

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Brian Warsh et al.

David M. McNevin
Wilson, Walker, Hochberg, Slopen, LLP

v. (27949)

**International Freehold Financial Services Ltd.
(Ont.)**

Inga Andriessen
Andriessen & Associates

FILING DATE 1.6.2000

Ville de Chambly

Daniel Longtin
Lacoste Langevin

c. (27924)

Line Dicaire et al. (Qué.)

Pierre Sylvestre
Sylvestre Charbonneau Fafard & Associés

DATE DE PRODUCTION 19.5.2000

Nedeljko Stojanovic

Milena Protich
Giffen Lee

v. (27929)

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

Negar Hashemi
A.G. of Canada

FILING DATE 23.5.2000

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

A.H.

A.H.

c. (27937)

Me Claude Melançon, et al. (Qué.)

Patricia Timmons
Faribault & Associés

DATE DE PRODUCTION 23.5.2000

**Compagnie d'assurance-vie Transamerica du
Canada**

René Vallerand
Pepin, Letourneau, s.e.n.c.

c. (27939)

Danielle Goulet (Qué.)

Jean Blaquièrre
Petit Blaquièrre Dagenais

DATE DE PRODUCTION 26.5.2000

Huguette Doiron

Huguette Doiron

c. (27940)

Olivier Lipp et al. (Qué.)

Michel Laplante
McCarthy Tétrault

DATE DE PRODUCTION 24.5.2000

B. Fréreau & Fils Inc.

Serge Champoux
Boisvert Champoux, s.e.n.c.

c. (27942)

**Société québécoise d'assainissement des eaux
(Qué.)**

Sébastien Grammond
Byers Casgrain, s.e.n.c.

DATE DE PRODUCTION 31.5.2000

Monopro Limited
Suzanne Côté
Stikeman Elliott

c. (27953)

Montreal Trust (Qué.)
Olivier Prat.c.r.
de Grandpré, Chait

DATE DE PRODUCTION 2.6.2000

Benoît Guindon
Benoît Slythe

c. (27954)

Lortie et Martin Limitée, et al. (Qué.)
Alfred Bélisle
Bélisle, Bertrand, Dubé, St-Jean

DATE DE PRODUCTION 5.6.2000

The Minister of Environment Canada
David Sgayias, Q.C.
A.G. of Canada

v. (27956)

**The Information Commissioner of Canada et al.
(F.C.A.)**
Daniel Brunet
Office of the Information Commissioner of
Canada

FILING DATE 5.6.2000

Bruce Holdbrook, operating as Best Print
R. Malcolm MacLeod, Q.C.
Patterson Palmer Hunt Murphy

v. (27957)

David Emeneau, et al. (N.S.)
Michael R. Brooker
Burchell MacDougall

FILING DATE 2.6.2000

Vancouver College Limited

George K. MacIntosh, Q.C.
Farris, Vaughan, Wills & Murphy

v. (27958)

The Christian Brothers of Ireland in Canada (In Liquidation), et al. (Ont.)

David K. Wingfield
Weir & Foulds

FILING DATE 7.6.2000

and

St. Thomas More Collegiate Ltd. et al.

Richard R. Sugden, Q.C.
Sugden, McFee & Roos

v. (27958)

The Christian Brothers of Ireland in Canada (In Liquidation) et al. (Ont.)

David K. Wingfield
Weir & Foulds

FILING DATE 8.6.2000

and

Representative Counsel for the Charitable Objects of the Christian Brothers of Ireland in Canada

Neil Finkelstein
Davies Ward & Beck

v. (27958)

The Christian Brothers of Ireland in Canada (In Liquidation), et al. (Ont.)

David K. Wingfield
Weir & Foulds

FILING DATE 9.6.2000

KPMG

J.L. McDougall, Q.C.
Fraser Milner Casgrain

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.)

W.A. Kelly, Q.C.
Kelly Affleck Greene

FILING DATE 8.6.2000

Dara Wilder

Dara Wilder

v. (27960)

Her Majesty the Queen (B.C.)

Cory Stolte
A.G. of Canada

FILING DATE 8.6.2000

The Gazette, une division de Southam Inc.

Mark Bantey
Lafleur Brown

c. (27961)

Conseil du référendum et al. (Qué.)

