles, Jean-Claude Danis

-et-

Raymond Gemme (Qué.)

NATURE DE LA CAUSE

Droit du travail - Droit administratif - Contrôle judiciaire - Norme de contrôle applicable - Accidents du travail - Législation - Interprétation - Mesure discriminatoire - La Commission d'appel en matière de lésions professionnelles a-t-elle excédé sa compétence en important dans le cadre de son interprétation de l'art. 32 de la *Loi sur les accidents du travail et les maladies professionnelles* la notion de discrimination non intentionnelle ou par suite d'un effet préjudiciable introduite par l'arrêt *Andrews c. Law Society of British Columbia*, [1989] 1 R.C.S. 143 rendu en matière de droits et libertés? - La Cour d'appel a-t-elle erré en omettant de considérer l'impact de la référence à l'arrêt *Andrews* sur l'ensemble de la décision R-3 de la Commission d'appel en matière de lésions professionnelles et sur le critère de révision judiciaire applicable? - L'interprétation qu'a donnée la Commission d'appel en matière de lésions professionnelles à la notion de «mesure discriminatoire» retrouvée à l'art. 32 de la *Loi sur les accidents du travail et les maladies professionnelles* et confirmée par la Cour d'appel, est-elle manifestement déraisonnable?

HISTORIQUE PROCÉDURAL

Le 19 février 1996 Commission d'appel en matière de lésions professionnelles (Danis, commissaire)	Appel de la décision du Bureau de révision accueilli; plainte du mis en cause accueillie
Le 25 juin 1996 Cour supérieure du Québec (Croteau j.c.s.)	Requête en révision judiciaire accueillie
Le 26 novembre 1999 Cour d'appel du Québec (Deschamps, Nuss, et Pidgeon jj.c.a.)	Appel accueilli
Le 25 janvier 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Sidbec-Dosco (ISPAT) Inc.

c. (27718)

Commission d'appel en matière de lésions professionnelles et Me Jean-Yves Desjardins

-et-

Clermont Gagné, Michel Cusson, Serge Picard, Bernard Séguin, Giussepe Pichirallo, Robert Powney, Benito Carmosino, Rolland Brabant (Qué.)

NATURE DE LA CAUSE

Droit du travail - Droit administratif - Contrôle judiciaire - Norme de contrôle applicable - Accidents du travail - Législation - Interprétation - Mesure discriminatoire - La Commission d'appel en matière de lésions professionnelles a-t-elle excédé sa compétence en important dans le cadre de son interprétation de l'art. 32 de la *Loi sur les accidents du travail et les maladies professionnelles* la notion de discrimination non intentionnelle ou par suite d'un effet préjudiciable introduite par l'arrêt *Andrews c. Law Society of British Columbia*, [1989] 1 R.C.S. 143 rendu en matière de droits et libertés? - La Cour d'appel a-t-elle erré en omettant de considérer l'impact de la référence à l'arrêt *Andrews* sur l'ensemble de la décision R-3 de la Commission d'appel en matière de lésions professionnelles et sur le critère de révision judiciaire applicable? - L'interprétation qu'a donnée la Commission d'appel en matière de lésions professionnelles à la notion de «mesure discriminatoire» retrouvée à l'art. 32 de la *Loi sur les accidents du travail et les maladies professionnelles* et confirmée par la Cour d'appel, est-elle manifestement déraisonnable?

HISTORIQUE PROCÉDURAL

Le 14 décembre 1995 Commission d'appel en matière de lésions professionnelles (Desjardins, commissaire)	Appels des décisions du Bureau de révision accueillis; plaintes des mis en cause accueillies
Le 24 septembre 1996 Cour supérieure du Québec (Tannenbaum j.c.s.)	Requête en révision judiciaire rejetée
Le 26 novembre 1999 Cour d'appel du Québec (Deschamps, Nuss, et Pidgeon jj.c.a.)	Appel rejeté
Le 25 janvier 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

CORAM: Gonthier, Binnie and Arbour JJ. /
Les juges Gonthier, Binnie et Arbour

Jean-Denis Côté

c. (27656)

Sa Majesté la Reine (C.A.F.)(Qué.)

NATURE DE LA CAUSE

Code civil - Droit fiscal - Régime matrimonial - Régime de la communauté de biens réduite aux acquêts - Droit de propriété sur les biens de la communauté - Gain de capital - Les principes établis dans l'arrêt *Sura* c. *M.N.R.*, [1962] R.C.S. 65 sont-ils toujours applicables? - Lequel des époux doit être imposé sur le gain en capital résultant de la disposition d'actions provenant de la masse commune d'un régime de communauté de biens? - *Code civil du Bas Canada*, art. 1292.

HISTORIQUE PROCÉDURAL

Le 13 novembre 1996 Cour canadienne de l'impôt (Archambault j.c.c.i.)	Appels du demandeur pour les années d'imposition 1988 et 1989 rejetés
Le 10 novembre 1999 Cour d'appel fédérale (Décary, Létourneau et Noël jj.c.a.)	Appel rejeté
Le 7 janvier 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Roger Guignard

c. (27704)

Ville de St-Hyacinthe (Qué.)

NATURE DE LA CAUSE

Charte canadienne - Civil - Libertés publiques - Liberté d'expression - Règlement municipal - Enseigne publicitaire - "Contre-publicité" - Les juridictions inférieures ont-elles erré en droit en concluant que l'article 14.1.5 p) du *Règlement de zonage de la Ville de Saint-Hyacinthe* constituait une violation justifiée de la liberté d'expression du demandeur, à titre de consommateur et au moyen de "contre-publicité"?

HISTORIQUE PROCÉDURAL

Le 30 avril 1997 Cour municipale (St-Hyacinthe) (Lalande j.c.m.)	Demandeur déclaré coupable de violation de l'article 14.1.5 p) du *Règlement de zonage de la Ville de St-Hyacinthe*
Le 8 octobre 1997 Cour supérieure du Québec (chambre criminelle) (Downs j.c.s.)	Appel rejeté
Le 17 novembre 1999 Cour d'appel du Québec (Beauregard, Thibault et Denis [*ad hoc*] jj.c.a.)	Appel rejeté
Le 14 janvier 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Hettema Inc., Visser Potato Ltd.

v. (27755)

Claude & Conrad Toner Ltd. (N.B.)

NATURE OF THE CASE

Commercial law - Contracts - Whether the Court of Appeal erred in law in finding that an inspection by an independent government agency which is required by law amounts to an examination by the Applicant buyers, such that the implied condition of merchantable quality under section 15(b) of the *Sale of Goods Act*, R.S.N.B. 1970, c. S-1 did not apply - Whether the Court of Appeal erred in law in finding reliance by the Applicants on the government inspectors precludes reliance upon the skill of the potato grower, so that the implied condition of reasonably fit for the purpose under section 15(b) of the *Sale of Goods Act* did not apply - Whether the Court of Appeal erred in failing to find a fundamental breach of contract by the Respondent which would allow repudiation of the contract.

PROCEDURAL HISTORY

January 29, 1999 Court of Queen's Bench of New Brunswick (Angers J.)	Applicants' claim for breach of contract and counterclaim for damages dismissed; Respondent's claim for payment allowed
December 13, 1999 Court of Appeal of New Brunswick (Ryan, Turnbull and Larlee JJ.A.)	Appeal dismissed
February 11, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Her Majesty the Queen in Right of the Province of British Columbia

v. (27721)

Leanne Rumley, John Pratt, Sharon Rumley, J.S. and M.M. (B.C.)

NATURE OF THE CASE

Procedural law - Civil procedure - Actions - Class actions - Chambers judge refusing to certify action for damages by former students of residential school for the deaf as a class proceeding under *Class Proceedings Act*, R.S.B.C. 1996, c. 50 - Court of Appeal allowing appeal in part and certifying common issues related to sexual abuse of students at school - Whether Court of Appeal erred in approach it adopted to determining whether allegations raised gave rise to common issues for which certification as a class proceeding was appropriate.

PROCEDURAL HISTORY

October 30, 1998 Supreme Court of British Columbia (Kirkpatrick J.)	Application to certify proceedings as a class action dismissed
November 26, 1999 Court of Appeal for British Columbia (Ryan, Donald and Mackenzie JJ.A.)	Appeal allowed in part; proceeding certified as a class proceeding with a defined class for a common issue related to sexual abuse
January 25, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Attorney General of Canada, Donald Uhrich, Roy Halfyard, Marcel Bujold, Paul Séguin, Janet Ball, Ed Snyder, Allan Bagnall, Ann MacDonald and Robert Bourgeois

v. (27770)

Paul Pleau, Heather Pleau and Adrianna and Paul Phillip Pleau, by their litigation guardian, Heather Pleau (N.S.)

NATURE OF THE CASE

Labour law - Jurisdiction of court - Motion to strike statement of claim - Federal public servant filing tort action against employer and several other employees - Whether statutory grievance procedure available under the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 ousts jurisdiction of court - Whether Court of Appeal erred in failing to prohibit action.

PROCEDURAL HISTORY

May 25, 1999 Supreme Court of Nova Scotia, Trial Division (Hood J.)	Motion to strike out statement of claim dismissed
December 21, 1999 Nova Scotia Court of Appeal (Glube C.J.N.S., Cromwell and Roscoe J.J.A.)	Appeal dismissed
February 18, 2000 Supreme Court of Canada	Application for leave to appeal filed

JULY 17, 2000 / LE 17 JUILLET 2000

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

Anand Rishi Persaud

v. (27771)

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

NATURE OF THE CASE

Criminal law - Evidence - Hearsay - Principled approach to hearsay - Jury charge - Whether the Court of Appeal erred in ruling that the trial judge was correct in admitting into evidence for their truth eight hearsay statements - Whether the Court of Appeal erred in finding that the trial judge acted within his discretion in permitting the hearsay statements to go as exhibits into the jury room for deliberations - Whether the Court of Appeal erred in not concluding that the trial judge's instructions directing the jury how to approach the hearsay statements were inadequate and unfair?

PROCEDURAL HISTORY

July 12, 1996	Applicant convicted of second degree murder and

Ontario Court (General Division) (O'Driscoll J.)	attempted murder
August 17, 1999 Court of Appeal for Ontario (Osborne A.C.J.O., Catzman and Farley [*ad hoc*] JJ.A.)	Appeal against conviction and sentence dismissed
February 18, 2000 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

Margaret K. Witte

v. (27751)

**The Workers' Compensation Board of the Northwest Territories,
The Corporate Board of the Workers' Compensation Board of the Northwest Territories,
Sheila Fullowka, Doreen Shauna Hourie, Tracey Neill,
Judit Pandev, Ella May Carole Riggs, Doreen Vodnoski
and James O'Neil (N.W.T.)**

NATURE OF THE CASE

Administrative law - Judicial review - Standard of review - Bias - Whether the patently unreasonable standard of review or the correctness standard of review applies where an overt and serious conflict of interest is found to exist between the administrative tribunal and one of the parties appearing before it but that administrative tribunal has the exclusive jurisdiction to decide the issue - Whether the legislature may provide for a lower standard of review for certain decisions of a Workers' Compensation Board than the patently unreasonable standard - Whether an administrative tribunal decision which flies in the face of what the legislature has said and which fails to take into account the very broad functions of the legislation is saved merely because the tribunal attributed "some reason" to it - Whether the decision or the process must be patently unreasonable.

PROCEDURAL HISTORY

April 21, 1998 Workers' Compensation Board of the Northwest Territories, Corporate Board (Wray, Chairperson, and Bardak, Kuksuk and Stevely, Members)	Application by Applicant dismissed: the alleged acts or omissions of the Applicant set out in a civil action raised in the Supreme Court of the Northwest Territories are not statute-barred
September 15, 1998 Supreme Court of the Northwest Territories (Veit J.)	Application by Applicant for judicial review allowed: decision of the Board set aside and quashed
December 16, 1999 Court of Appeal of the Northwest Territories (Côté, Picard and Hunt JJ.A.)	Appeal by Respondents allowed: decision of the Board re-instated
February 10, 2000 Supreme Court of Canada	Application for leave to appeal filed
March 7, 2000	Conditional application for leave to cross-appeal filed by

Supreme Court of Canada	Respondent O'Neil
March 8, 2000 Supreme Court of Canada	Conditional application for leave to cross-appeal filed by Respondents Fullowka, Hourie, Neill, Pandev, Riggs and Vodnoski

The Chase Manhattan Bank of Canada

v. (27740)

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

NATURE OF THE CASE

Taxation - Income from a business or property - Deductions - Interest - Loan to subsidiary - Subsidiary of the Applicant sought to deduct interest paid on loan advanced by the Applicant - Whether the interest expense incurred on money borrowed to replace equity with debt financing for a business is deductible as interest incurred for the purpose of earning income - *Income Tax Act*, S.C. 1970-71-72, c. 63, s. 20(1)(c)(i)

PROCEDURAL HISTORY

March 4, 1997 Tax Court of Canada (McArthur J.)	The borrowed funds by the appellant were used to pay a dividend and can not be traced to an income earning use
December 9, 1999 Federal Court of Appeal (Strayer, Létourneau, and Noel JJ.A)	Appeal dismissed
February 4, 2000 Supreme Court of Canada	Application for leave to appeal filed

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

Lawrence Collymore, Kevin Gayle and Maxine Nugent

v. (27526)

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

NATURE OF THE CASE

Canadian Charter, s. 8 - Criminal - Customs - Search and seizure - Seizure of cocaine by Customs officers after unsuccessful attempt by a courier to deliver an imported package led to opening of package, arousal of courier's suspicion, return to Customs officer and search by Customs - -Whether a border search occurred - Whether search and seizure was reasonable - Whether courier had been directed or compelled to return packages to Canada Customs - Whether Customs officer subjectively relied upon *Customs Act* at time of search - Whether Court of Appeal relied on facts contrary to the

findings of trial judge - Whether Respondent met burden under s. 24(2) of *Charter* - *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.), ss. 99(1)(d)(e).

PROCEDURAL HISTORY

April 24, 1996 Ontario Court (General Division) (Matlow J.)	Acquittals of conspiracy to import narcotic, trafficking and possession for trafficking
July 26, 1999 Court of Appeal for Ontario (Brooke, Osborne and Goudge JJ.A.)	Appeal allowed; acquittals set aside, new trial directed
April 3, 2000 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed
April 27, 2000 Supreme Court of Canadan (Gonthier J.)	Motion to extend time deferred to the panel designed to consider the application for leave

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Kenneth MacPherson

v. (27616)

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

NATURE OF THE CASE

Criminal law - Evidence - Jury charge - Whether the Court of Appeal erred in holding that the trial judge did not err in his instructions with respect to reasonable doubt and the burden of proof - Whether the Court of Appeal erred in concluding that the trial judge did not err in his instructions on motive - Whether the Court of Appeal erred in concluding that the expert evidence called by the Crown was admissible and in concluding that the trial Judge did not err in failing to warn the jury of the dangers of relying on that evidence.

PROCEDURAL HISTORY

November 19, 1996 Ontario Court of Justice (General Division) (Quinn J.)	Conviction: arson; sentence of imprisonment of two years less a day
November 10, 1999 Court of Appeal for Ontario (Labrosse, Doherty and Abella JJ.A.)	Appeal dismissed
April 14, 2000 Supreme Court of Canada	Application for leave to appeal filed

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Imperial Oil Limited

v. (27744)

Eric S. Lloyd, Ian C. Murdoch, H.G. Dreyer, Bernard C. Chung, Dale D. Eirich, Norman Douglas Willson, Cameron Ernest Palmer, Colin Lokken Laberge, James A. Coroon, Robert W.W. Hamilton, John MacDonald, Gregory Donald Jones, Brian Evan Dodd, Wayne Biegler, Gilles Fournier, Peter Weir, Roger A. Gallant, Murray Lytle and George Thomas on behalf of themselves and representatives of certain other persons having claims against Imperial Oil Limited (Alta.)

NATURE OF THE CASE

Procedural law - Civil procedure - Actions - Pre-trial procedure - Respondents suing Applicant with respect to variations in two pension plans - Applicant moving for order setting aside service of amended statement of claim and staying action permanently - Motion challenging jurisdiction of Alberta court over subject matter of action on grounds of *res judicata*, issue estoppel, collateral attack and adequate alternative remedy - How do doctrines of *res judicata*, issue estoppel, and collateral attack apply to decisions of administrative tribunals outside criminal law context?

PROCEDURAL HISTORY

April 23, 1999 Court of Queen's Bench of Alberta (O'Byrne J.)	Application for an order setting aside the service of the amended statement of claim and staying the action permanently dismissed
December 9, 1999 Court of Appeal of Alberta (Côté, Fruman and LoVecchio JJ.A.)	Appeal dismissed
February 7, 2000 Supreme Court of Canada	Application for leave to appeal filed

**CORAM: Gonthier, Binnie and Arbour JJ. /
Les juges Gonthier, Binnie et Arbour**

F.C.B.

v. (27868)

Her Majesty the Queen (Crim.)(N.S.)

NATURE OF THE CASE

Canadian Charter - Criminal - Criminal law - Evidence - Disclosure - Lost evidence - Remedies - Stay of proceedings - Applicant charged with gross indecency, incest and indecent assault - Complainant's original handwritten statement unavailable because police file had been destroyed five years after it was closed pursuant to file retention policy in existence at time - Whether Crown's failure to produce original statement constituted breach of Applicant's right to make full answer and defence under ss. 7 and 11(*d*) of *Canadian Charter of Rights and Freedoms* - Whether police file unavailable owing to unacceptable negligence - Whether trial judge erred in ordering stay of proceedings.

PROCEDURAL HISTORY

April 8, 1999	Stay of proceedings against the Applicant ordered

Nova Scotia Provincial Court
(Nichols Prov. Ct. J.)

February 23, 2000
Nova Scotia Court of Appeal
(Roscoe, Bateman and Cromwell JJ.A.)

Appeal allowed; stay of proceedings set aside and new trial ordered

April 20, 2000
Supreme Court of Canada

Application for leave to appeal filed

Her Majesty the Queen

v. (27921)

Kenneth Williamson (Crim.)(Ont.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal Law - Trial - Trial within reasonable time - Delay - Whether the Respondent's constitutional right to be "tried within a reasonable time" was violated in the circumstances of the present case - Whether the Respondent had impliedly waived his rights under s. 11(b) of the *Charter* in connection with the 10 month period of delay from September 26, 1997 to July 20, 1998 - Whether the trial judge erred in the manner in which she assessed the question of whether or not the Respondent suffered any significant "prejudice" as a result of the delay in this case - Whether the trial judge erred in refusing to consider the significance of the complete absence of any "pre-charge delay" in this case when assessing the reasonableness of the period of post-charge delay in this case - *Canadian Charter of Rights and Freedom*, s. 11(b).

PROCEDURAL HISTORY

September 9, 1998
Ontario Court (Provincial Division)
(Hawke J.)

Application for a stay of proceedings granted

April 25, 2000
Court of Appeal for Ontario
(Carthy, Charron and Sharpe JJ.A.)

Appeal dismissed

May 18, 2000
Supreme Court of Canada

Application for leave to appeal filed

Hydro-Québec

c. (27883)

Ville de Hampstead (Qué.)