DATE DE PRODUCTION 9.6.2000

Cape Breton - Victoria Regional School Board

Eric Durnford, Q.C.
McInnes Cooper

v. (27962)

Graham Menzies (N.S.)

Michael S. Ryan
Cox Hanson O'Reilly Matheson

FILING DATE 9.6.2000

CIBC Mortgage Corporation

Michel Deschamps
McCarthy Tétrault

c. (27963)

Marcella Vasquez et al. (Qué.)

Marie-Pierre Charland
Barette & Tremblay

DATE DE PRODUCTION 9.6.2000

Rodrigue Girard

Rodrigue Girard

c. (27964)

Marius Moisan et al. (Qué.)

Philippe Leboeuf
Beaumont Provençal

DATE DE PRODUCTION 13.6.2000

Valérie Tremblay

Suzanne Côté
Stikeman Elliott

c. (27965)

**Le Syndicat des employées et employés
professionnels-les et de bureau, section locale 57
SIEPB, CTC-FTQ et al. (Qué.)**

Pierre Gingras

DATE DE PRODUCTION 12.6.2000

McKenzie Forest Products Inc.

Nigel Campbell
Blake, Cassels & Graydon LLP

v. (27967)

Adam Tilberg, et al. (Ont.)

Gerald Rayner
Johns & Rayner

FILING DATE 14.6.2000

Mario Cortese, et al.

Gary J. Bigg
Lirenman Peterson

v. (27968)

Nowasco Well Service Ltd. et al. (Alta.)

Grant Stapon
Bennett Jones

FILING DATE 12.6.2000

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

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

JUNE 19, 2000 / LE 19 JUIN 2000

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

C.V.M.

v. (27779)

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

NATURE OF THE CASE

Criminal law - Whether the Court of Appeal misapplied *R. v. Yebe*, [1987] 2 S.C.R. 168 - Whether the application of *Yebe* to the facts of this case amounts to a miscarriage of justice - Whether the trial judge misapprehended and misapplied the evidence at trial on issues central to his finding resulting in a miscarriage of justice - Whether *Yebe* requires the Court of Appeal to uphold a finding of guilt in the circumstances of this case.

PROCEDURAL HISTORY

September 25, 1998
Provincial Court of Alberta
(Gaede J.)

Applicant convicted of sexual interference and sexual assault pursuant to ss. 271 and 151 of the *Criminal Code*

February 4, 2000
Court of Appeal of Alberta
(Côté, Sulatycky and Langston JJ.A.)

Appeal dismissed

February 24, 2000
Supreme Court of Canada

Application for leave to appeal filed

Lawpost, a division of Legal Research Consultants Inc., S. Bryant Smith

v. (27683)

Province of New Brunswick, The Legislative Assembly of New Brunswick and its members, as represented by the Speaker of the Legislative Assembly of New Brunswick, The Court of Appeal of New Brunswick, as represented by the Chief Justice of New Brunswick, The Court of Queen's Bench of New Brunswick, as represented by the Chief Justice of the Court of Queen's Bench of New Brunswick, and The Provincial Court of New Brunswick, as represented by the Chief Judge of the Provincial Court of New Brunswick (N.B.)

NATURE OF THE CASE

Canadian Charter - Civil - Civil rights - Procedural law - Courts - Parties to action - Property law - Copyright - Freedom of the press and life, liberty and security of the person - Crown copyright - Judgments, statutes and other "legislative products" - Statement of claim against Legislative Assembly and Courts struck and treated as judgment under Rules of Court - Whether Legislative Assembly and Courts are proper parties to an action to challenge the constitutionality of Crown copyright - Whether Legislative Assembly and Courts are subject to action for violations of the constitution -

Whether Applicants are entitled to costs on a constitutional basis - Whether applicable decisions of the Supreme Court of Canada considered.

PROCEDURAL HISTORY

April 20, 1999
Court of Queen's Bench of New Brunswick
(Russell J.)

Action against Respondents Legislative Assembly, Court of Appeal of New Brunswick, Court of Queen's Bench of New Brunswick and Provincial court of New Brunswick dismissed

November 9, 1999
Court of Appeal of New Brunswick
(Ryan, Drapeau and Larlee JJ.A.)