NATURE DE LA CAUSE

Code civil - Procédure - Couronne - Prescription - Immunités et privilèges de la Couronne - Droit municipal - Recours civil contre une municipalité - Législation - Interprétation - La Cour d'appel a-t-elle erré en droit en statuant que la prescription de six mois, contenue à l'article 586 de la *Loi sur les cités et villes*, est désormais opposable à la Couronne et à ses mandataires, depuis l'entrée en vigueur des articles 2877 et 2925 *C.c.Q.*? - Art. 2877 et 2925 *C.c.Q.*

HISTORIQUE PROCÉDURAL

Le 21 juin 1999 Cour du Québec (Désormeau j.c.q.)	Requête en irrecevabilité rejetée
Le 28 février 2000 Cour d'appel du Québec (Deschamps, Delisle et Denis jj.c.a.)	Appel accueilli
Le 27 avril 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

JUNE 29, 2000 / LE 29 JUIN 2000

27596 **S. BRYANT SMITH - v. - NEW BRUNSWICK HUMAN RIGHTS COMMISSION** (N.B.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - Actions - Civil Procedure - Jurisdiction - *Res judicata* - Whether the Court of Appeal erred by failing to find that the *New Brunswick Human Rights Act* is unconstitutional to the extent that the Act grants the Human Rights Commission with an immunity from legal action - Whether the Court of Appeal erred in failing to determine that governments may not control constitutional procedure through ordinary legislation so as to oust the constitution, the courts and the rule of law.

PROCEDURAL HISTORY

March 1, 1999 Court of Queen's Bench of New Brunswick (Russell J.)	Respondent is not a suable entity; the court does not have jurisdiction, motions dismissed pursuant Rule 23.01(2) (a)
September 22, 1999 Court of Appeal of New Brunswick (Ryan, Drapeau, and Larlee JJ.A)	Appeal dismissed
November 18, 1999 Supreme Court of Canada	Application for leave to appeal filed

27798 **DAVID MARK BLACK - v. - HER MAJESTY THE QUEEN** (B.C.) (Crim.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Whether evidence of actions that occur in response to a Charter breach admissible against the accused - Whether leave to appeal to British Columbia Court of Appeal should have been granted.

PROCEDURAL HISTORY

December 14, 1998 Provincial Court of British Columbia (Hoy P.C.J.)	Conviction: impaired driving, dangerous driving and assaulting a police officer
October 14, 1999 Supreme Court of British Columbia (Blair J.)	Summary conviction appeal from conviction of impaired driving and assaulting a police officer allowed; appeal from conviction of dangerous driving dismissed
January 17, 2000 Court of Appeal of British Columbia (Cumming J.A.)	Application for leave to appeal dismissed
March 13, 2000 Supreme Court of Canada	Application for leave to appeal filed

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27700 **ROLAND FILZMAIER - v. - O.K.W. LIMITED** (Ont.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is dismissed with costs on a solicitor-client basis.

La demande d'autorisation d'appel est rejetée avec dépens sur la base procureur-client.

NATURE OF THE CASE

Procedural law - Courts - Jurisdiction - Judgment and order - Examination in aid of execution - Ontario Court of Appeal has no jurisdiction under *Courts of Justice Act*, R.S.O. 1990, c. C.43, to hear appeals from interlocutory decisions of the Ontario Court (General Division) - Whether the Court of Appeal erred in quashing the appeal because it lacked jurisdiction - Whether the Court of Appeal erred by hearing the appeal pre-maturely.

PROCEDURAL HISTORY

August 26, 1999 Superior Court of Justice (Lalonde J.)	Motion for an order requiring Applicant to attend for re-examination on an Examination in Aid of execution granted
November 12, 1999 Court of Appeal for Ontario (McMurtry C.J.O., Catzman and Charron JJ.A.)	Appeal quashed
January 11, 2000 Supreme Court of Canada	Application for leave to appeal filed

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27640 **BRUCE BRETT, DAVID ROSS AND FELICIA ROSS - v. - HALIFAX REGIONAL MUNICIPALITY, MERLIN AVIATION SERVICES LIMITED, JOHN HAMPSON AND 3013910 NOVA SCOTIA LIMITED** (N.S.)

CORAM: The Chief Justice, Iacobucci and Major 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

Taxation - Statutory interpretation - Leases - The proper principles of statutory interpretation for a taxation statute - Whether a leasehold interest is assessable property pursuant to an assessment statute that defines "assessable property" as "land" without explicitly including "interests in land".

PROCEDURAL HISTORY

June 15, 1999 Supreme Court of Nova Scotia, Trial Division (Oland J.)	Application dismissed
October 14, 1999 Supreme Court of Nova Scotia, Appeal Division (Glube C.J.N.S., Hart and Flinn JJ.A.)	Appeal dismissed
December 13, 1999 Supreme Court of Canada	Application for leave to appeal filed

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27635 **WILLIAM FOOK WAH LIM - v. - HONG KEE LIM** (B.C.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Procedural law - Judgments - Res Judicata - Whether the Court of Appeal's ruling conflicts rulings in other provinces and other jurisdictions - Whether the Court of Appeal's ruling is in direct conflict with opinions expressed in precedents in the British Columbia Court of Appeal - Whether the Court of Appeal's ruling holds that the "Principle of Judicial Economy" should override the Applicant's right to have his action heard.

PROCEDURAL HISTORY

July 31, 1998 Supreme Court of British Columbia (Cole J.)	Motion for summary dismissal of action granted
October 19, 1999 Court of Appeal for British Columbia (Southin, Ryan and Hall JJ.A.)	Appeal dismissed
December 9, 1999	Application for leave to appeal filed

Supreme Court of Canada

27665 **FRIMA OLSZYNKO AND FRANK OLSZYNKO. - v. - ANNE LAROCQUE, BRUCE W. COWTAN, JAMES L. DUGAN AND JUDITH DUGAN** (Ont.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is dismissed with costs to the respondents James L. Dugan and Judith Dugan.

La demande d'autorisation d'appel est rejetée avec dépens en faveur des intimés James L. Dugan et Judith Dugan.

NATURE OF THE CASE

Torts - Appeal - Jury verdict - Motor vehicles - Negligence - Damages - Whether the Court of Appeal erred in law by holding that before a civil jury can be set aside as being perverse, it must be shown to be a dishonest verdict - Whether the Court of Appeal erred in law by failing to deal with a principal ground of appeal - Whether the Court of Appeal erred in law in failing to consider the uncontested and uncontradicted expert evidence showing that the Applicant Frima Olszynko had suffered psychological injuries - Whether the Court of Appeal erred in law relying on the trial judge's finding that there was some evidence to support the jury's verdict.

PROCEDURAL HISTORY

December 15, 1998 Ontario Court of Justice (General Division) (Sedgwick J.)	Action dismissed; motion to set verdict aside dismissed
November 26, 1999 Court of Appeal for Ontario (Finlayson, Weiler and O'Connor JJ.A.)	Appeal dismissed
December 30, 1999 Supreme Court of Canada	Application for leave to appeal filed

27759 **SA MAJESTÉ LA REINE - c. - PETER MAXWELL** (Crim.)(Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit criminel – Appel d'un acquittement – Dans le cas où une Cour d'appel conclut à une erreur de droit au motif que le juge du procès a omis de considérer une preuve pertinente et importante, cette Cour d'appel a-t-elle erré en droit en imposant au ministère public le fardeau additionnel de démontrer que n'eût été de cette erreur, le verdict n'aurait pas nécessairement été le même? - Dans le cas où l'erreur de droit constatée par une Cour d'appel porte sur l'omission de tenir compte d'une preuve pertinente et importante concernant la question ultime à trancher, cette Cour d'appel a-t-elle erré en

droit en ré-évaluant elle-même l'ensemble de la preuve aux fins de se satisfaire que le verdict aurait été nécessairement le même, usurpant ainsi le rôle du juge des faits?

HISTORIQUE PROCÉDURAL

Le 21 octobre 1997 Cour du Québec (Tarasofsky j.c.q.)	Intimé acquitté des infractions prévues aux articles 272 a), 279(2), 264.1(1)a), (2) et 344 du *Code criminel*
Le 15 décembre 1999 Cour d'appel du Québec (Dussault, Pidgeon jj.c.a. et Denis j.c.a. (*ad hoc*))	Pourvoi rejeté
Le 11 février 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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27645 **MICHAEL NIKKANEN - v. - HER MAJESTY THE QUEEN** (Crim.)(Ont.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal Law - Procedural Law - Right to silence - Entering statements to police into evidence - Mistrial or adjournment based on late disclosure of Crown information - Remedying non-disclosure by recalling witness and allowing limited cross-examination.

PROCEDURAL HISTORY

June 6, 1997 Ontario Court of Justice (General Division) (Boyko J.)	Conviction: guilty of sexual assault
October 15, 1999 Court of Appeal for Ontario (Labrosse, Laskin, and O'Connor JJ.A.)	Appeal against conviction dismissed; appeal against sentence of 18 months incarceration granted
December 14, 1999 Supreme Court of Canada	Application for leave to appeal filed

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27638 **RAOUL MARTENS - v. - GULFSTREAM RESOURCES CANADA LIMITED** (Alta.)

CORAM: L'Heureux-Dubé, Bastarache and LeBel 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 - Contracts - Agency - mandate - Interpretation of the terms of the contract - Whether the lower courts erred in law - Whether the lower courts erred in finding that the contract was not ambiguous - Whether the lower courts erred in interpreting the contract and in considering the evidence - Whether the lower courts erred in failing to find the ratified sub-agency agreement binding on the Respondent - Whether there was a palpable or overriding error.

PROCEDURAL HISTORY

May 13, 1998 Court of Queen's Bench of Alberta (Hart J.)	Applicant's action to recover commissions dismissed
October 12, 1999 Court of Appeal of Alberta (Bracco, Hetherington and Sulatycky JJ.A.)	Appeal dismissed
December 10, 1999 Supreme Court of Canada	Application for leave to appeal filed

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27584 **ALEXANDER MacBAIN CAMERON and CHERYL DAWN SMITH - v. - THE ATTORNEY GENERAL OF NOVA SCOTIA, REPRESENTING HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA, THE MINISTER OF HEALTH, THE DEPARTMENT OF HEALTH AND THE ADMINISTRATOR, INSURED PROFESSIONAL SERVICES** (N.S.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian *Charter* - Civil law - Whether *Canada Health* Act requirement of "comprehensiveness demands medical coverage for in vitro fertilization and related treatments - Whether failure of provincial medical insurance scheme to comply with *Canada Health Act* is a justiciable issue - Whether failure to provide medical coverage for in vitro fertilization and intra cytoplasmic sperm injection violates s. 15 of the *Charter* and, if so, whether that discrimination is justifiable pursuant to s. 1 - Whether failure to appoint an appellate tribunal pursuant to s. 7(1) of the Nova Scotia *Health Services and Insurance Act* violates s.7 of the *Charter*.

PROCEDURAL HISTORY

February 5, 1999 Supreme Court of Nova Scotia, Trial Division (Kennedy C.J.)	Application to obtain benefits under the *Health Services and Insurance Act* for non-funded infertility treatments dismissed
September 14, 1999 Nova Scotia Court of Appeal	Appeal dismissed

(Chipman, Pugsley, and Bateman JJ.A.)

November 9, 1999
Supreme Court of Canada

Application for leave to appeal filed

27633 **LE CLUB JURIDIQUE - c. - GÉRALD LAFRENIÈRE** (Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Législation - Interprétation - Article 61 du *Code de procédure civile*, L.R.Q. ch. C-25 - Droit de se représenter seul devant le tribunal - Quel est le sens de l'article 61(e) du *C.p.c.*? - Quelle est la portée des articles 2267 et suivants du *Code civil du Québec*? - Est-ce une question de fait ou de droit?

HISTORIQUE PROCÉDURAL

Le 7 mai 1999 et le 5 juillet 1999 Cour du Québec (Rémillard j.c.q.)	Permission de représenter le Club Juridique par Descôteaux refusée
Le 5 juillet 1999 Cour du Québec (Rémillard j.c.q.)	Condamnation d'Éthier à des dommages-intérêts
Le 6 octobre 1999 Cour d'appel du Québec (Robert j.c.a.)	Requête pour permission d'appeler du jugement du 7 mai 1999 rejetée
Le 13 avril 2000 Cour suprême du Canada (Arbour j.)	Requête pour obtenir une ordonnance prorogeant le délai pour déposer une demande d'autorisation d'appel accueillie
Le 8 décembre 1999 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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27655 **ERNST ZÜNDEL - v. - DON BOUDRIA, RANDY WHITE, BILL BLAIKIE, ELSIE WAYNE, ALEXA McDONOUGH, HEDY FRY, ALFONSO GAGLIANO, PRESTON MANNING, JEAN CHRÉTIEN, GILLES DUCEPPE, PETER MacKAY, THE CANADIAN JEWISH CONGRESS, MOSHE RONEN, THE LIBERAL PARTY OF CANADA, THE REFORM PARTY OF CANADA, THE NEW DEMOCRATIC PARTY, THE PROGRESSIVE CONSERVATIVE PARTY OF CANADA and THE BLOC QUÉBÉCOIS** (Ont.)

CORAM: L'Heureux-Dubé, Bastarache and LeBel 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

Canadian Charter - Civil - Freedom of expression - Parliamentary privilege - Applicant denied admittance to precincts of House of Commons by all-party motion to prevent him from conducting press conference in Parliamentary Press Gallery press conference room - Applicant's statement of claim against Respondent Members of Parliament for violation of his right to freedom of expression guaranteed under s. 2(*b*) of *Canadian Charter of Rights and Freedoms* struck out - Whether Court of Appeal erred in law in finding that statement of claim disclosed no reasonable cause of action.

PROCEDURAL HISTORY

January 22, 1999 Ontario Court (General Division) (Chadwick J.)	Applicant's statement of claim as against Respondents Chrétien, Manning, Duceppe, Wayne, McDonough, Fry, Gagliano, Boudria, White, Blaikie and MacKay struck out
November 10, 1999 Court of Appeal for Ontario (Charron, Rosenberg and MacPherson JJ.A.)	Appeal dismissed
December 16, 1999 Supreme Court of Canada	Application for leave to appeal filed

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27752 **TOMMY TURMEL - c. - SA MAJESTÉ LA REINE** (Crim.)(Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit criminel - Tabac - Saisie - Contrebande - Preuve du contenu - La poursuite pouvait-elle se fonder exclusivement sur la façon dont le produit était emballé et étiqueté pour établir que les cartouches contenaient vraiment du tabac fabriqué? - Le fait que le demandeur n'ait pas témoigné a-t-il été utilisé pour étayer la preuve du ministère public, qui autrement n'établirait pas la culpabilité du demandeur hors de tout doute raisonnable?

HISTORIQUE PROCÉDURAL

Le 26 mai 1997 Cour du Québec (Coupal j.c.q.)	Demandeur déclaré coupable d'avoir possédé du tabac en contravention de l'article 240(1)*b*) de la *Loi sur l'accise*, L.R.C. 1985, ch. E-14
Le 10 novembre 1997 Cour supérieure du Québec (Marx J.)	Appel rejeté

Le 14 décembre 1999 Cour d'appel du Québec (Beaudoin, Fish, and Delisle JJ.A)	Appel rejeté
Le 11 février 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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27717 **HER MAJESTY THE QUEEN - v. - FORD WARD** (Nfld.)

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

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Constitutional law - Division of powers - Whether the Court of Appeal erred in law in holding that the Government of Canada lacked the constitutional authority to enact s. 27 of the *Marine Mammal Regulations* to the *Fisheries Act*.

PROCEDURAL HISTORY

September 16, 1997 Supreme Court of Newfoundland (Trial Division) (Wells J.)	Application dismissed
December 14, 1999 Supreme Court of Newfoundland (Court of Appeal) (O'Neill [dissenting], Marshall and Steele JJ.A.)	Appeal allowed; *Marine Mammal Regulations*, SOR/56-93, s. 27, found *ultra vires*
February 8, 2000 Supreme Court of Canada	Application for leave to appeal filed

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27876 **AZCO MINING INC. - c. - SAM LÉVY ET ASSOCIÉS INC.** (Qué.)

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

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

The application for leave to appeal is granted with costs.

NATURE DE LA CAUSE

Droit commercial - Droit international - Procédures - Faillite - Droit international privé - Exception déclinatoire - Clause d'élection de for - *Forum non conveniens* - La Cour d'appel a-t-elle erré en considérant que la *Loi sur la faillite et l'insolvabilité*, L.R.C. (1985), ch. B-3 (ci-après "la L.F.I."), contient les dispositions attributives de compétence territoriale *(ratione personae)* nécessaires pour permettre au syndic de (a) poursuivre devant le tribunal du district où la faillite a été ouverte, un défendeur qui est domicilié à l'étranger et (b) intenter devant ce même tribunal un recours visant un bien situé

à l'étranger? - La Cour d'appel a-t-elle erré en refusant de recourir aux règles de compétence territoriale établies par le *Code civil du Québec* pour déterminer l'endroit où doit être intentée l'action d'un syndic contre un défendeur étranger ou une action concernant un bien situé à l'étranger? - La Cour d'appel a-t-elle erré en adoptant une règle de compétence territoriale unique qui ne tient aucun compte des critères des arrêts *Morguard Investments Ltd.* c. *De Savoye*, [1990] 3 R.C.S. 1077 et *Hunt* c. *T&N PLC*, [1993] 4 R.C.S. 289 relatifs à l'existence d'un lien réel et substantiel entre le tribunal et l'objet du litige? - La Cour d'appel a-t-elle erré en décidant qu'une clause d'élection de for consentie par la débitrice en faillite est contraire à l'ordre public et inopposable à son syndic à la faillite? - La Cour d'appel a-t-elle erré dans son interprétation de l'article 187(7) L.F.I. et dans l'application qu'elle en a faite? - La Cour d'appel a-t-elle erré en décidant que les principes du *forum non conveniens* ne s'appliquent pas dans un contexte de faillite?

HISTORIQUE PROCÉDURAL

Le 6 mai 1999 Cour supérieure du Québec (Isabelle j.c.s.)	Requête pour transfert de dossier rejetée
Le 21 février 2000 Cour d'appel du Québec (Proulx, Rousseau-Houle et Robert jj.c.a)	Appel rejeté
Le 25 avril 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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27627 **BANCA COMMERCIALE ITALIANA OF CANADA - c. - THE SISTERS OF THE GOOD SHEPHERD OF QUEBEC - LES SOEURS DU BON PASTEUR DE QUÉBEC** (Qué.)

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

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 - Dépens - La Cour d'appel a-t-elle interprété et appliqué de façon erronée l'art. 2761 du *Code civil du Québec*, L.Q. 1991, ch. 64, et plus particulièrement en ce qui concerne la question de savoir si les "frais engagés" incluent les honoraires extrajudiciaires et les honoraires judiciaires? - Lorsqu'il accorde les dépens, le tribunal peut-il compenser les honoraires judiciaires par le montant des honoraires extrajudiciaires remboursés par un défendeur à un demandeur? - La Cour d'appel a-t-elle erré en substituant sa discrétion à celle du premier juge qui avait refusé de mitiger la règle générale suivant laquelle la partie perdante paie les dépens?

HISTORIQUE PROCÉDURAL

Le 13 novembre 1997 Cour supérieure du Québec (Duval Hesler j.c.s.)	Requête en délaissement forcé et pour prise en paiement accueillie pour les frais seulement; intimée condamnée à payer 356 185,80$ en application du *Tarif des honoraires judiciaires des avocats*
Le 13 octobre 1999 Cour d'appel du Québec	Appel accueilli; intimée condamnée aux dépens réduits à 1 125$

(Mailhot, Delisle et Denis [*ad hoc*] jj.c.a.)

Le 8 décembre 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27897 **KIMBERLY VAN de PERRE - v. - THEODORE EDWARDS and VALERIE COOPER EDWARDS** (B.C.)

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

The application for leave to appeal is granted with costs and the stay is extended until the hearing of the appeal.

La demande d'autorisation d'appel est accordée avec dépens et le sursis est prorogé jusqu'à l'audition de l'appel.

JULY 6, 2000 / LE 6 JUILLET 2000

27520 **MIDLAND MORTGAGE CORPORATION v. JAWL & BUNDON AND JERYL J. McLEAN** (B.C.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The motion for an extension of time is granted. The application for leave to appeal is dismissed with costs.

La demande de prorogation de délai est accordée. La demande d'autorisation d'appel est rejetée avec dépens.

NATURE OF THE CASE

Torts - Negligence - Barristers and Solicitors - Duty to third party - Syndicated Financing - Did the Court of Appeal err in determining the proper approach as to whether a solicitor owes a duty of care to a third party who is not a party to the contract of retainer - Whether a solicitor's duty to a client supercedes a duty a solicitor may owe to a third party.

PROCEDURAL HISTORY

February 18, 1997
Supreme Court of British Columbia
(Tysoe J.)

Judgment in favour of the Applicant

March 24, 1999
Court of Appeal for British Columbia
(Southin, Hollinrake and Rowles JJ.A.)

7 day grace period to request further hearing, if no request made appeal shall be allowed

July 27, 1999
Court of Appeal for British Columbia
(Southin, Hollinrake and Rowles JJ.A.)

Supplementary reasons: The appeal is allowed and the Applicant's case is dismissed

September 29, 1999
Supreme Court of Canada

Application for leave to appeal filed

27568 **JOCELYN MARTIN v. MUNICIPALITÉ DE LA PAROISSE DE ST-HUBERT** (Qué.)

CORAM: Le Juge en chef et les juges L'Heureux-Dubé et Bastarache

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit municipal - Municipalités - Tribunaux - Appel - Compétence - Le pouvoir discrétionnaire conféré à la Cour supérieure aux termes de l'article 227 de la *Loi sur l'aménagement et l'urbanisme*, L.R.Q., ch. A-19.1, constitue-t-il un pouvoir général d'appréciation d'éléments de preuve pertinents ou si le pouvoir est limité à la qualification mineure de la dérogation au sens d'une mesure ? - La Cour d'appel a-t-elle commis une erreur en intervenant à l'égard de l'exercice du pouvoir discrétionnaire conféré au juge de première instance par l'article 227 de la *Loi sur l'aménagement et l'urbanisme* lui permettant de refuser d'émettre une ordonnance de démolition ?

HISTORIQUE PROCÉDURAL

Le 4 mars 1997 Cour supérieure du Québec (Blanchet j.c.s.)	Requête de l'intimée demandant l'émission d'une ordonnance de démolition suivant l'article 227 de la *Loi sur l'aménagement et l'urbanisme* rejetée
Le 31 août 1999 Cour d'appel du Québec (Gendreau, Rousseau-Houle et Philippon [*ad hoc*] jj.c.a.)	Appel accueilli : ordonnance émise en vertu de l'article 227 de la *Loi sur l'aménagement et l'urbanisme*
Le 29 octobre 1999 Cour suprême du Canada	Demande d'autorisation d'appel déposée

27934 **PERFORMANCE INDUSTRIES LTD. and TERRANCE O'CONNOR - v. - SYLVAN LAKE GOLF & TENNIS CLUB LTD. - and between - SYLVAN LAKE GOLF & TENNIS CLUB LTD. - v. - PERFORMANCE INDUSTRIES LTD. and TERRANCE O'CONNOR** (Alta.)

CORAM: L'Heureux-Dubé, Iacobucci and Binnie JJ.

The application for leave to appeal and the application for leave to cross-appeal are granted as well as the motion to expedite, with costs.

Les demandes d'autorisation d'appel et d'autorisation d'appel incident sont accordées ainsi que la requête visant à accélérer la décision sur la demande d'autorisation d'appel, le tout avec dépens.

NATURE OF THE CASE

Commercial law - Contracts - Test that must be satisfied in order to rectify a contract - Standard of review for an award at trial of punitive damages - Appropriate principles on which punitive damages should be awarded, including disgorgement of profits made by a wrongdoer.

PROCEDURAL HISTORY

June 14, 1999 Court of Queen's Bench of Alberta (Wilkins J.)	Applicants ordered to pay damages of $847,810 and punitive damages of $200,000 to Respondent plus costs and interest
April 17, 2000 Court of Appeal of Alberta (O'Leary, Berger and Sulatycky JJ.A.)	Appeal on punitive damages allowed; other grounds of appeal dismissed
May 25, 2000 Supreme Court of Canada	Application for leave to appeal filed

20.6.2000

Before / Devant: BINNIE J.

Motion for directions **Requête pour obtenir des directives**

The Canadian Red Cross Society, et al.

v. (27285)

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

GRANTED / ACCORDÉE Order to go on consent permitting the respondents Antoinette Mangione et al. to serve and file their factum on or before June 16, 2000.

22.6.2000

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai imparti pour signifier et déposer une réponse à la demande d'autorisation **Motion to extend the time in which to serve and file a response to the application for leave**

2953-6778 Québec Inc.

c. (27908)

Michael Gallagher, et al. (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 20 juin 2000.

22.6.2000

Before / Devant: BINNIE J.

Motion to adduce new evidence and motion to extend the time in which to serve and file the respondent's factum and record **Requête visant à produire de nouveaux éléments de preuve et requête en prorogation du délai imparti pour signifier et déposer le mémoire et le dossier de l'intimée**

Mohamed Ameerulla Khan

v. (27395)

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

This is an application by the respondent Crown for an order admitting new evidence and for an order extending the time to serve and file the Crown's factum and record for 30 days beyond the date of the order disposing of the motion.

The new evidence consists of the affidavit of Tracey Lord, a Crown Attorney who was initially assigned to the prosecution of the appellant in July of 1996. Her affidavit is essentially a vehicle to put before the Court a transcript of what is described as "discussions" between the trial judge and two jurors, in the presence of the jury coordinator, ten days *after* the appellant was convicted by the jury of first degree murder in the death of his wife Sureta Khan on February 13, 1998.

One of the grounds of the appeal is that the Khan jury was mistakenly provided with copies of conversations that took place between lawyers and the trial judge in the jury's absence. The copies were in the possession of the entire jury for approximately seven hours. This issue created a controversy at the conclusion of the trial and was reported in the Winnipeg press. Apparently these news reports came to the attention of at least two of the jurors. According to further press reports, these two jurors then asked to meet with the trial judge. The meeting took place in open court, but neither the appellant nor his counsel (nor Crown trial counsel) was invited to attend. A transcript was made of the discussion. The Crown says that the transcripts establish that the copies of conversations given to the jury "had no impact because the jury did not read the inadmissible parts of the transcripts before they were taken away from the jury".

In my view, the transcript of the discussion by the trial judge with two jurors as to what was read or was not read while the jury was deliberating on its verdict should not be admitted as fresh evidence. The law prohibits disclosure by jury members of any information relating to the proceedings of the jury when it was absent from the courtroom "that was not subsequently disclosed in open court". I do not think that a discussion between the trial judge and two of the jurors ten days after the conclusion of the trial, in the absence not only of the accused but of the other ten jurors whose activities were also the subject matter of the discussion, is not a disclosure "in open court" for these purposes.

The two jurors were not sworn as witnesses to give evidence. As stated, neither Crown counsel at the trial nor defence counsel nor the appellant was present. Admission of the proffered evidence would trigger a controversy as to what individual jurors did or did not review of material that was clearly, if mistakenly, provided for their consideration. The appeal would risk being converted into a juror-by-juror inquiry into the proceedings in the jury room, one of the concerns that led to the prohibition on disclosure in the first place.

Even if the unsworn evidence of the two jurors was admissible, it would not convincingly put to rest any concern the Court may have with respect to the other ten jurors.

I note that the transcript was offered to Chief Justice Scott of the Manitoba Court of Appeal on October 22, 1998 during the Crown's unsuccessful effort to have the Court of Appeal review the chambers order of the Honourable Mr. Justice Twaddle granting the appellant judicial interim release pending the hearing of his appeal against conviction. In his reasons for judgment, Chief Justice Scott stated in para. 9:

> I wish to make it clear, as I did to counsel during argument, that I have not had regard to para. 7 of the affidavit of Ms. Lord which adverts to the interview between the trial judge and two jurors concerning the effect of the disclosure to the jury of inadmissible evidence. Doubtless the admissibility of this information and its impact will be matters that will be fully addressed when the appeal is heard on the merits.

It is common ground that the Crown did not pursue the admission of this evidence before the Manitoba Court of Appeal. This omission further weakens the Crown's effort to have it introduced for the first time on appeal to this Court.

In the circumstances, the application to admit fresh evidence is denied. The time within which the respondent is to serve and file her factum and the respondent's record is extended to Friday, July 7, 2000.

26.6.2000

Before / Devant: THE DEPUTY 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

Shirley Harvey, on behalf of the Estate of Alice Stinson

v. (27849)

Her Majesty the Queen in Right of the province of British Columbia and the Attorney General of British Columbia (B.C.)

GRANTED / ACCORDÉE Time extended to June 9, 2000.

26.6.2000

Before / Devant: THE DEPUTY REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le dossier, le mémoire et le recueil de jurisprudence et de doctrine des intimés

The Canadian Red Cross Society, et al.

v. (27285)

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

GRANTED / ACCORDÉE Time extended to June 1, 2000.

26.6.2000

Before / Devant: THE DEPUTY REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le dossier, le mémoire et le recueil de jurisprudence et de doctrine des intimés

The Canadian Red Cross Society, et al.

v. (27284)

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

GRANTED / ACCORDÉE Time extended to May 30, 2000.

26.6.2000

Before / Devant: LE REGISTRAIRE ADJOINT

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

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

John Gorenko, et al.

c. (27266)

Sa Majesté la Reine du chef du Canada, et al. (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 31 août 2000.

15.6.2000

Before / Devant: CHIEF JUSTICE McLACHLIN

Motion to state a constitutional question

Requête pour énoncer une question constitutionnelle

Rui Wen Pan

v. (27424)

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

GRANTED / ACCORDÉE Notices of intervention are to be filed no later than August 28, 2000.

UPON APPLICATION by Counsel on behalf of the Appellant for an order stating constitutional questions; and

UPON CONSIDERING the materials filed by the parties in respect thereof,

IT IS HEREBY ORDERED THAT:

The motion to state constitutional questions is granted, the questions formulated being:

1. Does Section 649 of the *Criminal Code* infringe the rights and freedoms guaranteed by Section 7, 11(d) or 11(f) of the *Canadian Charter of Rights and Freedoms*?

2. If the answer to Question 1 is yes, is Section 649 of the *Criminal Code* a reasonable limit, prescribed by law, that can be demonstrably justified in a free and democratic society, pursuant to Section 1 of the *Canadian Charter of Rights and Freedoms*?

3. Does the common law exclusionary rule, precluding the admission of evidence relating to the deliberations of a jury, infringe the rights and freedoms guaranteed by Section 7, 11(d) or 11(f) of the *Canadian Charter of Rights and Freedoms*?

4. If the answer to Question 3 is yes, is the above-noted common law rule a reasonable limit, prescribed by law, that can be demonstrably justified in a free and democratic society, pursuant to Section 1 of the *Canadian Charter of Rights and Freedoms*; and if not, ought the said common law rule to be modified to conform with the said *Canadian Charter of Rights and Freedoms*?

5. Does Section 653(1) of the *Criminal Code* and/or the common law power of a judge to declare a mistrial, during or following the deliberations of the jury, violate the protection against double jeopardy which is guaranteed by Section 7 of the *Canadian Charter of Rights and Freedoms*?

6. If the answer to Question 6 is yes, is Section 653(1) of the *Criminal Code*, or the said common law power to declare a mistrial, a reasonable limit, prescribed by law, that can be demonstrably justified in a free and democratic society, pursuant to Section 1 of the *Canadian Charter of Rights and Freedoms*; and if not, ought the common law rule to be modified to conform with the said *Canadian Charter of Rights and Freedoms*?

7. Does Section 653(2) of the *Criminal Code* violate Sections 7, 11(d) or 11(f) of the *Canadian Charter of Rights and Freedoms*?

8. If the answer to Question 7 is yes, is Section 653(2) of the *Criminal Code* a reasonable limit, prescribed by law, that can be demonstrably justified in a free and democratic society, pursuant to Section 1 of the *Canadian Charter of Rights and Freedoms*?

[TRADUCTION]

(1) L'article 649 du *Code criminel* porte-t-il atteinte aux droits et libertés garantis par l'art. 7, l'al. 11*d*) ou l'al. 11*f*) de la *Charte canadienne des droits et libertés*?

(2) Si la réponse à la première question est affirmative, l'art. 649 du *Code criminel* constitue-t-il une limite raisonnable prescrite par une règle de droit et dont la justification peut se démontrer dans le cadre d'une société libre et démocratique, conformément à l'article premier de la *Charte canadienne des droits et libertés*?

(3) La règle d'exclusion, reconnue en common law, qui empêche l'admission d'éléments de preuve concernant les délibérations d'un jury porte-t-elle atteinte aux droits et libertés garantis par l'art. 7, l'al. 11*d*) ou l'al. 11*f*) de la *Charte canadienne des droits et libertés*?

(4) Si la réponse à la troisième question est affirmative, la règle de common law susmentionnée constitue-t-elle une limite raisonnable prescrite par une règle de droit et dont la justification peut se démontrer dans le cadre d'une société libre et démocratique, conformément à l'article premier de la *Charte canadienne des droits et libertés*? Sinon, ladite règle de common law devrait-elle être modifiée de manière à être conforme à ladite *Charte canadienne des droits et libertés*?

(5) Le paragraphe 653(1) du *Code criminel* et le pouvoir que la common law confère à un juge de déclarer un procès nul pendant ou après les délibérations d'un jury, ou l'un ou l'autre de ceux-ci, compromettent-ils atteinte à la protection contre le double péril garantie par l'art. 7 de la *Charte canadienne des droits et libertés*?

(6) Si la réponse à la cinquième question est affirmative, le par. 653(1) du *Code criminel* ou ledit pouvoir de common law de déclarer un procès nul constitue-t-il une limite raisonnable prescrite par une règle de droit et dont la justification peut se démontrer dans le cadre d'une société libre et démocratique, conformément à l'article premier de la *Charte canadienne des droits et libertés*? Sinon, ce pouvoir de common law devrait-il être modifié de manière à être conforme à ladite *Charte canadienne des droits et libertés*?

(7) Le paragraphe 653(2) du *Code criminel* porte-t-il atteinte aux droits et libertés garantis par l'art. 7, l'al. 11*d*) ou l'al. 11*f*) de la *Charte canadienne des droits et libertés*?

(8) Si la réponse à la septième question est affirmative, le par. 653(2) du *Code criminel* constitue-t-il une limite raisonnable prescrite par une règle de droit et dont la justification peut se démontrer dans le cadre d'une société libre et démocratique, conformément à l'article premier de la *Charte canadienne des droits et libertés*?

20.6.2000

Before / Devant: BINNIE J.

Motion to state a constitutional question **Requête pour énoncer une question constitutionnelle**

Tom Dunmore, et al.

v. (27216)

Attorney General for the Province of Ontario, et al.
(Ont.)

GRANTED / ACCORDÉE Notices of intervention are to be filed no later than August 28, 2000.

(1) Does s. 80 of the *Labour Relations and Employment Statute Law Amendment Act, 1995*, S.O. 1995, c. 1, limit the right of agricultural workers

(a) to freedom of association guaranteed by s. 2(*d*) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"); or

(b) to equality before and under the law and equal benefit of the law without discrimination as guaranteed by s. 15 of the *Charter*?

(2) Does s. 3(b) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A, limit the right of agricultural workers

(a) to freedom of association guaranteed by s. 2(*d*) of the *Charter*; or

(b) to equality before and under the law and equal benefit of the law without discrimination as guaranteed by s. 15 of the *Charter*?

(3) If the answer to any part of questions 1 or 2 is in the affirmative, is the limitation nevertheless justified under s. 1 of the *Charter*?

[TRADUCTION]

(1) L'article 80 de la *Loi de 1995 modifiant des lois en ce qui concerne les relations de travail et l'emploi*, L.O. 1995, ch. 1, limite-t-il le droit des travailleurs agricoles

(a) à la liberté d'association garantie par l'al. 2*d*) de la *Charte canadienne des droits et libertés* (la «*Charte*»), ou

(b) à l'égalité devant la loi et dans l'application de la loi ainsi qu'au même bénéfice de la loi, indépendamment de toute discrimination, que garantit l'art. 15 de la *Charte*?

(2) L'alinéa 3b) de la *Loi de 1995 sur les relations de travail*, L.O. 1995, ch. 1, annexe A, limite-t-il le droit des travailleurs agricoles

(a) à la liberté d'association garantie par l'al. 2*d*) de la *Charte*, ou

(b) à l'égalité devant la loi et dans l'application de la loi ainsi qu'au même bénéfice de la loi, indépendamment de toute discrimination, que garantit l'art. 15 de la *Charte*?

(3) Si la réponse à l'un ou l'autre des volets de la première ou deuxième question est affirmative, la limite est-elle néanmoins justifiée au sens de l'article premier de la *Charte*?

27.6.2000

Before / Devant: THE DEPUTY REGISTRAR

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

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

Kingsley Michael Sutton

v. (27666)

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

GRANTED / ACCORDÉE Time extended to August 31, 2000.

29.6.2000

Before / Devant: BINNIE J.

Motion for leave to intervene **Requête en autorisation d'intervention**

BY/PAR: Women's Legal Education and Action Fund (LEAF)

IN/DANS: Willis Barclay Frederick Boston

v. (27682)

Shirley Isobel Boston (Ont.)

GRANTED / ACCORDÉE

UPON APPLICATION by the Women's Legal Education and Action Fund ("LEAF") for leave to intervene in the above appeal;

AND HAVING READ the material filed;

AND IT APPEARING THAT neither the appellant nor the respondent has filed support or opposition to the motion;

IT IS HEREBY ORDERED that:

1. The motion for leave to intervene of the applicant Women's Legal Education and Action Fund ("LEAF") is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

2. The request to present oral argument is deferred to a rota judge following receipt and consideration of the written arguments of the parties and intervener(s).

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

4. Pursuant to Rule 18(6), the intervener shall pay to the appellant and respondent any additional disbursements occasioned to the appellant and respondent by the intervention.

29.6.2000

Before / Devant: BINNIE J.

Motion for leave to intervene **Requête en autorisation d'intervention**

BY/PAR: African Canadian Legal Clinic, Canadian Civil Liberties Association, Canadian Association of Chiefs of Police, Aboriginal Legal Services of Toronto Inc.

IN/DANS: Ian Vincent Golden

v. (27547)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the Aboriginal Legal Services of Toronto Inc., the Canadian Association of Chiefs of Police, the Canadian Civil Liberties Association and the African Canadian Legal Clinic for leave to intervene in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT;

1) The motion for leave to intervene of the applicant Aboriginal Legal Services of Toronto Inc., is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

2) The motion for leave to intervene of the applicant Canadian Association of Chiefs of Police is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

3) The motion for leave to intervene of the applicant Canadian Civil Liberties Association is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

4) The motion for leave to intervene of the applicant African Canadian Legal Clinic is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

The request to present oral argument is deferred to a rota judge following receipt and consideration of the written arguments of the parties and interveners.

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

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

29.6.2000

Before / Devant: THE DEPUTY REGISTRAR

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'appelant

Gerald Augustine Regan

v. (27541)

Her Majesty the Queen (Crim.)(N.S.)

GRANTED / ACCORDÉE Time extended to July 11, 2000.

29.6.2000

Before / Devant: BINNIE J.

Motion to strike out

Requête en radiation

KPMG

v. (27959)

Montreal Trust Company of Canada, in its capacity as trustee for the senior debentureholders of Bramalea Inc. and in its capacity as assignee of all choses in action of Bramalea Inc. (Ont.)

GRANTED / ACCORDÉE

This is an application on behalf of Montreal Trust to strike out the affidavits of Robert Flannigan and Donovan W.M. Waters filed in support of the application for leave to appeal.