Appeal dismissed

January 4, 2000
Supreme Court of Canada

Application for leave to appeal filed

Michael Taylor

v. (27889)

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

NATURE OF THE CASE

Administrative Law - Judicial Review - Constitutional Law - Judicial Immunity - Does a superior court judge enjoy absolute immunity from human rights legislation while acting as a judge - If not, what are the exceptions to common law judicial immunity, having regard to the *Canadian Human Rights Act* and the *Charter* - Does judicial immunity extinguish the right of a courtroom spectator to freedom from religious discrimination by the presiding judge?

PROCEDURAL HISTORY

December 15, 1997
Federal Court of Canada, Trial Division
(Dubé J.)

Application for judicial review dismissed

March 6, 2000
Federal Court of Appeal
(Robertson, Sexton and Evans JJ.A.)

Appeal dismissed

May 4, 2000
Supreme Court of Canada

Application for leave to appeal filed

**Chief Councillor Mathew Hill, also known as Tha-Iathatk,
on his own behalf and on behalf of all other members of the
Kitkatla Band and Kitkatla Band**

v. (27801)

**The Minister of Small Business, Tourism and Culture,
The Attorney General for the Province of British Columbia
and International Forest Product Limited (B.C.)**

AND BETWEEN:

**Chief Councillor Mathew Hill, also known as Tha-Iathatk,
on his own behalf and on behalf of all other members of the
Kitkatla Band and Kitkatla Band**

v. (27801)

**The Minister of Small Business, Tourism and Culture,
The Attorney General for the Province of British Columbia
and International Forest Product Limited (B.C.)**

NATURE OF THE CASE

Native Law - Constitutional Law - Division of powers - Whether the impugned sections of the *Heritage Conservation Act*, dealing with aboriginal heritage objects and sites, are *intra vires* the legislature of the Province of British Columbia - Whether the Province can authorize the destruction (extinguishment) of aboriginal heritage - Whether the impugned sections of the *Heritage Conservation Act* either apply of their own force as provincial legislation or through referential incorporation as federal law pursuant to s. 88 of the *Indian Act*.

Native Law - Administrative Law - Judicial Review - Jurisdiction - Whether the Minister of Small Business, Tourism and Culture has jurisdiction to consider or determine asserted aboriginal rights in relation to aboriginal heritage objects and sites when authorizing, by permit issued under the *Heritage Conservation Act*, the alteration of such aboriginal heritage - Whether the inclusion of words in the *Heritage Conservation Act* that nothing in the Act “abrogates or derogates from aboriginal treaty rights” relieves the Minister from an obligation to consider aboriginal rights, and that only judicial proceedings are available to remedy an infringement of aboriginal rights authorized by a permit issued under the *Heritage Conservation Act* - Whether the lack of legislative structuring of the exercise of the Minister’s discretion to consider aboriginal rights in the *Heritage Conservation Act* is evidence of the lack of legislative intention to confer a discretion to consider aboriginal rights.

PROCEDURAL HISTORY

November 12, 1998
Supreme Court of British Columbia
(Wilson J.)

Application for a declaration that subsections 12(2)(a) and 13(2)(c) and (d) of the *Heritage Conservation Act* are *ultra vires* dismissed

December 15, 1998
Supreme Court of British Columbia
(Wilson J.)

Application for prohibition against Minister of Small Business, Tourism and Culture from granting a site alteration permit dismissed

January 19, 2000
Court of Appeal of British Columbia
(Prowse, Braidwood and Hall JJ.A.)

Appeal from both decisions dismissed

March 16, 2000
Supreme Court of Canada

Applications for leave to appeal filed

The Corporation of the City of Brampton

v. (27742)

Maria Bisoukis, Christos Bisoukis and Sophia Bisoukis (Ont.)

NATURE OF THE CASE

Procedural law - Limitation of actions - Statement of claim filed three months after expiry of limitation period - Torts - Motor Vehicles - Liability of municipality for non-repair of highway pursuant to s. 284(1) of the *Municipal Act*, R.S.O. 1990, c. M.9 - Applicant injured after losing control of vehicle on black ice - Applicant suffering severe reactive depression as a result of the accident - Whether Applicant of was of "unsound mind" in accordance with s. 47 of the *Limitations Act*, R.S.O. 1990, c.L.15 so that claim not statute-barred - Whether municipality liable for injuries suffered as a result of non-repair of highway in the circumstances.

PROCEDURAL HISTORY

July 30, 1997
Ontario Court of Justice (General Division)
(Langdon J.)