The affidavits outline in a general way the legal issues presented in the leave application, and the status of Canadian law in relation thereto. In each case, the affiant deposes that he was requested "by counsel for the applicant (defendant) to prepare and submit this affidavit attesting to my independent views on the importance of the issues raised in this proposed appeal". Both affiants are professors of law with undoubted expertise in matters relevant to the proposed appeal.

Much of the scholarly debate about the points in issue in the context of business trusts is contained in the published debate between Professor Flannigan and Mr. Maurice Cullity, Q.C. (as he then was), referred to in the applicant's material and in the courts below. Selected works of Professor Flannigan and Professor Waters are relied on by way of authorities in the applicant's memorandum of argument.

Their overall conclusion is that there is a paucity of jurisprudence on the points in issue, a fact which is apparent from the applicant's memorandum of argument.

In my view, these affidavits fall within the prohibition referred to by Major J. in *Jack Wallace v. United Grain Growers Limited*, (Man.) (24986) dated December 14, 1995, in which Major J. states:

> These affidavits do not depose to facts but are the expert legal opinions of the deponents expressing their reasons for concluding that the issue between the parties raises important questions of law that are of national importance. This is the very question to be determined by this Court in deciding on the leave application and as such the affidavits are inappropriate and inadmissible.

See also *Ballard Estate v. Ballard Estate*, [1991] S.C.C.A. No. 239.

The applicant relies on the following authorities:

(i) *Dreyfus & Cie v. Holding Tusculum B.V.* (S.C.C. No. 26843, January 4, 1999, *per* Cory J.), but in that case the affiant brought to the attention of the Court documentation that recorded the position of the government of France that service of legal proceedings by telecopier on a French citizen is not permissible, and Cory J. concluded:

> It may be of some assistance to the panel considering the leave application to know that the government of France was sufficiently concerned about the issue to have its Consul General in Quebec City write to the government of Quebec.

No comparable factual information is contained in the affidavits in question.

(ii) *The Guarantee Company of North America v. Gordon Capital Corporation and Chubb Insurance* (S.C.C. No. 26654, July 16, 1998, *per* Major J.). In that case, Major J. refused to strike out the affidavit of Alexander Kennedy of the Insurance Council of Canada ("ICC") in which the affiant brought to the Court's attention various activities of insurers that would be impacted by the ruling, including their ability to set reserves, establish premiums and underwrite risks. No comparable insight into business practice is offered in the affidavits in question.

(iii) *Arthur Andersen et al. v. Toronto-Dominion Bank et al.* (S.C.C. No. 24111, May 30, 1994, *per* Gonthier J.) in which Gonthier J. refused to strike out the affidavit of Kevin Patrick McGuinness, of the Law Society of Upper Canada, who had been the Secretary to the Attorney General's Advisory Committee on the draft *Construction Lien Act* and a co-author of the report of that Committee. He described conditions in the construction industry that would be impacted by the decision. While he did venture an opinion on the correctness of the decision in question, it was apparently considered by Gonthier J. that the factual insights in the affidavit outweighed the simple expression of opinion. Some of the decisions in similar motions deprecate statements by affiants that the decision sought to be appealed is incorrect. It must be remembered that the decision sought to be appealed may be perfectly correct but still raise questions of national importance. Such statements about perceived error are therefore irrelevant.

My view is that the learned commentary of Professor Flannigan and Waters contains little that could not be (or, in the case of the applicant, has not been) set out in the written argument. The expertise of the affiants is undoubted, their reliability is unquestioned, but there is no necessity for this affidavit evidence to enable the Court to draw its own conclusions about the state of the law. The affidavits are not "required" within the meaning of Rule 23(1)(c)(ii).

I therefore grant the application and strike out the affidavits of Robert Flannigan and Donovan Waters. The applicant is to have 15 days from today's date to serve and file the amended leave application books. I would grant the extension of time to serve and file the respondent's response to August 21, 2000.

30.6.2000

Before / Devant: THE DEPUTY REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimé et la réplique du requérant

Daniel Laplante

v. (27885)

Michel Fortin (Ont.)

GRANTED / ACCORDÉE Time to serve and file the respondent's response is extended to June 22, 2000 and time to serve and file the applicant's reply is extended to July 10, 2000.

30.6.2000

Before / Devant: THE DEPUTY REGISTRAR

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

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

Lorne Brown, et al.

v. (27150)

Regional Municipality of Durham Police Service Board (Ont.)

GRANTED / ACCORDÉE Time extended to July 17, 2000.

30.6.2000

Before / Devant: THE DEPUTY REGISTRAR

Motion to extend the time in which to serve and file the factum of the intervener the Attorney General of Alberta

Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'intervenant le procureur général de l'Alberta

Ontario English Catholic Teachers' Association, et al.

v. (27363)

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

GRANTED / ACCORDÉE Time extended to July 21, 2000.

30.6.2000

Before / Devant: THE DEPUTY REGISTRAR

Motion to extend the time in which to serve and file the factum of the intervener EGALE

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

British Columbia College of Teachers

v. (27168)

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

GRANTED / ACCORDÉE Time extended to July 14, 2000.

30.6.2000

Before / Devant: LE REGISTRAIRE ADJOINT

Requête visant le dépôt d'un nombre réduit d'exemplaires

Motion for an order reducing the number of copies to be filed

Benoît Proulx

c. (27235)

La procureure générale du Québec (Qué.)

GRANTED / ACCORDÉE La requête pour obtenir la permission de produire douze (12) copies du dossier de l'intimée est accordée.

7.7.2000

Before / Devant: THE DEPUTY REGISTRAR

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

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

W.B.C.

v. (27822)

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

GRANTED / ACCORDÉE Time extended to August 18, 2000.

7.7.2000

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

Air Wemindji Inc.

v. (27859)

Héli-Forex Inc., et al. (Que.)

GRANTED / ACCORDÉE Time extended to June 23, 2000.

11.7.2000

Before / Devant: IACOBUCCI 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

Hugh John MacMaster, a mental incompetent, not so found, by his Litigation Guardian, Michael MacMaster, et al.

v. (27983)

The Corporation of the Regional Municipality of York (Ont.)

GRANTED / ACCORDÉE Time extended to June 27, 2000.

20.6.2000

539938 Ontario Limited, et al.

v. (27524)

Tyler Derksen, a minor by his litigation guardian William Derksen, et al. (Ont.)

21.6.2000

Louise Gosselin

c. (27418)

Le procureur général du Québec (Qué.)

21.6.2000

Manickavasagam Suresh

v. (27790)

The Minister of Citizenship and Immigration et al. (F.C.A.)

21.6.2000

Mansour Ahani

v. (27792)

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

22.6.2000

Donald Russell

v. (27732)

Her Majesty the Queen (Ont.)

22.6.2000

Bernard Gerardus Maria Berendsen et al.

v. (27312)

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

22.6.2000

Her Majesty the Queen

v. (27738)

Clayton George Mentuck (Man.)

28.6.2000

Frédéric St-Jean

c. (27515)

Denis Mercier (Qué.)

27.6.2000

Peter William Fliss

v. (27998)

Her Majesty the Queen (B.C.)

AS OF RIGHT

29.6.2000

Her Majesty the Queen

v. (27722)

Douglas E. Rice (N.B.)

30.6.20000

Philip Douglas Backman

v. (27561)

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

4.7.2000

Kimberly Van De Perre

v. (27897)

Theodore Edwards et al. (B.C.)

2.5.2000

Eric Arthur Berntson

v. (27896)

Her Majesty the Queen (Sask.)

AS OF RIGHT

30.6.2000

Her Majesty the Queen

v. (28002)

Hugo Gayetano Llorenz (Ont.)

AS OF RIGHT

26.6.2000

Paramount Resources Ltd., et al.

v. (27743)

The Metis Settlements Appeal Tribunal Existing Leases Land Access Panel et al. (Alta.)

(leave)

6.7.2000

Sylvio Monachino

v. (27902)

Liberty Mutual Fire Insurance et al. (Ont.)

(leave)

JULY 20, 2000 / LE 20 JUILLET 2000

26971 **FRIEDMANN EQUITY DEVELOPMENTS INC. v. DR. ALMAS ADATIA, also known as ALMAS ADATIA, MOHAMED RAJANI, SHORIM INVESTMENTS, in trust, SHORIM INVESTMENTS LIMITED, in trust, PETER BORTOLUZZI, SULTAN LALANI, in trust, and 808413 ONTARIO INC., CROWN FREIGHT FORWARDERS LTD., previously known as 808548 ONTARIO INC. - and - LIONEL C. LARRY and ROBINS, APPLEBY & TAUB** (Ont.) **2000 SCC 34**

CORAM: Gonthier, Major, Bastarache, Binnie and Arbour JJ.

The appeal is dismissed with costs.

Le pourvoi est rejeté avec dépens.

26805 **F.N. v. HER MAJESTY THE QUEEN, ROMAN CATHOLIC SCHOOL BOARD FOR ST. JOHN'S and AVALON CONSOLIDATED SCHOOL BOARD - and - CANADIAN FOUNDATION FOR CHILDREN, YOUTH AND THE LAW** (Nfld.) **2000 SCC 35**

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

The appeal is allowed with costs here and in the courts below, the order of the Court of Appeal is set aside, and a prohibition will issue against continuation of the present practice of the Youth Court of St. John's to distribute the docket to both school boards in the St. John's area.

Le pourvoi est accueilli avec dépens dans notre Cour et dans les cours d'instance inférieure, l'ordonnance de la Cour d'appel est annulée et une interdiction est prononcée contre la poursuite de la pratique actuelle du tribunal pour adolescents de St. John's, qui consiste à diffuser le rôle aux deux commissions scolaires de la région de St. John's.

26601 **WILL-KARE PAVING & CONTRACTING LIMITED v. HER MAJESTY THE QUEEN** (F.C.A)(N.S.) **2000 SCC 36**

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

The appeal is dismissed with costs throughout, Gonthier, McLachlin and Binnie JJ. dissenting.

Le pourvoi est rejeté avec dépens dans toutes les cours. Les juges Gonthier, McLachlin et Binnie sont dissidents.

26165 **ROBERT LOVELACE, on his own behalf and on behalf of the Ardoch Algonquin First Nation and Allies, the ARDOCH ALGONQUIN FIRST NATION AND ALLIES, CHIEF KRIS NAHRGANG, on behalf of the Kawartha Nishnawbe First Nation, the KAWARTHA NISHNAWBE FIRST NATION, CHIEF ROY MEANISS, on his own behalf and on behalf of the Beaverhouse First Nation, the BEAVERHOUSE FIRST NATION, CHIEF THERON MCCRADY, on his own behalf and on behalf of the Poplar Point Ojibway First Nation, the POPLAR POINT OJIBWAY FIRST NATION, and the BONNECHERE MÉTIS ASSOCIATION - and - BE-WAB-BON MÉTIS AND NON-STATUS INDIAN ASSOCIATION and the ONTARIO MÉTIS ABORIGINAL ASSOCIATION - v. - HER MAJESTY THE QUEEN IN RIGHT OF**

ONTARIO and THE CHIEFS OF ONTARIO - and - ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL FOR SASKATCHEWAN, COUNCIL OF CANADIANS WITH DISABILITIES, MNJIKANING FIRST NATION, CHARTER COMMITTEE ON POVERTY ISSUES, CONGRESS OF ABORIGINAL PEOPLES, NATIVE WOMEN'S ASSOCIATION OF CANADA, and MÉTIS NATIONAL COUNCIL OF WOMEN (Ont.) **2000 SCC 37**

CORAM: L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Major, Bastarache and Arbour JJ.

The appeal is dismissed with no order as to costs. The constitutional questions are answered as follows:

Question 1: Does the exclusion of the appellant aboriginal groups from the First Nations Fund, and from the negotiations on the establishment and operation of the Fund, set up pursuant to s. 15(1) of the *Ontario Casino Corporation Act, 1993*, S.O. 1993, c. 25, on the grounds that they are not aboriginal groups registered as *Indian Act* bands under the *Indian Act*, R.S.C., 1985, c. I-5, violate s. 15 of the *Canadian Charter of Rights and Freedoms*?

Answer: No.

Question 2: If the answer to question No. 1 is yes, is the violation demonstrably justified under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Answer: In view of the answer to Question 1, it is not necessary to answer this question.

Question 3: Is the exclusion of the appellant aboriginal groups from the First Nations Fund of the Casino Rama Project, and from the negotiations on the establishment and operation of the Fund on the grounds that they are not aboriginal groups registered as *Indian Act* bands under the *Indian Act*, R.S.C., 1985, c. I-5, *ultra vires* the power of the province under the *Constitution Act, 1867*?

Answer: No.

Le pourvoi est rejeté et il n'y aura pas d'ordonnance concernant les dépens. Les questions constitutionnelles reçoivent les réponses suivantes:

Question1: L'exclusion des groupes autochtones appelants du Fonds des premières nations et des négociations sur l'établissement et l'exploitation du Fonds, créé conformément au par. 15(1) de la *Loi de 1993 sur la Société des casinos de l'Ontario*, L.O. 1993, ch. 25, pour le motif qu'ils ne sont pas des groupes autochtones inscrits comme bandes au sens de la *Loi sur les Indiens* en vertu de la *Loi sur les Indiens*, L.R.C. (1985), ch. I-5, viole-t-elle l'art. 15 de la *Charte canadienne des droits et libertés*?

Réponse: Non.

Question 2: Si la réponse à la question n^{o} 1 est affirmative, s'agit-il d'une violation dont la justification peut se démontrer en vertu de l'article premier de la *Charte canadienne des droits et libertés*?

Réponse: Vu la réponse à la Question 1, il n'y a pas lieu de répondre à cette question.

Question 3: L'exclusion des groupes autochtones appelants du Fonds des premières nations du projet Casino Rama et des négociations sur l'établissement et l'exploitation du Fonds, pour le motif qu'ils ne sont pas des groupes autochtones inscrits comme bandes au sens de la *Loi sur les Indiens* en vertu de la *Loi sur les Indiens*, L.R.C. (1985), ch. I-5, outrepasse-t-elle les pouvoirs conférés à la province par la *Loi constitutionnelle de 1867*?

Réponse: Non.

Friedmann Equity Developments Inc.- v. - *Dr. Almas Adatia, also known as Almas Adatia, Mohamed Rajani, Shorim Investments, in trust, Shorim Investments Limited, in trust, Peter Bortoluzzi, Sultan Lalani, in trust, 808413 Ontario Inc., and Crown Freight Forwarders Ltd., previously known as 808548 Ontario Inc.* - and - *Lionel C. Larry and Robins, Appleby & Taub* (Ont.)(26971)

Indexed as: Friedmann Equity Developments Inc. *v.* Final Note Ltd. /
Répertorié: Friedmann Equity Developments Inc. *c.* Final Note Ltd.
Neutral citation: 2000 SCC 34. / **Référence neutre: 2000 CSC 34.**

Judgment rendered July 20, 2000 / Jugement rendu le 20 juillet 2000

Present: Gonthier, Major, Bastarache, Binnie and Arbour JJ.

Contracts -- Sealed contracts -- Mortgages -- Mortgage agreement entered into by corporation acting as agent of undisclosed principals -- Mortgage executed under seal of corporation -- Corporation defaulting on mortgage and mortgagee suing undisclosed principals -- Common law rule preventing undisclosed principals from being sued on contract executed by their agent when contract executed under seal -- Whether sealed contract rule applies to corporate agent -- Whether sealed contract rule should be abolished.

Contracts -- Sealed contracts -- Intent -- Evidence -- Creation of sealed contract requiring intent to create instrument under seal -- Whether attachment of corporate seal to agreement constitutes evidence of intent to create sealed instrument -- Statutory provisions may render intent irrelevant.

A corporation was created to hold legal title to municipal property as a trustee or agent for beneficial owners. A mortgage registered against the property was executed in the form required under the Ontario *Land Registration Reform Act, 1984*. The mortgage agreement was signed by the corporation's duly authorized officer under it**s** corporate seal. In1994, the mortgagee commenced an action for a default on the mortgage against the beneficial owners, none of whom were parties to the mortgage. The beneficial owners commenced proceedings against the solicitors who had represented them in the transaction. The beneficial owners and the third party solicitors brought a motion to dismiss the action on the basis that the beneficial owners were undisclosed principals who could not be sued on an indenture executed by their agent under seal. The Ontario Court (General Division) dismissed the motion. On appeal, the Divisional Court granted the motion and dismissed the action. The Court of Appeal upheld the Divisional Court's decision.

Held: The appeal should be dismissed.

As a general rule, an undisclosed principal may sue or be sued on a simple contract entered into on his or her behalf by an agent. The sealed contract rule is a well-established exception to that general rule: when a contract is executed under seal, an undisclosed principal can neither sue nor be sued upon the contract. The exception stems from the rule that only parties to a sealed instrument may have obligations and rights under it. The sealed contract rule operates within a system of rules relating to sealed instruments, all of which are derived from the fact that a sealed instrument is enforceable by virtue of the form of the instrument itself. The English Court of Appeal's decision in *Harmer* did not create an exception to the sealed contract rule nor did it recognize any legal relationship upon which a third party can sue a beneficiary.

The sealed contract rule is part of the common law of Canada and applies equally to individual agents and corporate agents. Subject to exceptions set out by statute, a corporation has the same powers and capacities as a natural person and there is no principled basis upon which to treat corporations differently. While it is clear that the sealed contract rule applies to corporate agents, the attachment of a corporation's seal to an agreement may not be sufficient in all circumstances to constitute a sealed contract within the meaning of the sealed contract rule. The creation of a sealed instrument requires formalities that must be observed. A sealed instrument must be signed, sealed and delivered and the application of the seal must be a conscious and deliberate act. The relevant question is whether the parties intended to create an instrument under seal. Corporate seals, in many circumstances, are equivalent to the signature of a natural person, and therefore, merely affixing a corporate seal may not be evidence of an intent to create a sealed instrument. Courts must examine the instrument and the circumstances surrounding its creation to determine intent. Statutory provisions, however, may render intent irrelevant. In this case, s. 13(1) of the *Land Registration Reform Act, 1984* rendered intent irrelevant by making all documents transferring an interest in land, and charges or discharges, sealed instruments for all purposes including the application of the sealed contract rule.

A proposed change in the common law must be necessary to keep the common law in step with the evolution of society, to clarify a legal principle or to resolve inconsistency. A change should be incremental and its consequences should be capable of assessment. Courts should not intervene if a change will have complex, uncertain and far-reaching effects. Here, no compelling reasons exist for the abolition of the sealed contract rule. There is no conflicting appellate authority regarding whether the rule applies in Canada and its inclusion in Canadian common law is not out of step with other jurisdictions. The rule is consistent with commercial reality and with other rules that apply to sealed instruments, and continues to serve a useful purpose in our law. It has not caused inconvenience in commercial transactions nor great hardship. The sealed contract rule is part of a system of property and contract rules. To abolish it simply because the historical rationale for the rule is no longer important would necessarily call into question the validity of other rules that apply to sealed instruments and of other technical rules, both in the law of contract and in the law of property, which no longer appear to have any modern day rationale, thereby creating uncertainty both in commercial relations and in the law itself. The abolition of the sealed contract rule could also have far-reaching effects on existing contractual relationships. It would have the unfair result of creating uncertainty for those who had relied on the rule in executing their contracts. To avoid uncertainty and any unfairness to those parties who have structured their commercial relationships in accordance with the sealed contract rule, any change to the law should operate prospectively. Only a legislature has the power to create a prospective change in the law.

The corporation's officer affixed the corporation's seal to the mortgage agreement and the mortgage is in the form prescribed under the *Land Registration Reform Act, 1984*, which deems all instruments governed by its provisions to be documents under seal. The sealed contract rule applies and only the parties to the mortgage may be sued upon it. Therefore, the mortgagee cannot maintain its action on the covenant in the mortgage against the beneficial owners.

APPEAL from a judgment of the Ontario Court of Appeal (1998), 41 O.R. (3d) 712, 112 O.A.C. 253, 20 R.P.R. (3d) 257, [1998] O.J. No. 3520 (QL), dismissing the appellant's appeal from a judgment of the Divisional Court, [1997] O.J. No. 642 (QL), allowing the respondents' appeal from a decision of Borins J., dismissing the respondents' motion to dismiss the appellant's action for a default on a mortgage. Appeal dismissed.

Benjamin Zarnett, Carolyn Silver and *Julie Rosenthal*, for the appellant.

Robert D. Malen, for the respondents Dr. Almas Adatia, also known as Almas Adatia, Peter Bortoluzzi, Sultan Lalani, in Trust, 808413 Ontario Inc. and Crown Freight Forwarders Ltd., previously known as 808548 Ontario Inc.

Carl Orbach, Q.C., for the respondents Mohamed Rajani, Shorim Investments, in Trust, and Shorim Investments Limited, in Trust.

Valerie A. Edwards, for the respondents Lionel C. Larry and Robins, Appleby & Taub.

Solicitors for the appellant: Goodman Phillips & Vineberg, Toronto.

Solicitors for the respondents Dr. Almas Adatia, also known as Almas Adatia, Peter Bortoluzzi, Sultan Lalani, in Trust, 808413 Ontario Inc. and Crown Freight Forwarders Ltd., previously known as 808548 Ontario Inc.: Goldman, Sloan, Nash & Haber, Toronto.

Solicitors for the respondents Mohamed Rajani, Shorim Investments, in Trust, and Shorim Investments Limited, in Trust: Orbach, Katzman & Herschorn, Toronto.

Solicitors for the respondents Lionel C. Larry and Robins, Appleby & Taub: Torkin, Manes, Cohen & Arbus, Toronto.

Présents: Les juges Gonthier, Major, Bastarache, Binnie et Arbour.

Contrats -- Contrats par actes scellés -- Hypothèques -- Acte d'hypothèque conclu par une société par actions agissant à titre de mandataire de mandants secrets – Acte d'hypothèque revêtu du sceau de la société par actions – Manquement à l'acte d'hypothèque par la société par actions et action intentée par le créancier hypothécaire contre les mandants secrets – Existence d'une règle de common law faisant obstacle à l'engagement de poursuites contre des mandants secrets sur le fondement d'un contrat conclu par leur mandataire lorsque ce contrat est revêtu d'un sceau – La règle du contrat par acte scellé s'applique-t-elle aux personnes morales agissant comme mandataires? -- La règle du contrat par acte scellé devrait-elle être abolie?

Contrats -- Contrats par actes scellés -- Intention – Preuve -- La création d'un contrat par acte scellé exige l'intention de créer un acte scellé -- L'apposition du sceau d'une personne morale sur un accord constitue-t-elle une preuve de l'intention de créer un acte scellé? -- Des dispositions législatives peuvent avoir pour effet d'enlever toute pertinence à l'intention.

Une société par actions a été créée en vue de détenir le titre de propriété à l'égard d'un bien immobilier en tant que fiduciaire ou mandataire des propriétaires bénéficiaires. Un acte d'hypothèque enregistré relativement au bien immobilier concerné a été préparé sous la forme prescrite par la *Land Registration Reform Act, 1984*, de l'Ontario. L'acte d'hypothèque a été signé par le représentant dûment autorisé de la société par actions, qui y a apposé le sceau de celle-ci. En 1994, le créancier hypothécaire a pris action contre les propriétaires bénéficiaires intimés pour cause de manquement à l'acte d'hypothèque. Aucun de ceux-ci n'était partie à l'acte. Les propriétaires bénéficiaires ont entamé des poursuites contre les avocats qui les avaient représentés dans l'opération. Les propriétaires bénéficiaires et les tiers avocats ont présenté une requête en rejet d'action au motif que les propriétaires bénéficiaires étaient des mandants secrets qui ne pouvaient pas être poursuivis en vertu d'un acte conclu par leur mandataire et revêtu d'un sceau. La Cour de l'Ontario (Division générale) a rejeté la requête. En appel, la Cour divisionnaire a accordé la requête et a rejeté l'action. La Cour d'appel a confirmé la décision de la Cour divisionnaire.

Arrêt: Le pourvoi est rejeté.

Un mandant secret peut en règle générale ester en justice en vertu d'un contrat nu conclu en son nom par un mandataire. La règle du contrat par acte scellé est une exception bien établie à cette règle générale: lorsque le contrat est revêtu d'un sceau, le mandant secret ne peut ni poursuivre ni être poursuivi en vertu de celui-ci. Cette exception découle de la règle selon laquelle seules les parties à un acte scellé peuvent avoir des droits et obligations en vertu de cet acte. Cette règle s'inscrit dans un ensemble de règles relatives aux actes scellés, lesquelles reposent toutes sur le fait qu'un acte scellé est exécutoire de par sa forme même. La décision rendue par la Cour d'appel anglaise dans *Harmer* n'a pas créé d'exception à la règle du contrat par acte scellé ni reconnu l'existence de rapports juridiques permettant à un tiers de poursuivre un bénéficiaire.

La règle du contrat scellé fait partie de la common law du Canada et s'applique tant aux particuliers agissant comme mandataires qu'aux personnes morales agissant comme tel. Sous réserve des exceptions prévues par des textes de loi, les personnes morales ont les mêmes droits et la même capacité qu'une personne physique et il n'y a aucune considération de principe justifiant de traiter les personnes morales différemment. Bien qu'il soit clair que la règle du contrat par acte scellé s'applique aux personnes morales agissant comme mandataires, l'apposition du sceau d'une personne morale sur un accord peut ne pas suffire dans tous les cas pour faire de cet accord un contrat scellé au sens de la règle du contrat par acte scellé. La création d'un acte scellé requiert l'observation de certaines formalités. Un acte scellé doit être signé, scellé et délivré, et l'apposition du sceau doit être faite de propos délibéré et en pleine connaissance de cause. La question pertinente est de savoir si les parties avaient l'intention de créer un acte scellé. Dans bien des cas, le sceau d'une personne morale équivaut à la signature d'une personne physique, de sorte que la simple apposition d'un tel sceau n'indique pas toujours l'intention de créer un acte scellé. Les tribunaux doivent examiner l'acte lui-même et les circonstances de sa création pour déterminer l'intention. Des dispositions législatives peuvent toutefois enlever toute pertinence à l'intention. En l'espèce, le par. 13(1) de la *Land Registration Reform Act, 1984*, a rendu l'intention non pertinente en considérant les documents cédant un droit sur un bien-fonds, les charges et les mainlevées comme étant des actes scellés à tous égards, y compris pour l'application de la règle du contrat par acte scellé.

Une modification de la common law doit être nécessaire soit pour permettre à celle-ci de suivre l'évolution de la société, soit pour préciser un principe de droit ou encore pour éliminer une contradiction. La modification doit être graduelle et ses conséquences doivent pouvoir être évaluées. Les tribunaux ne doivent pas intervenir lorsque la modification proposée aurait des effets complexes, incertains et d'une grande portée. En l'espèce, il n'existe aucun motif convaincant pour abolir la règle du contrat par acte scellé. Les arrêts des cours d'appel canadiennes ne se contredisent pas quant à l'application de la règle du contrat par acte scellé et son existence dans la common law canadienne n'est pas incompatible avec l'évolution du droit dans d'autres pays. La règle est compatible avec les réalités du commerce et avec les autres règles qui s'appliquent aux actes scellés, et elle continue de servir une fin utile dans notre droit. Elle n'a pas nui à des opérations commerciales ni causé de grandes difficultés. La règle du contrat par acte scellé fait partie d'un ensemble de règles du droit des biens et du droit des contrats. L'abolir tout simplement parce que sa justification historique a perdu son importance remettrait nécessairement en cause la validité des autres règles s'appliquant aux actes scellés et les autres règles de forme, tant en droit des contrats qu'en droit des biens, qui paraissent ne plus avoir de raison d'être aujourd'hui, ce qui créerait de l'incertitude dans les relations commerciales et dans le droit lui-même. L'abolition de la règle du contrat par acte scellé pourrait également avoir des effets d'une grande portée sur les relations contractuelles existantes. Cela aurait comme effet inéquitable de créer de l'incertitude pour ceux qui se sont fiés à la règle en concluant leurs contrats. Pour éviter l'incertitude ainsi que toute injustice pour les parties qui ont organisé leurs relations commerciales conformément à la règle du contrat par acte scellé, toute modification apportée au droit devrait avoir effet pour l'avenir. Seule une législature a le pouvoir d'apporter au droit des modifications portant effet pour l'avenir.

Le représentant de la société par actions a apposé le sceau de celle-ci à l'acte d'hypothèque, qui est établi selon la forme prescrite par la *Land Registration Reform Act, 1984*, loi aux termes de laquelle tous les actes visés par ses dispositions sont réputés être des documents revêtus d'un sceau. La règle du contrat par acte scellé s'applique et seules les parties à l'acte d'hypothèque peuvent être poursuivies en vertu de ce dernier. Par conséquent, le créancier hypothécaire ne peut pas poursuivre son action contre les propriétaires bénéficiaires sur le fondement de l'engagement figurant dans l'acte d'hypothèque.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1998), 41 O.R. (3d) 712, 112 O.A.C. 253, 20 R.P.R. (3d) 257, [1998] O.J. No. 3520 (QL), qui a rejeté l'appel formé par l'appelante contre une décision de la Cour divisionnaire [1997] O.J. No. 642 (QL), faisant droit à l'appel interjeté par les intimés contre une décision du juge Borins, qui avait rejeté la requête des intimés demandant le rejet de l'action de l'appelante pour cause de manquement à un acte d'hypothèque. Pourvoi rejeté.

Benjamin Zarnett, Carolyn Silver et *Julie Rosenthal*, pour l'appelante.

Robert D. Malen, pour les intimés D^{r} Almas Adatia, également connu sous le nom de Almas Adatia, Peter Bortoluzzi, Sultan Lalani, en fiducie, 808413 Ontario Inc. et Crown Freight Forwarders Ltd., auparavant connue sous le nom de 808548 Ontario Inc.

Carl Orbach, c.r., pour les intimés Mohamed Rajani, Shorim Investments, en fiducie, et Shorim Investments Limited, en fiducie.

Valerie A. Edwards, pour les intimés Lionel C. Larry et Robins, Appleby & Taub.

Procureurs de l'appelante: Goodman Phillips & Vineberg, Toronto.

Procureurs des intimés D^{r} Almas Adatia, également connu sous le nom de Almas Adatia, Peter Bortoluzzi, Sultan Lalani, en fiducie, 808413 Ontario Inc. et Crown Freight Forwarders Ltd., auparavant connue sous le nom de 808548 Ontario Inc.: Goldman, Sloan, Nash & Haber, Toronto.

Procureurs des intimés Mohamed Rajani, Shorim Investments, en fiducie, et Shorim Investments Limited, en fiducie: Orbach, Katzman & Herschorn, Toronto.

Procureurs des intimés Lionel C. Larry et Robins, Appleby & Taub: Torkin, Manes, Cohen & Arbus, Toronto.

F.N. v. Her Majesty the Queen and *Roman Catholic School Board for St. John's* and *Avalon Consolidated School Board* (Nfld.)(Crim.)(26805)
Indexed as: F.N. (Re) / Répertorié: F.N. (Re)
Neutral citation: 2000 SCC 35. / Référence neutre: 2000 CSC 35.
Judgment rendered July 20, 2000 / Jugement rendu le 20 juillet 2000

Present: L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Bastarache, Binnie and Arbour JJ.

Criminal law -- Young Offenders -- Confidentiality -- Non-disclosure -- Youth Court records -- Youth Court routinely distributing copies of weekly Youth Court docket to local school boards -- Whether Youth Court exceeded its jurisdiction -- Whether distribution of Youth Court docket violated non-publication and non-disclosure requirements of Young Offenders Act -- Young Offenders Act, R.S.C. 1985, c. Y-1, s. 38, 40-46.

On the recommendation of its "Youth Justice Concerns Committee", an advisory body with no statutory powers or duties, the Youth Court staff in St. John's began routine distribution of its weekly Youth Court docket to local school boards. The docket of January 4, 1996 disclosed the name of the appellant, the fact that he was charged with two counts of assault and breach of probation, and the place and date of trial. He objected that this administrative practice violated the non-disclosure provisions of the *Young Offenders Act*, and applied for an order of prohibition. His application to the Newfoundland Supreme Court, Trial Division, and subsequent appeal to the Newfoundland Court of Appeal were both dismissed.

Held: The appeal should be allowed.

It is an important constitutional rule that the courts be open to the public and that their proceedings be accessible to all those who may have an interest. To this principle there are a number of exceptions where the public interest in confidentiality outweighs the public interest in openness. This balance is dealt with explicitly in the non-disclosure provisions of the *Young Offenders Act*. Parliament has recognized that a young person once stigmatized as a lawbreaker may, unless given help and redirection, render the stigma a self-fulfilling prophecy. In the long run, society is best protected by preventing recurrence and maximizing the chances of rehabilitation for young offenders. At the same time, the scheme of the Act does not attempt to achieve rehabilitation of the offender at the expense of public safety.

The Act creates two distinct but mutually reinforcing regimes to control information about a young offender. The first set of provisions commences at s. 38(1) with a general prohibition that "no person shall publish by any means any report" identifying a young offender with an offence or proceeding under the Act. The second regime applies to the maintenance and use of court records found in s. 40 to s. 44. These provisions set out in considerable detail the type of records that may be kept, where they may be kept, and the circumstances in which they may be disclosed. The respondent's argument was that if the docket could be characterized as something other than a "record" or "report", narrowly construed, its contents could be disseminated free of statutory restrictions. However, while neither term is defined in the Act, etymological niceties ought not to be allowed to overwhelm the clear purpose expressed by Parliament. What is important is not what the communication is called but the substance of what is communicated.

The nub of the statutory non-disclosure provisions is the avoidance of unauthorized disclosure of information that links the identity of the young person with a charge, proceeding or disposition under the Act. The interpretive exercise is therefore not directed at some formal classification of documents, but at the nature of the information sought to be disclosed. Where the prohibited link is not made, the ban does not apply.

The non-disclosure provisions of the Act were violated by the administrative practice of distributing dockets. The Youth Court docket necessarily links the name of the young person to a charge or proceeding. While the court docket, as a piece of paper, has a transient function, the information it contains is very much part of the court record, and its disclosure is prohibited unless the circumstances fall within the relevant exceptions set out in s. 44.1 of the Act.

Parliament's restrictions in s. 44.1(1)(*k*) were violated in the following respects: (1) disclosure was not authorized by a judge; (2) distribution was not limited to the board responsible for the appellant's school; and (3) the information was

distributed for school purposes and not for purposes related to the administration of justice. Equally, school boards are not government agencies of the type that are responsible for the supervision or care of young persons in trouble with the law within the ambit of s. 44.1(1)(*g*).

Nor was disclosure of the docket authorized under one of the enumerated exceptions to the general publication ban in s. 38 against linking young people to offences or proceedings under the Act. The preparation, use and disclosure of the docket in Youth Court is permitted by the Act pursuant to s. 38(1.1) because it occurs "in the course of the administration of justice" and the purpose is not to make the information known in the community, but distribution of the docket to the school boards was not authorized under that section because school boards have no general responsibility for the administration of justice. Here, the dockets were provided for school board purposes.

Neither can general distribution of the docket be validated on the basis of the "school board" exception. Section 38(1.13) permits disclosure of information to the representative of any school board or school where disclosure is necessary either to ensure compliance by the young person with a court order or to ensure the safety of others. Although schools may be called on to assist in ensuring compliance with a court order, there was no evidence that the school boards had such a role to play in respect of the appellant. The purpose of ensuring safety would also support disclosure of a specific young person's information to the school board, but the exemption does not authorize the release of information about all young persons identified on the docket list, whether or not they are a threat to safety of others and whether or not they attend school. The disclosure is over-inclusive because it includes young persons who present no safety risk at all and who may not be students and it is also under-inclusive because if there is a serious safety concern, it may not include enough information to enable the school to formulate appropriate remedial action. Violent offences against people, e.g., assault, assault causing bodily harm, aggravated sexual assault, weapons offences, drugs and more serious property offences such as arson may clearly raise a sufficient safety concern for the safety of the young person as well as "staff, students or other persons" to justify notification to the board responsible for the student in question. There is nothing in the section that precludes the implementation of a general notification procedure provided the policy is properly tailored to the statutory requirements.

APPEAL from a judgment of the Newfoundland Court of Appeal (1998), 163 Nfld. & P.E.I.R. 154, 503 A.P.R. 154, 126 C.C.C. (3d) 114, [1998] N.J. No. 126 (QL), dismissing the appellant's appeal from a decision of Newfoundland Supreme Court, Trial Division (1996), 142 Nfld. & P.E.I.R. 31, 445 A.P.R. 31, [1996] N.J. No. 150 (QL), dismissing his application for an order of prohibition. Appeal allowed.

Joan Dawson, for the appellant.

Bernard Coffey, *Q.C.*, for the respondent Her Majesty the Queen.

R. Wayne Bruce, for the respondents The Roman Catholic School Board for St. John's and The Avalon Consolidated School Board.

Cheryl Milne, for the intervener.

Solicitor for the appellant: Joan Dawson, St. John's.

Solicitor for the respondent Her Majesty the Queen: The Department of Justice, St. John's.

Solicitors for the respondents The Roman Catholic School Board for St. John's and The Avalon Consolidated School Board: Stewart McKelvey Stirling Scales, St. John's.

Solicitor for the intervener: Canadian Foundation for Children, Youth and the Law, Toronto.

Présents: Les juges L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Bastarache, Binnie et Arbour.

Droit criminel -- Jeunes contrevenants -- Confidentialité -- Non-communication -- Dossiers du tribunal pour adolescents -- Un tribunal pour adolescents communiquait régulièrement des copies de son rôle aux commissions scolaires locales -- A-t-il outrepassé sa compétence? -- La distribution du rôle contrevenait-elle aux exigences de non-publication et de non-communication de la Loi sur les jeunes contrevenants? -- Loi sur les jeunes contrevenants, L.R.C. (1985), ch. Y-1, art. 38, 40 à 46.

Suivant la recommandation de son «Youth Justice Concerns Committee », un organe consultatif auquel la loi ne confère aucun pouvoir ni aucune obligation, le personnel du tribunal pour adolescent à St. John's a commencé à distribuer régulièrement son rôle hebdomadaire aux commissions scolaires locales. Le rôle du 4 janvier 1996 révélait le nom de l'appelant, le fait que ce dernier était accusé de deux chefs de voies de fait et de manquement aux conditions de la probation, ainsi que le lieu et la date du procès. L'appelant s'est opposé à cette pratique administrative au motif qu'elle contrevenait aux dispositions de non-communication de la *Loi sur les jeunes contrevenants*, et il a demandé une ordonnance d'interdiction. Sa demande auprès de la Section de première instance de la Cour suprême de Terre-Neuve et son appel auprès de la Cour d'appel de Terre-Neuve ont été rejetés.

Arrêt: Le pourvoi est accueilli.

Selon une règle constitutionnelle importante, les tribunaux doivent être accessibles au public et leurs procédures, à tout intéressé. Ce principe comporte certaines exceptions dans les cas où le droit du public à la confidentialité l'emporte sur le droit du public à l'accessibilité. Cet équilibre est expressément visé par les dispositions de non-communication dans la *Loi sur les jeunes contrevenants*. Le législateur reconnaît qu' une fois stigmatisé comme étant un malfaiteur, un adolescent peut faire en sorte que le stigmate devienne réalité, à moins de recevoir de l'aide et d'être réorienté. À long terme, la société est mieux protégée par la prévention de la récidive et par la maximalisation des chances de réadaptation des jeunes contrevenants. Par ailleurs, l'objet de la Loi n'est pas la réinsertion sociale du contrevenant aux dépens de la sécurité du public.