Action by Respondents dismissed

December 7, 1999
Court of Appeal for Ontario
(Doherty, Goudge and Borins JJ.A.)

Appeal allowed: judgement of trial court set aside and judgment granted in favour of the Respondents

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**

Pamela Khan

v. (27737)

Her Majesty the Queen (Ont.)

NATURE OF THE CASE

Procedural law - Appeal struck out.

PROCEDURAL HISTORY

September 2, 1999
Ontario Superior Court of Justice (Low J.)

Application for leave to institute or continue a proceeding dismissed

December 16, 1999
Court of Appeal for Ontario (Deputy Registrar)

Appeal struck out for delay

January 14, 2000
Supreme Court of Canada

Application for leave to appeal filed

Premier Horticulture Ltée

c. (27654)

Denis Lévesque (Qué.)

NATURE DE LA CAUSE

Droits des biens - Baux - Clause de renouvellement - En absence d'erreur déraisonnable ou manifeste du juge de première instance, la Cour d'appel a-t-elle commis une erreur en s'immiscant dans l'appréciation des faits du juge de première instance?

HISTORIQUE PROCÉDURAL

Le 10 septembre 1996
Cour supérieure du Québec (Carrier j.c.s.)

Requête pour jugement déclaratoire rejetée

Le 20 octobre 1999
Cour d'appel du Québec
(Mailhot, Rousseau-Houle et Biron [*ad hoc*] jj.c.a.)

Appel accueilli

Le 15 décembre 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Elwyn Patterson, The Marginalized Workers Action League

v. (27757)

Attorney General of British Columbia, Ministry of Human Resources and Mervin W.C. Harrower (B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil rights - Statutes - Interpretation - Regulations - - Right to privacy - Security of the person - Interpretation of the consent portion of the *B.C. Benefits (Income Assistance) Act*, R.S.B.C. 1996, c. 27 application form - B.C. Regulation 123/98 - Whether it is contrary to ss. 7 and 8 of the *Charter*, and not justifiable under s. 1, to compel persons who rely on welfare to waive privacy rights over a range of biographical information as a condition of receiving welfare - Whether the impugned regulation is *ultra vires* the Minister's statutory power in that it takes away, by regulation, a right extended under the *Act*.

PROCEDURAL HISTORY

July 20, 1998
Supreme Court of British Columbia
(Williamson J.)

Application for declaration that consent portion of application for income assistance *ultra vires* the *B.C. Benefits (Income Assistance) Act* and violated ss. 7 and 8 of *Charter* dismissed

November 10, 1999
Court of Appeal of British Columbia
(Southin, Hollinrake and Ryan [dissenting] JJ.A.)

Appeal dismissed

February 11, 2000
Supreme Court of Canada

Application for leave to appeal filed

Norman Sterriah, on behalf of all members of the Ross River Dena Council Band and Ross River Dena Development Corporation

v. (27762)

Her Majesty the Queen in Right of Canada and The Government of Yukon (Y.T.)

NATURE OF THE CASE

Native Law - Reserves - What are the legal requirements for the creation of an Indian reserve under the *Indian Act* - Whether it is a legal requirement that there be an Order-in-Council to evidence the setting apart of lands by the Crown, in order for lands to be “set apart by Her Majesty for the use and benefit of a band” - Whether the Yukon Court of Appeal erred in fact and law in reversing the finding of the Chambers Judge that the Ross River Dena Village Site was a reserve under the *Indian Act - Indian Act*, R.S.C., 1985, c. I-6.

PROCEDURAL HISTORY

June 8, 1998
Supreme Court of the Yukon Territory (Maddison J.)

Declaration that certain lands are an Indian Reserve, within the meaning of the *Indian Act*

December 15, 1999
Court of Appeal of the Yukon Territory
(Richard, Finch [dissenting] and Hudson JJ.A.)

Appeal allowed

February 14, 2000
Supreme Court of Canada

Application for leave to appeal filed

**Alissa Westergard-Thorpe, Annette Muttray,
Jamie Doucette, Mark Brooks, Denis Porter,
Deke Samchok and Craig Elton Jones**

v. (27778)

**The Attorney General of Canada
and Her Majesty the Queen in Right of Canada (F.C.A.) (B.C.)**

AND BETWEEN:

**Craig Elton Jones, Jonathan Oppenheim, Jamie Doucette,
Deke Samchok, Denis Porter and Annette Muttray**

v. (27778)

**Her Majesty the Queen, The Minister of Justice
and The Attorney General of Canada (F.C.A.) (B.C.)**

NATURE OF THE CASE

Constitutional law - Procedural law - Evidence - Disclosure of government information - Objection relating to confidence of Queen's Privy Council - Applicants filing complaints with RCMP Public Complaints Commission alleging various forms of misconduct by RCMP personnel - Commission counsel requesting that Government of Canada disclose to panel all government records relevant to hearing - Clerks of Privy Council filing certificates under s. 39 of *Canada Evidence Act*, R.S.C. 1985, c. C-5, certifying that information contained in certain documents constituted confidences of Queen's Privy Council for Canada - Action by Applicants challenging constitutionality of s. 39 dismissed - Whether federal Parliament may enact an evidentiary provision that has the effect of shielding the federal executive from constitutional scrutiny, or whether unwritten constitutional principles bar it from so doing - Whether, if Parliament does have the power to provide a general privilege, such a provision must be "read down" here.

PROCEDURAL HISTORY

June 25, 1999
Federal Court of Canada, Trial Division
(McKeown J.)

Application by Applicants challenging the constitutionality of s. 39 of the *Canada Evidence Act* dismissed

January 14, 2000
Federal Court of Appeal
(Strayer, Robertson and McDonald JJ.A.)

Appeal dismissed

February 22, 2000
Supreme Court of Canada

Application for leave to appeal filed

March 6, 2000
Supreme Court of Canada
(Bastarache J.)

Motion by Applicants for an order expediting the application for leave to appeal dismissed

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

Vincenzo Commisso

v. (27787)

The United States of America (Crim.)(Ont.)

AND BETWEEN:

Cosimo D'Agostino

v. (27787)

The United States of America (Crim.)(Ont.)

AND BETWEEN:

Rocco Commisso

v. (27787)

The United States of America (Crim.)(Ont.)

AND BETWEEN:

Matthew Szabo

v. (27787)

United States of America (Crim.)(Ont.)

NATURE OF THE CASE

Criminal law - Extradition - Whether the Court of Appeal for Ontario erred in law in holding that extradition could take place despite the absence of a *prima facie* case of the offence alleged - Whether the Court of Appeal for Ontario erred in holding that the conduct based standard for committal was satisfied when the facts underlying the foreign allegation revealed “some connection to or is some evidence of” those allegations - Whether the Court of Appeal for Ontario erred in law in holding that the extradition judge erred in his assessment of the sufficiency of the evidence in support of the specific charges upon which the extradition of the Applicant was sought - Whether the Court of Appeal for Ontario erred in law by committing the Applicants for surrender in relation to the counts of conspiracy to import and distribute narcotics when there was no evidence that the importation or distribution of narcotics into the United States was an object of the conspiracy alleged - Whether the Court of Appeal for Ontario erred in law in failing to hold that the 28 month delay in the appellate process, attributable exclusively to Canadian state actors, had not resulted in prejudice to the Applicants despite the uncontroverted evidence of personal prejudice elicited in the Court of Appeal.

PROCEDURAL HISTORY

June 5, 1997 Ontario Court of Justice, General Division (Matlow J.)	Applicants discharged; Respondent did not satisfy the preconditions for the Applicants’ committal for surrender for extradition
February 22, 2000 Court of Appeal for Ontario (Labrosse, Laskin, and O’Connor JJ.A)	Application for stay of extradition proceedings dismissed; appeal allowed; warrant of committal issued for each Applicant with respect to both charges for which extradition sought
April 25, 2000 Supreme Court of Canada	Application for leave to appeal filed for Applicant Vincenzo Commisso
April 25, 2000 Supreme Court of Canada	Application for leave to appeal filed for Applicant Rocco Commisso
April 25, 2000 Supreme Court of Canada	Application for leave to appeal filed for Applicant Cosimo D’Agostino
May 3, 2000 Supreme Court of Canada	Application for leave to appeal filed for Applicant Matthew Szabo

Marcel Joly

v. (27715)

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

NATURE OF THE CASE

Criminal law - Evidence - Whether the Court of Appeal erred in concluding that the trial judge was entitled to offer his opinion on the viability of the “other suspect” evidence - Whether there is any valid justification for the common law rule which permits trial judges to offer their opinion on the facts of a particular case - Whether the rule is consistent with the *Charter*.