La Loi établit deux régimes distincts, mais qui se renforcent mutuellement, pour contrôler les renseignements concernant les jeunes contrevenants. Le premier ensemble de dispositions commence au par. 38(1) par une interdiction générale «de diffuser, par quelque moyen que ce soit, le compte rendu» permettant de lier un jeune contrevenant à une infraction ou à des procédures prévues par la Loi. Le second régime s'applique à la tenue et à l'utilisation des dossiers judiciaires et est établi par les art. 40 à 44. Ces dispositions prévoient de façon très précise le genre de dossiers qui peuvent être conservés, l'endroit où ils peuvent l'être, et les cas dans lesquels ils peuvent être communiqués. L'argument de l'intimée était que si le document pouvait être qualifié d'autre chose que de «dossier» ou de «compte rendu», son contenu pouvait être diffusé sans restriction légale. Toutefois, bien que ces mots ne soient pas définis dans la Loi, on ne doit pas permettre que des subtilités étymologiques l'emportent sur le but clairement exprimé par le législateur. Ce n'est pas le nom donné à la communication qui importe, mais son contenu.

Les dispositions légales relatives à l'interdiction de communication visent essentiellement à éviter la communication non autorisée de tout renseignement liant l'identité de l'adolescent à une accusation, une instance ou une décision prise en vertu de la Loi. L'exercice d'interprétation ne vise donc pas la classification formelle des documents, mais la nature des renseignements dont on demande la communication. L'interdiction ne s'applique pas lorsque le lien interdit n'est pas fait.

Les dispositions de non-communication de la Loi ont été violées par la pratique administrative de la distribution des rôles. Le rôle du tribunal pour adolescents lie nécessairement le nom de l'adolescent à une accusation ou à une instance. Bien qu'en tant que document, le rôle de la cour ait une fonction temporaire, les renseignements qu'il contient font vraiment partie du dossier de la cour et leur communication est interdite sauf dans les cas pertinents prévus à l'art. 44.1 de la Loi.

Les restrictions prévues par le législateur à l'al. 44.1(1)*k*) ont été violées des manières suivantes: 1) La communication n'a pas été autorisée par un juge; 2) la distribution ne s'est pas limitée à la commission scolaire dont relevait l'école de l'appelant; 3) les renseignements demandés étaient pour les besoins de l'école et n'avaient rien à voir

avec l'administration de la justice. De même, les commissions scolaires ne sont pas un type d'organisme gouvernemental chargé de surveiller des adolescents ayant des démêlés avec la justice ou de s'en occuper au sens de l'al. 44.1(1)*g*).

La communication du rôle n'était pas autorisée non plus par l'une des exceptions à l'interdiction générale de publication prévue à l'art. 38, qui interdit qu'un lien soit fait entre l'adolescent et des infractions ou des instances prévues par la Loi. La préparation, l'utilisation et la communication du rôle du tribunal pour adolescents sont permises par la Loi en vertu du par. 38(1.1) parce qu'elles ont lieu «dans le cours de l'administration de la justice» et qu'elles ne visent pas à renseigner la collectivité, mais la distribution du rôle aux commissions scolaires n'était pas autorisée par ce paragraphe parce que les commissions scolaires n'ont aucune responsabilité générale en matière d'administration de la justice. En l'espèce, les rôles ont été fournis pour les besoins des commissions scolaires.

La distribution générale du rôle ne peut pas non plus être justifiée par l'exception relative à la «commission scolaire». Le paragraphe 38(1.13) permet la communication de renseignements au représentant de toute commission scolaire ou école si la communication est nécessaire pour faire en sorte que l'adolescent se conforme à une ordonnance judiciaire ou pour assurer la sécurité des autres. Même si les écoles peuvent être sollicitées pour aider à assurer le respect des ordonnances judiciaires, il n'y a aucune preuve que les commissions scolaires aient eu un tel rôle à jouer relativement à l'appelant. Le but d'assurer la sécurité justifierait également la communication à la commission scolaire des renseignements relatifs à un adolescent en particulier, mais l'exception n'autorise pas la diffusion des renseignements relatifs à tous les jeunes identifiés sur le rôle, qu'ils constituent ou non un danger pour la sécurité des autres et qu'ils aillent ou non à l'école. La communication a une portée trop large car elle vise des adolescents qui ne constituent aucun risque pour la sécurité et qui ne sont peut-être même pas des étudiants, et elle a aussi une portée trop restrictive car, s'il existe un danger grave en matière de sécurité, elle peut ne pas contenir suffisamment de renseignements pour permettre à l'école d'élaborer une mesure remédiatrice appropriée. Les infractions de violence contre des personnes - comme les voies de fait, les voies de fait avec lésions, les agressions sexuelles graves, les infractions relatives aux armes et aux drogues ainsi que les infractions graves contre les biens telles que l'incendie criminel - peuvent manifestement soulever une préoccupation suffisante pour la sécurité de l'adolescent lui-même ainsi que pour celle «du personnel, des étudiants ou d'autres personnes» pour justifier la notification à la commission scolaire responsable de l'étudiant en question. Rien dans la disposition n'empêche de procéder par notification générale, pourvu que la politique soit conçue conformément aux exigences de la loi.

POURVOI contre un arrêt de la Cour d'appel de Terre-Neuve (1998), 163 Nfld. & P.E.I.R. 154, 503 A.P.R. 154, 126 C.C.C. (3d) 114, [1998] N.J. No. 126 (QL), qui a rejeté l'appel de l'appelant à l'encontre d'une décision de la Cour suprême de Terre-Neuve, Section de première instance (1996), 142 Nfld. & P.E.I.R. 31, 445 A.P.R. 31, [1996] N.J. No. 150 (QL), qui avait rejeté sa demande d'ordonnance d'interdiction. Pourvoi accueilli.

Joan Dawson, pour l'appelant.

Bernard Coffey, c.r., pour l'intimée Sa Majesté la Reine.

R. Wayne Bruce, pour les intimés Roman Catholic School Board for St. John's et Avalon Consolidated School Board.

Cheryl Milne, pour l'intervenante.

Procureur de l'appelant: Joan Dawson, St. John's.

Procureur de l'intimée Sa Majesté la Reine: Le ministère de la Justice, St. John's.

Procureurs des intimés Roman Catholic School Board for St. John's et Avalon Consolidated School Board: Stewart McKelvey Stirling Scales, St. John's.

Procureur de l'intervenante: Canadian Foundation for Children, Youth and the Law, Toronto.

Will-Kare Paving & Contracting Limited - v. - *Her Majesty the Queen* (F.C.)(26601)
Indexed as: Will-Kare Paving & Contracting Ltd. *v.* Canada /
Répertorié: Will-Kare Paving & Contracting Ltd. *c.* Canada
Neutral citation: 2000 SCC 36. / Référence neutre: 2000 CSC 36.
Judgment rendered July 20, 2000 / Jugement rendu le 20 juillet 2000

Present: L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Major, Bastarache and Binnie JJ.

Taxation -- Income tax -- Deductions -- Capital cost of property -- Investment tax credit -- Manufacturing or processing goods for sale -- Taxpayer constructing its own asphalt plant -- Asphalt produced by plant mostly used in taxpayer's own paving business but part of production sold to third parties -- Whether capital cost of plant qualifies for investment tax credit under s. 127(5) of Income Tax Act and accelerated capital cost allowance under Class 39 of Schedule II of Income Tax Regulations -- Whether asphalt plant primarily acquired for "manufacturing or processing goods for sale" -- Meaning of "sale" -- Income Tax Act, S.C. 1970-71-72, c. 63, ss. 20(1)(a), 127(5), (9) "qualified property" -- Income Tax Regulations, C.R.C. 1978, c. 945, Schedule II, Class 39.

The appellant operates a paving business. In 1988, it constructed its own asphalt plant, anticipating that the plant would allow it to bid on larger contracts and that third-party sales of excess production would make the plant economically feasible. After the plant was acquired, the appellant's sales and revenues from paving contracts increased as expected. For the taxation years in question, approximately 75 per cent of the appellant's asphalt output was supplied to customers pursuant to contracts for work and materials. The remaining 25 per cent was sold to third parties. In the taxation years 1988, 1989 and 1990, the appellant included the plant in Class 39 of Schedule II of the *Income Tax Regulations*, claiming that the plant was property used primarily in the "manufacturing and processing of goods for sale". As such, the appellant claimed an accelerated capital cost allowance under s. 20(1)(*a*) of the *Income Tax Act* and the s. 127(5) investment tax credit on the basis that the plant was "qualified property" within the meaning of s. 127(9) of the Act. The Minister of National Revenue reassessed the appellant, reclassifying the plant as Class 8 property for capital cost allowance purposes and denying the investment tax credit, in both cases on the basis that the plant was not being used primarily for the "manufacturing or processing of goods for sale". The appellant's appeals to both the Tax Court of Canada and the Federal Court of Appeal were dismissed.

Held (Gonthier, McLachlin and Binnie JJ. dissenting): The appeal should be dismissed.

Per L'Heureux-Dubé, Iacobucci, **Major** and Bastarache JJ.: To receive the benefit of the s. 127(5) investment tax credit and the accelerated capital cost allowance of Class 39, the taxpayer must establish that it acquired the asphalt plant primarily for the purpose of "manufacturing or processing goods for sale or lease". Notwithstanding the absence of direction in the wording of the relevant provisions, the concepts of a sale or a lease have settled legal definitions. Parliament was cognizant of these meanings and the implication of using such language, so the availability of the manufacturing and processing incentives at issue must be restricted to property utilized in the supply of goods for sale and not extended to property primarily utilized in the supply of goods through contracts from work and materials. Absent express direction that an interpretation other than that ascribed by settled commercial law be applied, it would be inappropriate to apply another interpretation.

To apply a "plain meaning" interpretation of the concept of a sale in the case at bar would assume that the *Income Tax Act* operates in a vacuum, oblivious to the legal characterization of the broader commercial relationships it affects. Previous jurisprudence of this Court has assumed that reference must be given to the broader commercial law to give meaning to words that, outside the Act, are well-defined. Referring to the broader context of private commercial law in ascertaining the meaning to be ascribed to language used in the *Income Tax Act* is also consistent with the modern purposive principle of statutory interpretation. Since the word "sale" has an established meaning, the technical nature of the *Income Tax Act* does not lend itself to broadening the principle of plain meaning to embrace popular meaning, although it would be open to Parliament to provide for a broadened definition of sale for the purpose of applying the incentives with clear language to that effect.

Here, the appellant is not entitled to claim the two manufacturing and processing tax incentives. For the taxation years in issue, the plant was used primarily in the manufacturing or processing of goods supplied through contracts for

work and materials, not through sale. Property in the asphalt was transferred to the appellant's customers as a fixture to real property.

Per Gonthier, McLachlin and **Binnie** JJ. (dissenting): The appellant is entitled to claim the two manufacturing and processing tax incentives at issue. This appeal does not turn on the percentages of asphalt sold under different types of contract, but on the fact that the asphalt plant produced a manufactured product in a saleable condition. The evidence is that about 25 per cent of the product was appropriated by the taxpayer and sold as is to customers. It disposed of the balance of the asphalt under various paving contracts for work and materials. None of the asphalt was retained by the taxpayer. It is common ground that if the taxpayer had sold to its paving customers the asphalt in one contract and the installation of it in another, it would be entitled to the deduction.

The customer's objective was to obtain an asphalt driveway, and the services provided by the taxpayer were incidental to realization of that objective. The price was paid, and the customer became the owner of the asphalt in his driveway. The taxpayer and its customers were likely oblivious to the fact that, in the eye of the law, title to the steaming stretch of asphalt passed by accession. It is important in a self-assessment tax system to promote an interpretation of provisions, where possible, that is comprehensible to the taxpayers themselves. Neither the appellant nor the customers were likely to understand the distinction between accession and sale.

The primary rule of statutory interpretation is to ascertain the intention of Parliament. Where the meaning of the words used is plain and no ambiguity arises from context, then the words offer the best indicator of Parliament's intent. While the original plain meaning rule has been the subject of some criticism in the past, the modern plain meaning rule is not fairly subject to those criticisms. Here, it is not unreasonable to require the legislative drafter to make plain any intention that the product must not only be manufactured for sale, but must be disposed of under a specific type of contract. It would be a simple matter to signal to the taxpayer in ordinary language that if he or she supplies services along with the manufactured product the fast write-off and the investment tax credit will be forfeited. A review of the related text in the Act and the legislative history confirms the fact that the "plain meaning" accords with Parliament's intent expressed by the responsible Minister and senior officials.

In this case, the other provisions of the Act, the purpose of the legislation, and the context of economic and commercial reality cannot alter the interpretation of words in the statute that are clear and plain. Nor, given the clarity of the language, would it be appropriate to narrow the words "sale or lease" by reference to technical legal distinctions among various types of disposal contracts which are totally extraneous to the Act and are not easily accessible to the self-assessing taxpayer. Such imported technical distinctions may frustrate not only the plain meaning, but the legislative purpose of the tax provision. Where, as here, Parliament has spoken in language that continues to speak plainly despite "successive circles of context", the taxpayer is entitled to the benefit voted by Parliament.

APPEAL from a judgment of the Federal Court of Appeal (1998), 232 N.R. 381, 98 D.T.C. 6203, [1998] F.C.J. No. 234 (QL) dismissing the taxpayer's appeal from a decision of the Tax Court of Canada, [1996] 2 C.T.C. 2426, 97 D.T.C. 506, [1996] T.C.J. No. 281 (QL). Appeal dismissed, Gonthier, McLachlin and Binnie JJ. dissenting.

Philip Anisman and *Robert B. MacLellan*, for the appellant.

Bruce S. Russell and *Anne-Marie Lévesque*, for the respondent.

Solicitors for the appellant: Philip Anisman, Toronto; Burchell MacDougall, Truro, Nova Scotia.

Solicitor for the respondent: The Department of Justice, Halifax.

Présents: Les juges L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Major, Bastarache et Binnie.

Droit fiscal – Impôt sur le revenu – Déductions – Coût en capital des biens – Crédit d'impôt à l'investissement – Fabrication ou transformation de marchandises à vendre – La contribuable a construit sa propre usine de fabrication d'asphalte – L'asphalte fabriqué à l'usine était surtout utilisé pour l'entreprise d'asphaltage de la contribuable, mais une partie de la production était vendue à des tiers – La contribuable peut-elle déduire le coût en capital de l'usine au titre du crédit d'impôt à l'investissement prévu au par. 127(5) de la Loi de l'impôt sur le revenu, et se prévaloir de la déduction pour amortissement accéléré selon la catégorie 39 de l'annexe II du Règlement de l'impôt sur le revenu? – L'usine de fabrication d'asphalte a-t-elle été acquise principalement pour «la fabrication ou la transformation de marchandises à vendre»? – Le sens du mot «vendre» – Loi de l'impôt sur le revenu, S.C. 1970-71-72, ch. 63, art. 20(1)a), 127(5), (9) «bien admissible» – Règlement de l'impôt sur le revenu, C.R.C. 1978, ch. 945, annexe II, catégorie 39.

L'appelante exploite une entreprise de pavage. En 1988, elle a construit sa propre usine de fabrication d'asphalte, escomptant que l'usine lui permettrait de soumissionner des travaux de plus grande importance et que la vente de sa production excédentaire à des tiers rendrait l'usine rentable. Après l'acquisition de l'usine, les ventes et les recettes de l'appelante provenant de contrats d'asphaltage ont augmenté comme prévu. Pour les années d'imposition considérées, environ 75 % de la production d'asphalte de l'appelante était fournie à des clients en application de contrats de fourniture d'ouvrage et de matériaux et 25 % était vendue à des tiers. Pour les années d'imposition 1988, 1989 et 1990, l'appelante a inscrit l'usine dans la catégorie 39 de l'annexe II du *Règlement de l'impôt sur le revenu*, car il s'agissait selon elle d'un bien utilisé principalement pour «la fabrication et la transformation de marchandises à vendre». Elle a donc demandé la déduction pour amortissement accéléré en application de l'al. 20(1)*a*) de la *Loi de l'impôt sur le revenu*, et le crédit d'impôt à l'investissement prévu au par. 127(5) pour le motif que l'usine est un «bien admissible» au sens du par. 127(9) de la Loi. Le ministre du Revenu national a établi une nouvelle cotisation à l'égard de l'appelante, inscrivant l'usine dans la catégorie 8 aux fins de la déduction pour amortissement et refusant le crédit d'impôt à l'investissement, pour le motif, dans les deux cas, que l'usine n'était pas utilisée principalement pour «la fabrication ou la transformation de marchandises à vendre». Les appels interjetés par l'appelante à la Cour canadienne de l'impôt et à la Cour d'appel fédérale ont été rejetés.

Arrêt (Les juges Gonthier, McLachlin et Binnie sont dissidents): Le pourvoi est rejeté.

Les juges L'Heureux-Dubé, Iacobucci, **Major** et Bastarache: Pour bénéficier du crédit d'impôt à l'investissement prévu au par. 127(5) et de la déduction pour amortissement accéléré de la catégorie 39, la contribuable doit établir qu'elle a acquis l'usine de fabrication d'asphalte principalement pour «la fabrication ou la transformation de marchandises à vendre ou à louer». Malgré l'absence de précision dans le libellé des dispositions pertinentes, vente et location ont un sens bien établi en droit. Le législateur connaissait le sens de ces termes et était conscient des conséquences de leur emploi, de sorte que les stimulants fiscaux accordés pour la fabrication et la transformation ne visent que les biens utilisés pour la fourniture de marchandises à vendre, à l'exclusion des biens utilisés principalement pour la fourniture de marchandises en exécution de contrats de fourniture d'ouvrage et de matériaux. Sauf indication contraire expresse, il y a lieu de recourir à l'interprétation qui découle des règles bien établies du droit commercial.

Interpréter en l'espèce le mot vente selon son «sens ordinaire» supposerait que la *Loi de l'impôt sur le revenu* s'applique en vase clos sans tenir aucun compte de la qualification juridique des rapports commerciaux plus généraux qu'elle vise. Notre Cour a tenu pour acquis, dans des arrêts antérieurs, qu'il faut s'en remettre aux règles plus générales du droit commercial pour attribuer un sens à des mots qui, indépendamment de la Loi, sont bien définis. Il est également conforme au principe moderne de l'interprétation des lois en fonction de leur objet de s'en remettre au contexte plus large du droit commercial pour déterminer le sens à donner aux termes employés dans la *Loi de l'impôt sur le revenu*. Puisque le mot «vente» a un sens bien établi, la nature technique de la *Loi de l'impôt sur le revenu* ne permet pas d'élargir le principe du sens ordinaire de manière à englober le sens courant, bien qu'il soit loisible au législateur de prévoir une définition plus étendue de la vente aux fins de l'application des stimulants fiscaux en adoptant un libellé clair en ce sens.

En l'espèce, l'appelante n'a pas le droit de se prévaloir des deux stimulants fiscaux aux titres de la fabrication et de la transformation. Pour les années d'imposition considérées, l'usine était utilisée principalement pour la fabrication ou la transformation de marchandises fournies en exécution de contrats de fourniture d'ouvrage et de matériaux, et non en exécution de contrats de vente. La propriété de l'asphalte est passée aux clients de l'appelante comme accessoire fixe d'un bien réel.

Les juges Gonthier, McLachlin et **Binnie** (dissidents): L'appelante a le droit de se prévaloir des deux stimulants fiscaux aux titres de la fabrication et de la transformation. L'issue du présent pourvoi dépend non pas des pourcentages d'asphalte vendus en application de divers types de contrats, mais du fait que l'usine de fabrication d'asphalte produisait un matériau pouvant être vendu. Selon la preuve, la contribuable a pris environ 25 % du produit pour le vendre tel quel à des clients. Le reste de l'asphalte a servi à l'exécution de divers contrats de fourniture d'ouvrage et de matériaux, la contribuable n'en ayant pas conservé. Nul ne conteste que, si la contribuable avait conclu avec ses clients un contrat pour la vente de l'asphalte et un autre pour l'étendre, elle aurait droit à la déduction.

L'objectif du client était d'obtenir une allée asphaltée, et les services fournis par la contribuable étaient accessoires à la réalisation de cet objectif. Une fois le prix payé, le client devenait propriétaire de l'asphalte recouvrant son allée. La contribuable et ses clients n'étaient vraisemblablement pas conscients du fait qu'aux yeux de la loi, le titre sur cette bande fumante d'asphalte passait par accession. Il est important dans un régime fiscal fondé sur l'autocotisation de promouvoir une interprétation des dispositions qui soit, dans la mesure du possible, compréhensible pour les contribuables eux-mêmes. Ni l'appelante ni les clients n'étaient vraisemblablement en mesure de comprendre la distinction entre l'accession et la vente.

La première règle d'interprétation des lois est qu'il faut déterminer l'intention du législateur. Quand le sens des mots utilisés est clair et que le contexte ne crée pas d'ambiguïté, les mots sont alors les meilleurs indicateurs de l'intention du législateur. Même si la règle du sens ordinaire initiale a fait l'objet de certaines critiques dans le passé, la règle moderne du sens ordinaire ne mérite pas ces critiques. En l'espèce, il n'est pas déraisonnable d'exiger du rédacteur de lois qu'il dise clairement non seulement que le matériau doit être fabriqué en vue de la vente, mais qu'il faut aussi en disposer dans le cadre d'un type précis de contrat. Il serait très simple de signaler au contribuable, en langage clair, que s'il fournit des services en même temps que le matériau fabriqué, il perdra la déduction pour amortissement accéléré et le crédit d'impôt à l'investissement. Un examen des dispositions connexes de la Loi et de l'historique législatif confirme le fait que le «sens ordinaire» concorde avec l'intention du législateur telle qu'elle est exprimée par le ministre et les hauts fonctionnaires responsables.

Dans la présente espèce, les autres dispositions de la Loi, son objet et le contexte de la réalité économique et commerciale ne sauraient altérer l'interprétation des termes de la Loi qui sont clairs et nets. Compte tenu de la clarté du libellé, il n'y aurait pas lieu de restreindre le sens de «vente ou location» en recourant à des distinctions juridiques techniques entre divers types de contrats d'aliénation, distinctions qui sont totalement étrangères à la Loi et ne sont guère à la portée du contribuable en régime d'autocotisation. Le recours à ces distinctions techniques importées risque d'aller à l'encontre non seulement du sens ordinaire, mais aussi de l'objet législatif de la disposition fiscale. Dans un cas où, comme en l'espèce, le législateur a utilisé des termes qui continuent d'être clairs malgré les «cercles contextuels successifs», le contribuable a droit à l'avantage ainsi consenti.

POURVOI contre un arrêt de la Cour d'appel fédérale (1998), 232 N.R. 381, 98 D.T.C. 6203, [1998] A.C.F. n° 234 (QL), qui a rejeté l'appel d'un contribuable à l'encontre d'une décision de la Cour canadienne de l'impôt, [1996] 2 C.T.C. 2426, 97 D.T.C. 506, [1996] A.C.I. n° 281 (QL). Pourvoi rejeté, les juges Gonthier, McLachlin et Binnie sont dissidents.

Philip Anisman et *Robert B. MacLellan*, pour l'appelante.

Bruce S. Russell et *Anne-Marie Lévesque*, pour l'intimée.

Procureurs de l'appelante: Philip Anisman, Toronto; Burchell MacDougall, Truro, Nouvelle-Écosse.

Procureur de l'intimée: Le ministère de la Justice, Halifax.

Robert Lovelace, on his own behalf and on behalf of the Ardoch Algonquin First Nation and Allies, the Ardoch Algonquin First Nation and Allies, and Chief Kris Nahrgang, on behalf of Kawartha Nishnawbe First Nation, the Kawartha Nishnawbe First Nation, Chief Roy Meaniss on his own behalf and on behalf of the Beaverhouse First Nation, and the Beaverhouse First Nation, Chief Theron Mccrady on his own behalf and on behalf of the Poplar Point Ojibway First Nation, and the Bonnechere Métis Association - and - *Be-Wab-Bon Métis and Non-Status Indian Association and Ontario Métis Aboriginal Association* -v.- *Her Majesty the Queen in Right of Ontario and the Chiefs of Ontario* (Ont.)(26165)
Indexed as: Lovelace *v.* Ontario / Répertorié: Lovelace *c.* Ontario
Neutral citation: 2000 SCC 37. / Référence neutre: 2000 CSC 37.
Judgment rendered July 20, 2000 / Jugement rendu le 20 juillet 2000

Present: L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Major, Bastarache and Arbour JJ.

Constitutional law -- Charter of Rights -- Equality rights -- Indians -- Proceeds of province's first reserve-based commercial casino to be distributed only to Ontario First Nations communities registered as bands under Indian Act -- Whether province's decision to exclude non-band aboriginal communities from casino proceeds and from participating in the negotiations infringing s. 15(1) of Canadian Charter of Rights and Freedoms.

Constitutional law – Charter of Rights – Equality rights – Relationship between ss. 15(1) and 15(2) of Canadian Charter of Rights and Freedoms.

Constitutional law -- Division of powers -- Indians -- Proceeds of province's first reserve-based commercial casino to be distributed only to Ontario First Nations communities registered as bands under Indian Act -- Whether province's decision to exclude non-band aboriginal communities ultra vires -- Whether province exercising its spending power -- Constitution Act, 1867, s. 91(24).

In the early 1990's First Nations bands approached the Ontario government for the right to control reserve-based gaming activities. The profits from these activities were to be used to strengthen band economic, cultural, and social development. As a result, Ontario and representatives from Ontario's First Nations entered into a process of negotiations with the goal of partnering in the development of the province's first reserve-based commercial casino. In 1996, the appellants were informed by the province that the casino's proceeds ("First Nations Fund") were to be distributed only to Ontario First Nations communities registered as bands under the *Indian Act*. At the individual level, all of the appellate groups have members who have, or are entitled to, registration as individual "Indians" pursuant to the *Indian Act*; however, as communities, the appellant groups are non-status since they are not registered as *Indian Act* "bands", and do not have reserve lands. At motions court, the appellants successfully sought a declaration that Ontario's refusal to include them in the casino project was unconstitutional and that they should be allowed to participate in the distribution negotiations. The judge held that (1) the exclusion of the appellants from the First Nations Fund violated their equality rights under s. 15(1) of the *Canadian Charter of Rights and Freedoms* and was not justified under s. 1; (2) s. 15(2) of the *Charter* could not be invoked as a defence to the s. 15(1) violation; and (3) Ontario's actions were *ultra vires* because of s. 91(24) of the *Constitution Act, 1867*. The Court of Appeal set aside the decision, finding that the motions judge had misapprehended the facts and made errors in law. On the basis that the main object of the casino project was to ameliorate the social and economic conditions of bands, the court held that the casino project was authorized by s. 15(2) of the *Charter* and could not therefore constitute discrimination under s. 15(1). The Court of Appeal held also that the province did not act *ultra vires* the *Constitution Act, 1867* as the province simply exercised its spending power.

Held: The appeal should be dismissed.

This appeal should be decided on the basis of s. 15(1) of the *Charter*. Although the Court of Appeal's decision was based on the application of s. 15(2), it was rendered without the benefit of this Court's decision in *Law*. *Law* requires that the determination of a discrimination claim be grounded in three broad inquiries: (1) whether the law, program or activity imposes differential treatment between the claimant and others; (2) whether this differential treatment is based on one or more enumerated or analogous grounds; and (3) whether the impugned law, program or activity has a purpose or effect that is substantively discriminatory. Each of these inquiries proceeds on the basis of a comparative analysis which takes into consideration the surrounding context of the claim and the claimant.

Section 15(1) is to be interpreted in a purposive and contextual manner. The main focus of the inquiry is to establish whether a conflict exists between the purpose or effect of an impugned law and the purpose of s. 15(1), which is to protect against the violation of essential human dignity. The contextual analysis is a directed inquiry; it is focused through the application of contextual factors which have been identified as being particularly sensitive to the potential existence of substantive discrimination. Further, the determination of the appropriate comparator and the evaluation of the context must be examined from the reasonable perspective of the claimant. The question to be asked is whether, taking the perspective of a "reasonable person, in circumstances similar to those of the claimant, who takes into account the contextual factors relevant to the claim", the law has the effect of demeaning a claimant's human dignity. The s. 15(1) scrutiny, which applies to comprehensive benefit schemes as well as targeted ameliorative programs, is not limited to distinctions set out only in legislation. The activities relating to the First Nations Fund undertaken by the provincial government are open to *Charter* scrutiny as actions taken under the statutory authority of s. 15(1) of the *Ontario Casino Corporation Act, 1993*.

The s. 15(1) inquiry must proceed in this case on the basis of comparing band and non-band aboriginal communities. It is clear that the appellants have been subjected to differential treatment since the province confirmed that they were excluded from a share in the First Nations Fund and any related negotiation process. However, it is not necessary to decide whether the differential treatment was based on an enumerated or analogous ground in view of the finding at the third stage of the inquiry that even if these grounds are present there is no discrimination in the circumstances of this case.

Four contextual factors provide the basis for organizing the third stage of the discrimination analysis: (i) pre-existing disadvantage, stereotyping, prejudice, or vulnerability; (ii) the correspondence, or lack thereof, between the ground(s) on which the claim is based and the actual need, capacity, or circumstances of the claimant or others; (iii) the ameliorative purpose or effects of the impugned law, program or activity upon a more disadvantaged person or group in society; and (iv) the nature and scope of the interest affected by the impugned government activity. The relative disadvantage of the claimant, as assessed in relation to the comparator group, does not stand alone as constituting a fifth contextual factor. The broad and fully contextual s. 15(1) analysis transcends the superficiality of a simple balancing of relative disadvantage. The inappropriateness of a relative disadvantage approach is highlighted by the unique circumstances of this case, where the disadvantages suffered both by the claimants and the comparator group must be acknowledged.

An analysis of the four contextual factors leads to the conclusion that the First Nations Fund does not conflict with the purpose of s. 15(1) and does not engage the remedial function of the equality right. While, the appellants have established pre-existing disadvantage, stereotyping, and vulnerability, they have failed to establish that the First Nations Fund functioned by device of stereotype. Instead, the distinction corresponded to the actual situation of individuals it affects, and the exclusion did not undermine the ameliorative purpose of the targeted program. Second, while the appellants' needs correspond to the needs addressed by the casino program, for both the appellant and respondent aboriginal communities face these same social problems, the correspondence consideration requires more than establishing a common need. A consideration of the correspondence between the actual needs, capacities, and circumstances on the one hand, and the program on the other, indicates that the appellant aboriginal communities have very different relations with respect to land, government, and gaming from those anticipated by the casino program. Third, the focus of the ameliorative purpose analysis is not the fact that the appellant and respondent groups are equally disadvantaged, but that the program was targeted at ameliorating the conditions of a specific disadvantaged group rather than at disadvantage potentially experienced by any member of society. Although the targeted ameliorative program is alleged to be underinclusive, one must recognize that exclusion from a targeted or partnership program is less likely to be associated with stereotyping or stigmatization or conveying the message that the excluded group is less worthy of recognition and participation in the larger society. Here, the ameliorative purpose of the overall casino project and the related First Nations Fund has clearly been established. The First Nations Fund will provide bands with resources in order to ameliorate specifically social, health, cultural, education, and economic disadvantages, thereby increasing the fiscal autonomy of the bands and supporting the bands in achieving self-government and self-reliance. The First Nations Fund has a purpose that is consistent with s. 15(1) of the *Charter* and the exclusion of the appellants does not undermine this purpose since it is not associated with a misconception as to their actual needs, capacities and circumstances. Lastly, with respect to the nature of the interest affected, the targeted arrangement and circumstances surrounding the First Nations Fund do not result

in any lack of recognition of the appellants as self-governing communities. To the extent that there is any such effect in this respect, it is remote.

Therefore, the appellants have failed to demonstrate that, viewed from the perspective of the reasonable individual, in circumstances similar to those of the appellants, the exclusion from the First Nations Fund has the effect of demeaning the appellants' human dignity. This conclusion was reached despite a recognition that the appellant and respondent aboriginal communities have overlapping and largely shared histories of discrimination, poverty, and systemic disadvantage that cry out for improvement. The contextual analysis reveals an almost precise correspondence between the casino project and the needs and circumstances of the First Nations bands. The casino project was undertaken by Ontario in order to further develop a partnership or a "government-to-government" relationship with Ontario's First Nation band communities. It is a project that is aimed at supporting the journey of these aboriginal groups towards empowerment, dignity, and self-reliance. While it is not designed to meet similar needs in the appellant aboriginal communities, its failure to do so does not amount to discrimination under s. 15.

At this stage of the s. 15 jurisprudence, s. 15(2) of the *Charter* should be understood as confirmatory of s. 15(1). In that respect, claimants arguing equality claims in the future should first be directed to s. 15(1) since that subsection can embrace ameliorative programs of the kind that are contemplated by s. 15(2). By doing that one can ensure that the program is subject to the full scrutiny of the discrimination analysis, as well as the possibility of a s. 1 review. However, in view of emerging equality jurisprudence the possibility is not foreclosed that s. 15(2) may be independently applicable to a case in the future.

Finally, the province did not act *ultra vires* in partnering the casino initiative with *Indian Act* registered aboriginal communities. The exclusion of non-registered aboriginal communities did not act to define or impair the "Indianness" of the appellants since the province simply exercised its constitutional spending power in making the casino arrangements. There is nothing in the casino program affecting the core of the s. 91(24) federal jurisdiction. Consequently, this casino program cannot have the effect of violating the rights affirmed by s. 35(1) of the *Constitution Act, 1982* and does not approach the core of aboriginality.

APPEAL from a judgment of the Ontario Court of Appeal (1997), 33 O.R. (3d) 735, 100 O.A.C. 344, 44 C.R.R. (2d) 285, 148 D.L.R. (4th) 126, [1998] 2 C.N.L.R. 36, [1997] O.J. No. 2313 (QL), allowing an appeal from a decision of the Ontario Court (General Division) (1996), 38 C.R.R. (2d) 297, [1997] 1 C.N.L.R. 66, [1996] O.J. No. 5063 (QL), [1996] O.J. No. 3176 (QL), declaring that the exclusion of the appellants from the First Nations Fund violated s. 15(1) of the *Canadian Charter of Rights and Freedoms.* Appeal dismissed.

Christopher M. Reid, for the appellants Robert Lovelace et al.

Robert MacRae and *Michael S. O'Neill*, for the appellants Be-Wab-Bon Métis and Non-Status Indian Association and the Ontario Métis Aboriginal Association.

Lori R. Sterling and *Sarah Kraicer*, for the respondent Her Majesty the Queen in right of Ontario.

Michael W. Sherry, for the respondent the Chiefs of Ontario.

Urszula Kaczmarczyk and *Michael H. Morris*, for the intervener the Attorney General of Canada.

Isabelle Harnois and *Pierre-Christian Labeau* for the intervener the Attorney General of Quebec.

Kurt Sandstrom and *Marilyn Poitras*, for the intervener the Attorney General for Saskatchewan.

M. Philip Tunley and *Jane A. Langford*, for the intervener the Mnjikaning First Nation.

Marc J. A. LeClair and *Joseph E. Magnet*, for the intervener the Congress of Aboriginal Peoples.

Mary Eberts and *Lucy McSweeney*, for the intervener the Native Women's Association of Canada.

Written submissions only by *David Baker*, for the intervener the Council of Canadians with Disabilities.

Written submissions only by *Cynthia Petersen*, for the intervener the Charter Committee on Poverty Issues.

Written submissions only by *Kathleen A. Lahey*, for the intervener the Métis National Council of Women.

Solicitor for the appellants Robert Lovelace et al.: Christopher M. Reid, Toronto.

Solicitors for the appellants Be-Wab-Bon Métis and Non-Status Indian Association and the Ontario Métis Aboriginal Association: Sarlo O'Neil, Sault Ste. Marie.

Solicitor for the respondent Her Majesty the Queen in right of Ontario: The Attorney General of Ontario, Toronto.

Solicitor for the respondent the Chiefs of Ontario: Michael W. Sherry, Toronto.

Solicitor for the intervener the Attorney General of Canada: The Deputy Attorney General of Canada.

Solicitor for the intervener the Attorney General of Quebec: The Department of Justice, Sainte-Foy.

Solicitor for the intervener the Attorney General for Saskatchewan: The Deputy Attorney General of Saskatchewan, Regina.

Solicitors for the intervener the Mnjikaning First Nation: McCarthy Tétrault, Toronto.

Solicitor for the intervener the Congress of Aboriginal Peoples: Marc J.A. LeClair, Ottawa.

Solicitors for the intervener the Native Women's Association of Canada: Eberts Symes Street & Corbett, Toronto.

Solicitors for the intervener the Charter Committee on Poverty Issues: Sack Goldblatt Mitchell, Toronto.

Solicitor for the intervener the Métis National Council of Women: Kathleen A. Lahey, Kingston.

Présents: Les juges L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Major, Bastarache et Arbour.

Droit constitutionnel -- Charte des droits -- Droits à l'égalité -- Indiens -- Recettes du premier casino commercial situé dans une réserve de l'Ontario devant être distribuées seulement aux Premières nations de cette province inscrites comme bandes en vertu de la Loi sur les Indiens -- Est-ce que la décision de la province d'exclure les communautés autochtones non constituées en bandes du partage des recettes et de la participation aux négociations contrevient au par. 15(1) de la Charte canadienne des droits et libertés.

Droit constitutionnel – Charte des droits – Droits à l'égalité – Corrélation entre les art. 15(1) et 15(2) de la Charte canadienne des droits et libertés.

Droit constitutionnel -- Partage des compétences -- Indiens -- Recettes du premier casino commercial situé dans une réserve de l'Ontario devant être distribuées seulement aux Premières nations de cette province inscrites comme bandes en vertu de la Loi sur les Indiens -- Est-ce que la décision de la province d'exclure les communautés autochtones non constituées en bandes est ultra vires? -- La province exerçait-elle son pouvoir de dépenser? -- Loi constitutionnelle de 1867, art. 91(24).