PROCEDURAL HISTORY

December 5, 1994
Ontario Court of Justice (General Division)
(Soubliere J.)

Conviction: Second degree murder. Applicant sentenced to life imprisonment, with parole ineligibility for 20 years

April 26, 1999
Court of Appeal for Ontario
(Morden, Doherty and Abella JJ.A.)

Appeal against conviction dismissed; appeal against sentence allowed

January 24, 2000
Supreme Court of Canada

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

**Commission des droits de la personne
et des droits de la jeunesse**

c. (27639)

**Centre d'hébergement et de soins de longue durée
Champlain-Manoir de Verdun (Qué.)**

NATURE DE LA CAUSE

Droit du travail - Congédiement - Grief déposé - Plainte à la Commission des droits de la personne et des droits de la jeunesse - Entente intervenue entre le syndicat et l'employeur - Dans quelle mesure la Cour d'appel pouvait-elle supprimer le droit d'un organisme qui agit dans l'intérêt public de porter en appel un jugement qui réduit sa compétence d'enquête alors que c'est l'intimé qui, dans un premier temps, avait contesté la compétence d'enquête de la Commission, et qui a ensuite présenté une requête en rejet d'appel sur la base d'une transaction qu'il a lui-même négociée? - Les questions soulevées par le jugement de la première instance étaient-elles devenues théoriques en raison d'une transaction intervenue entre le salarié et l'intimé? - La Cour d'appel a-t-elle erré en droit en décidant qu'autoriser la continuation de l'appel dans les circonstances remettrait en cause toute la transaction intervenue et pourrait, à la limite, entraîner la nullité? - La Cour d'appel, en accueillant la requête en rejet d'appel, a-t-elle erré en droit en maintenant indirectement la conclusion du juge de première instance à l'effet que l'exercice d'un recours en grief constituait l'exercice du recours prévu à l'article 49 de la *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12? - La Cour d'appel, en accueillant la requête pour rejet d'appel, a-t-elle erré en droit en maintenant indirectement la conclusion du juge de première instance à l'effet que la Commission devait cesser d'agir en faveur du mis en cause en vertu de l'article 77, al. 1, 2^o de la *Charte*?

HISTORIQUE PROCÉDURAL

Le 3 novembre 1998
Cour supérieure du Québec
(Rochon j.c.s.)

Requête de l'intimé accueillie: la demanderesse est tenue de cesser d'agir en faveur du mis en cause Pierre Sauvé

Le 20 septembre 1999
Cour d'appel du Québec
(Delisle, Otis et Pidgeon jj.c.a.)

Requête en rejet d'appel de l'intimé accueillie: appel de la demanderesse rejeté

Le 13 décembre 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Robert Martin Friedland

v. (27773)

United States of America (Ont.)

AND BETWEEN:

Robert Martin Friedland

v. (27773)

United States of America, David L. Dain, Peter R. Mounsey and Nancy A. Mangone (Ont.)

NATURE OF THE CASE

International - Statutes - Interpretation - *Mareva* injunction vacated - Counterclaim - State immunity - Whether the Respondents explicitly submitted to the court's jurisdiction under s. 4(2)(a) of the *State Immunity Act*, R.S.C. 1982 c. S-18 (hereinafter "S.I.A.") - Whether the Respondents submitted to a counterclaim under s. 4(4) of the S.I.A. - Whether there is a loss of immunity for death, injury, damage or loss in Canada under s. 6 of the S.I.A.

PROCEDURAL HISTORY

June 22, 1998
Superior Court of Justice
(Lederman J.)

Applicant and Respondent's motions for orders dismissing Counterclaim based on *State Immunity Act* dismissed.

December 23, 1999
Ontario Court of Appeal
(Osborne, Brooke, and Catzman JJ.A.)

Order of Lederman J. set aside, order dismissing Applicant's counterclaim issued

February 21, 2000
Supreme Court of Canada

Application for leave to appeal filed

Jean Boudreault

c. (27660)

Procureur général du Canada (C.F.A.) (Ont.)

NATURE DE LA CAUSE

Droit administratif - Contrôle judiciaire - Plainte de discrimination contrairement à l'art. 14 de la *Loi canadienne sur les droits de la personne* - Est-ce que la Commission est obligée d'enquêter les plaintes en vertu de la *Loi* d'une manière neutre, impartiale et selon l'équité procédurale et quelle est la norme de révision de ses décisions?