Au début des années 90, les Premières nations constituées en bandes ont fait des démarches auprès du gouvernement de l'Ontario pour obtenir le droit de régir les activités de jeu dans les réserves. Les profits tirés de ces activités devaient être utilisés pour favoriser le développement économique, culturel et social des bandes. Par conséquent, l'Ontario et les représentants des Premières nations de l'Ontario ont entamé des négociations en vue d'établir, en partenariat, le premier casino commercial dans une réserve indienne. En 1996, les appelants ont été informés par la province que les recettes du casino (le «Fonds des Premières nations») seraient distribuées uniquement aux Premières nations de l'Ontario inscrites comme bandes en vertu de la *Loi sur les Indiens*. Sur le plan individuel, tous les groupes appelants comptent des membres qui sont inscrits à titre d'«Indiens» en vertu de la *Loi sur les Indiens* ou qui ont le droit de l'être; toutefois, en tant que communautés, les groupes appelants n'ont aucun statut car ils ne sont pas inscrits en tant que «bandes» au sens de la *Loi sur les Indiens* et ils n'ont pas de terres de réserve. Devant la cour des requêtes, les appelants ont obtenu un jugement déclarant que le refus de l'Ontario de les considérer comme parties au projet de casino était inconstitutionnel et qu'ils devaient être autorisés à participer aux négociations relatives à la distribution des recettes. Le juge a estimé (1) que l'exclusion des appelants du Fonds des Premières nations portait atteinte aux droits à l'égalité garantis aux appelants par le par. 15(1) de la *Charte canadienne des droits et libertés* et n'était pas justifiée au regard de l'article premier; (2) que le par. 15(2) *de la Charte* ne pouvait pas être invoqué comme moyen de défense relativement à la violation du par. 15(1); (3) que les actes de l'Ontario étaient *ultra vires* au regard du par. 91(24) de la *Loi constitutionnelle de 1867*. La Cour d'appel a infirmé la décision du juge des requêtes, estimant que celui-ci avait mal saisi les faits et avait commis des erreurs de droit. La cour a conclu que, puisque l'objectif principal du projet de casino était l'amélioration de la situation sociale et économique des bandes, le projet de casino était autorisé par le par. 15(2) et qu'il ne pouvait être source de discrimination au sens du par. 15(1) de la *Charte*. La Cour d'appel a également estimé que la province n'avait pas outrepassé les pouvoirs qui lui sont conférés par la *Loi constitutionnelle de 1867* puisqu'elle avait simplement exercé son pouvoir de dépenser.

Arrêt: Le pourvoi est rejeté.

Le présent pourvoi doit être décidé au moyen de l'application du par. 15(1) de la *Charte*. La décision de la Cour d'appel était fondée sur l'application du par. 15(2), mais elle a été rendue sans que la Cour d'appel n'ait l'avantage de disposer de l'arrêt *Law* de notre Cour. Suivant cet arrêt, il faut, pour statuer sur une allégation de discrimination, répondre à trois grandes questions: (1) Est-ce que la loi, le programme ou l'activité traite le demandeur différemment d'autres personnes? (2) Est-ce que cette différence de traitement est fondée sur un ou plusieurs motifs énumérés ou analogues? (3) Est-ce que la loi, le programme ou l'activité contesté a un objet ou un effet qui est source de discrimination réelle? Chacune de ces étapes prend la forme d'une analyse comparative qui prend en considération le contexte entourant l'allégation et le demandeur.

Il faut interpréter le par. 15(1) au moyen d'une démarche fondée sur l'objet et sur le contexte. L'analyse vise principalement à déterminer s'il existe un conflit entre l'objet ou l'effet de la disposition législative contestée et l'objet du par. 15(1), qui est la protection des individus contre les atteintes à la dignité humaine essentielle. L'analyse contextuelle est balisée; elle s'attache à l'application de facteurs contextuels qui ont été considérés particulièrement susceptibles de révéler l'existence potentielle de discrimination réelle. En outre, la détermination de l'élément de comparaison approprié et l'évaluation du contexte doivent être réalisées à partir du point de vue raisonnable du demandeur. La question qu'il faut se poser est de savoir si, du point de vue d'une «personne raisonnable qui se trouve dans une situation semblable à celle où se trouve le demandeur et qui tient compte des facteurs contextuels pertinents aux fins de l'allégation», la loi a pour effet de porter atteinte à la dignité humaine du demandeur. L'examen fondé sur le par. 15(1), qui s'applique aux régimes d'avantages généralement accessibles de même qu'aux programmes améliorateurs ciblés, ne se limite pas aux seules distinctions établies par un texte de loi. Les activités du gouvernement provincial relatives au Fonds des Premières nations peuvent être examinées au regard de la *Charte* en tant qu'actes accomplis en vertu des pouvoirs conférés par la loi, c'est-à-dire par le par. 15(1) de la *Loi de 1993 sur la Société des casinos de l'Ontario.*

En l'espèce, l'analyse fondée sur le par. 15(1) doit être faite en comparant les communautés autochtones constituées en bandes et celles qui ne le sont pas. Les appelants font manifestement l'objet d'un traitement différent depuis que la province a confirmé qu'ils étaient exclus de la participation aux recettes du Fonds des Premières nations et de toute négociation à cet égard. Il n'est toutefois pas nécessaire de déterminer si cette différence de traitement était fondée sur

un motif énuméré ou analogue compte tenu de la conclusion, à la troisième étape de l'analyse, que, même si ces motifs sont présents, il n'y a pas de discrimination dans les circonstances de la présente affaire.

Quatre facteurs constituent les assises de la troisième étape de l'analyse relative à la discrimination: (i) la préexistence d'un désavantage, de stéréotypes, de préjugés ou d'une situation de vulnérabilité; (ii) la correspondance, ou l'absence de correspondance, entre les motifs sur lesquels l'allégation est fondée et les besoins, les capacités ou la situation véritables du demandeur ou d'autres personnes; (iii) l'objet ou l'effet améliorateur de la loi, du programme ou de l'activité contesté eu égard à une personne ou un groupe défavorisés dans la société; (iv) la nature et l'étendue du droit touché par l'activité gouvernementale contestée. Le désavantage relatif du demandeur, apprécié par rapport au groupe de comparaison, n'est pas considéré en soi comme un cinquième facteur contextuel. L'analyse — large et entièrement contextuelle — fondée sur le par. 15(1) transcende le caractère superficiel de la simple mise en balance des désavantages relatifs. Le caractère inapproprié de la démarche fondée sur le désavantage relatif ressort des faits particuliers de la présente affaire, où il faut reconnaître les désavantages subis tant par les demandeurs que par le groupe de comparaison.

L'analyse des quatre facteurs contextuels mène à la conclusion que le Fonds des Premières nations n'est pas incompatible avec l'objet du par. 15(1) et ne fait pas entrer au jeu la fonction réparatrice du droit à l'égalité. Quoique les appelants aient établi la préexistence d'un désavantage, de stéréotypes et d'une situation de vulnérabilité, ils n'ont pas réussi à démontrer que l'application du Fonds des Premières nations fonctionnait par l'application de stéréotypes. Au contraire, la distinction correspondait à la situation véritable des individus qu'elle touche, et l'exclusion n'a pas compromis l'objet améliorateur du programme ciblé. Deuxièmement, bien que les besoins des appelants correspondent aux besoins visés par l'établissement du casino, les communautés autochtones appelantes et les communautés autochtones intimées étant aux prises avec les mêmes problèmes sociaux, il faut prouver davantage que l'existence d'un besoin commun pour satisfaire au critère de la correspondance. L'examen de la correspondance entre les besoins, les capacités et la situation véritables d'une part, et le programme d'autre part, indique que les communautés autochtones appelantes ont, à l'égard du territoire, du gouvernement et du jeu, des rapports très différents de ceux envisagés par le programme. Troisièmement, l'aspect central de l'analyse relative à l'objet améliorateur n'est pas le fait que les groupes appelants et intimés sont également défavorisés, mais que le programme vise à améliorer la situation d'un groupe défavorisé précis plutôt qu'à remédier à un désavantage dont pourrait souffrir tout membre de la société. Quoique l'on reproche au programme améliorateur ciblé d'avoir un caractère trop limitatif, il faut reconnaître qu'il est peu probable que le fait d'exclure un groupe d'un programme ciblé ou établi en partenariat ait pour effet d'associer à ce groupe des stéréotypes ou des stigmates ou encore de communiquer le message qu'il est moins digne de reconnaissance et d'intégration au sein de la société dans son ensemble. En l'espèce, l'objet améliorateur du projet de casino dans son ensemble et du Fonds des Premières nations a clairement été établi. Le Fonds fournira aux bandes des ressources en vue de remédier aux désavantages sur les plans sociaux, culturels et économiques ainsi qu'en matière de santé et d'éducation, accroissant ainsi leur autonomie financière et les aidant à réaliser l'autonomie gouvernementale et l'autosuffisance. Le Fonds des Premières nations a un objet compatible avec le par. 15(1) de la *Charte*, et l'exclusion des appelants ne compromet pas la réalisation de cet objet puisqu'elle n'est pas liée à une conception erronée de leurs besoins, capacités et situation véritables. Enfin, relativement à la nature du droit touché, les mesures ciblées et les circonstances entourant le Fonds des Premières nations n'ont pas pour effet d'empêcher les appelantes d'être reconnues comme communautés titulaires de l'autonomie gouvernementale. Dans la mesure où un tel effet existe, il est ténu.

Par conséquent, les appelants n'ont pas démontré que, considérée du point de vue de la personne raisonnable qui serait dans une situation analogue à la leur, leur exclusion du Fonds des Premières nations a pour effet de porter atteinte à leur dignité humaine. Cette conclusion a été tirée malgré la reconnaissance du fait que les communautés autochtones appelantes et intimées partagent, dans une large mesure, un vécu de discrimination, de pauvreté et de désavantage systémique qui appelle à l'amélioration de leur sort. L'analyse contextuelle révèle une correspondance presque parfaite entre le projet de casino d'une part, ainsi que les besoins et la situation des Premières nations constituées en bandes d'autre part. Le projet de casino a été entrepris par l'Ontario afin de développer un partenariat ou des rapports de «gouvernement à gouvernement» avec les Premières nations constituées en bandes. Il s'agit d'un projet visant à appuyer la marche de ces groupes autochtones vers la prise en charge de leur destinée, la dignité et l'autosuffisance. Quoique ce projet ne soit pas conçu pour répondre aux besoins similaires des communautés autochtones appelantes, ce fait n'équivaut pas à de la discrimination au sens de l'art. l5.

Dans l'état actuel de la jurisprudence relative à l'art. 15, le par. 15(2) de la *Charte* doit être considéré comme ayant pour effet de confirmer la portée du par. 15(1). À cet égard, les demandeurs qui présenteront dans le futur des demandes fondées sur le droit à l'égalité devraient d'abord invoquer le par. 15(1), puisque cette disposition vise les programmes améliorateurs du genre de ceux envisagés au par. 15(2). En agissant ainsi, ils s'assureront que le programme fera l'objet de l'examen approfondi effectué dans le cadre de l'analyse relative à la discrimination, en plus d'ouvrir la possibilité d'un examen fondé sur l'article premier. Toutefois, à la lumière de la jurisprudence récente en matière d'égalité, il demeure possible que le par. 15(2) puisse s'appliquer de façon indépendante dans une éventuelle affaire.

Enfin, la province n'a pas outrepassé ses pouvoirs en mettant de l'avant le projet de casino en partenariat avec les communautés autochtones inscrites en vertu de la *Loi sur les Indiens*. L'exclusion des communauté autochtones non inscrites n'a pas eu pour effet de définir l'«indianité» des appelants ou d'y porter atteinte, puisque la province n'a fait qu'exercer son pouvoir constitutionnel de dépenser en prenant les arrangements relatifs au casino. Aucun aspect du programme relatif au casino ne touche à l'essentiel de la compétence conférée au fédéral par le par. 91(24). En conséquence, ce programme ne peut avoir pour effet de porter atteinte aux droits confirmés par le par. 35(1) de la *Loi constitutionnelle de 1982*, et il ne touche pas à l'essentiel de l'autochtonité.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1997), 33 O.R. (3d) 735, 100 O.A.C. 344, 44 C.R.R. (2d) 285, 148 D.L.R. (4th) 126, [1998] 2 C.N.L.R. 36, [1997] O.J. No. 2313 (QL), qui a accueilli l'appel d'une décision de la Cour de l'Ontario (Division générale) (1996), 38 C.R.R. (2d) 297, [1997] 1 C.N.L.R. 66, [1996] O.J. No. 5063 (QL), [1996] O.J. No. 3176 (QL), ayant déclaré que l'exclusion des appelants du Fonds de Premières nations contrevenait au par. 15(1) de la *Charte canadienne des droits et libertés*. Pourvoi rejeté.

Christopher M. Reid, pour les appelants Robert Lovelace et autres.

Robert MacRae et *Michael S. O'Neill*, pour les appelantes Be-Wab-Bon Métis and Non-Status Indian Association et Association des Métis autochtones de l'Ontario.

Lori R. Sterling et *Sarah Kraicer*, pour l'intimée Sa Majesté la Reine du chef de l'Ontario.

Michael W. Sherry, pour l'intimée les Chefs de l'Ontario.

Urszula Kaczmarczyk et *Michael H. Morris*, pour l'intervenant le Procureur général du Canada.

Isabelle Harnois et *Pierre-Christian Labeau*, pour l'intervenant le Procureur général du Québec.

Kurt Sandstrom et *Marilyn Poitras*, pour l'intervenant le Procureur général de la Saskatchewan.

M. Philip Tunley et *Jane A. Langford*, pour l'intervenante la Première nation de Mnjikaning.

Marc J. A. LeClair et *Joseph E. Magnet*, pour l'intervenant le Congrès des peuples autochtones.

Mary Eberts et *Lucy McSweeney*, pour l'intervenante l'Association des femmes autochtones du Canada.

Observations écrites seulement par *David Baker*, pour l'intervenant le Conseil des Canadiens avec Déficiences.

Observations écrites seulement par *Cynthia Petersen*, pour l'intervenant le Comité de la Charte et des questions de pauvreté.

Observations écrites seulement par *Kathleen A. Lahey*, pour l'intervenant le Métis National Council of Women.

Procureur des appelants Robert Lovelace et autres: Christopher M. Reid, Toronto.

Procureurs des appelantes Be-Wab-Bon Métis and Non-Status Indian Association et Association des Métis autochtones de l'Ontario: Sarlo O'Neil, Sault Ste. Marie.

Procureur de l'intimée Sa Majesté la Reine du chef de l'Ontario: Le Procureur général de l'Ontario, Toronto.

Procureur de l'intimée les Chefs de l'Ontario: Michael W. Sherry, Toronto.

Procureur de l'intervenant le Procureur général du Canada: Le Sous-procureur général du Canada.

Procureur de l'intervenant le Procureur général du Québec: Le ministère de la Justice, Sainte-Foy.

Procureur de l'intervenant le Procureur général de la Saskatchewan: Le Sous-procureur général de la Saskatchewan, Régina.

Procureurs de l'intervenante la Première nation de Mnjikaning: McCarthy Tétrault, Toronto.

Procureur de l'intervenant le Congrès des peuples autochtones: Marc J.A. LeClair, Ottawa.

Procureurs de l'intervenante l'Association des femmes autochtones du Canada: Eberts Symes Street & Corbett, Toronto.

Procureurs de l'intervenante le Comité de la Charte et des questions de pauvreté: Sack Goldblatt Mitchell, Toronto.

Procureur de l'intervenant le Métis National Council of Women: Kathleen A. Lahey, Kingston.

The next session of the Supreme Court of Canada commences on October 2, 2000.
La prochaine session de la Cour suprême du Canada débute le 2 octobre 2000.

The next bulletin of proceedings will be published August 25, 2000.
Le prochain bulletin des procédures sera publié le 25 août 2000.

DEADLINES: MOTIONS

BEFORE THE COURT:

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

Motion day	**:**	**October 2, 2000**
Service	:	September 11, 2000
Filing	:	September 15, 2000
Respondent	:	September 22, 2000
Motion day	**:**	**November 6, 2000**
Service	:	October 16, 2000
Filing	:	October 20, 2000
Respondent	:	October 27, 2000
Motion day	**:**	**December 4, 2000**
Service	:	November 10, 2000
Filing	:	November 17, 2000
Respondent	:	November 24, 2000

DÉLAIS: REQUÊTES

DEVANT LA COUR:

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

Audience du	**:**	**2 octobre 2000**
Signification	:	11 septembre 2000
Dépôt	:	15 septembre 2000
Intimé	:	22 septembre 2000
Audience du	**:**	**6 novembre 2000**
Signification	:	16 octobre 2000
Dépôt	:	20 octobre 2000
Intimé	:	27 octobre 2000
Audience du	**:**	**4 décembre 2000**
Signification	:	10 novembre 2000
Dépôt	:	17 novembre 2000
Intimé	:	24 novembre 2000

DEADLINES: APPEALS

The Fall Session of the Supreme Court of Canada will commence October 2, 2000.

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:

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

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

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

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

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

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

DÉLAIS: APPELS

La session d'automne de la Cour suprême du Canada commencera le 2 octobre 2000.

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

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

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

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

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

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

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).

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

Judgments reported in [2000] 1 S.C.R. Part 2

Ingles *v.* Tutkaluk Construction Ltd., [2000] 1 S.C.R. 298, 2000 SCC 12

Nanaimo (City) *v.* Rascal Trucking Ltd., [2000] 1 S.C.R. 342, 2000 SCC 13

R. *v.* Brooks, [2000] 1 S.C.R. 237, 2000 SCC 11

R. *v.* Wells, [2000] 1 S.C.R. 207, 2000 SCC 10

Regina Police Assn. Inc. *v.* Regina (City) Board of Police Commissioners, [2000] 1 S.C.R. 360, 2000 SCC 14

Jugements publiés dans [2000] 1 R.C.S. Partie 2

Ingles *c.* Tutkaluk Construction Ltd., [2000] 1 R.C.S. 298, 2000 CSC 12

Nanaimo (Ville) *c.* Rascal Trucking Ltd., [2000] 1 R.C.S. 342, 2000 CSC 13

R. *c.* Brooks, [2000] 1 R.C.S. 237, 2000 CSC 11

R. *c.* Wells, [2000] 1 R.C.S. 207, 2000 CSC 10

Regina Police Assn. Inc. *c.* Regina (Ville) Board of Police Commissioners, [2000] 1 R.C.S. 360, 2000 CSC 14

Judgments reported in [2000] 1 S.C.R. Part 3

Ajax (City) *v.* CAW, Local 222, [2000] 1 S.C.R. 538, 2000 SCC 23

Global Securities Corp. *v.* British Columbia (Securities Commission), [2000] 1 S.C.R. 494, 2000 SCC 21

R. *v.* A.G., [2000] 1 S.C.R. 439, 2000 SCC 17

R. *v.* Arrance, [2000] 1 S.C.R. 488, 2000 SCC 20

R. *v.* Arthurs, [2000] 1 S.C.R. 481, 2000 SCC 19

R. *v.* Biniaris, [2000] 1 S.C.R. 381, 2000 SCC 15

R. *v.* G.D.B., [2000] 1 S.C.R. 520, 2000 SCC 22

R. *v.* Molodowic, [2000] 1 S.C.R. 420, 2000 SCC 16

R. *v.* Wust, [2000] 1 S.C.R. 455, 2000 SCC 18

Jugements publiés dans [2000] 1 R.C.S. Partie 3

Ajax (Ville) *c.* TCA, section locale 222, [2000] 1 R.C.S. 538, 2000 CSC 23

Global Securities Corp. *c.* Colombie-Britannique (Securities Commission), [2000] 1 R.C.S. 494, 2000 CSC 21

R. *c.* A.G., [2000] 1 R.C.S. 439, 2000 CSC 17

R. *c.* Arrance, [2000] 1 R.C.S. 488, 2000 CSC 20

R. *c.* Arthurs, [2000] 1 R.C.S. 481, 2000 CSC 19

R. *c.* Biniaris, [2000] 1 R.C.S. 381, 2000 CSC 15

R. *c.* G.D.B., [2000] 1 R.C.S. 520, 2000 CSC 22

R. *c.* Molodowic, [2000] 1 R.C.S. 420, 2000 CSC 16

R. *c.* Wust, [2000] 1 R.C.S. 455, 2000 CSC 18

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2000 -

OCTOBER - OCTOBRE

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

- 2001 -

JANUARY - JANVIER

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

MARCH - MARS

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

APRIL - AVRIL

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

MAY - MAI

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

JUNE - JUIN

S D	M L	T M	W M	T J	F V	S S
					1	2
3	4	5	6	7	8	9
10	**M 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:

M

H

18 sitting weeks / semaines séances de la cour
78 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