HISTORIQUE PROCÉDURAL

Le 29 octobre 1996
Commission canadienne des droits de la personne

Plainte de discrimination du demandeur rejetée

Le 23 décembre 1997
Cour fédérale du Canada, Section de première instance
(Nadon j.)

Demande de contrôle judiciaire de la décision de la Commission canadienne des droits de la personne rejetée

Le 14 octobre 1999
Cour d'appel fédérale
(Décary, Létourneau et Noël jj.c.a.)

Appel rejeté

Le 16 décembre 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

JUNE 21, 2000 / LE 21 JUIN 2000

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

Performance Industries Ltd. and Terrance O'Connor

v. (27934)

Sylvan Lake Golf & Tennis Club Ltd. (Alta.)

AND BETWEEN:

Sylvan Lake Golf & Tennis Club Ltd.

v. (27934)

Performance Industries Ltd. and Terrance O'Connor (Alta.)

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

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

JUNE 22, 2000 / LE 22 JUIN 2000

27758 **C.A.L. (a young offender) v. HER MAJESTY THE QUEEN** (N.S.) (Crim.)

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.

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

NATURE OF THE CASE

Criminal Law - Young offenders - Sexual assault - Credibility of witnesses - Whether a trial judge should be under a legal duty to articulate reasons for preferring evidence of one witness over the evidence of another witness in cases of sexual assault - Whether the decision in *R. v. Burns*, [1994] 1 S.C.R. 656 should be revisited - Whether the deference accorded to trial judges by appellate courts on matters of credibility is a sufficient legal safeguard for accused persons charged with stigma offences, such as sexual assault

PROCEDURAL HISTORY

October 21, 1998 Provincial Youth Court (Ryan J.)	Conviction: sexual assault
December 13, 1999 Nova Scotia Court of Appeal (Freeman, Pugsley and Bateman JJ.A.)	Appeal dismissed
February 11, 2000 Supreme Court of Canada	Application for leave to appeal filed

27731 **K.M.C. (a young offender) v. HER MAJESTY THE QUEEN** (Nfld.) (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

Criminal law - Young offenders - Transfer to ordinary court - Section 16 of the *Young Offenders Act*, R.S.C., 1985, c. Y-1 - Review by court of appeal - Expert evidence - Whether the Court of Appeal erred in law in failing to give due deference to the findings of fact and evaluation of the expert psychiatric evidence heard on a transfer application?

PROCEDURAL HISTORY

February 11, 1999 Youth Court of Newfoundland (Hyslop Y.C.J.)	Respondent's application for an order transferring the case to ordinary court dismissed
November 30, 1999 Newfoundland Supreme Court - Court of Appeal (Wells C.J.N., Steele and Cameron JJ.A.)	Appeal allowed; proceedings transferred to ordinary court
January 28, 2000 Supreme Court of Canada	Application for leave to appeal filed

27749 **RICHARD OFFEI-TWUMASI v. HER MAJESTY THE QUEEN** (Ont.) (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

Criminal law - Whether the Court of Appeal for Ontario erred in dismissing the Applicant's application for leave to appeal against sentence?

PROCEDURAL HISTORY

October 29, 1997 Ontario Court of Justice (Provincial Division) (Timms J.)	Applicant convicted of theft; sentenced to a \$50.00 fine and one year probation
August 10, 1998 Ontario Court of Justice (General Division) (Shaughnessy J.)	Appeal against conviction and sentence dismissed
November 22, 1999 Court of Appeal for Ontario (McMurtry C.J.O., Rosenberg and Moldaver JJ.A.)	Application for leave to appeal against conviction dismissed; application for leave to appeal against sentence granted and appeal against sentence allowed; absolute discharge substituted
January 19, 2000 Supreme Court of Canada	Application for leave to appeal filed

PROCEDURAL HISTORY

May 7, 1992 Federal Court of Canada (Isaac C.J.)	Direction that the Applicant will not be permitted to put on the files in the proceedings remarks that are insulting to the Court or to its Judges or remarks that are abusive or slanderous of other parties to the proceedings and that any document submitted for filing by the Applicant must be first submitted to a prothonotary for examination
February 16, 1998 Federal Court of Canada (Isaac C.J.)	Confirmation that Direction of May 7, 1992 remains in force and applies to all material filed by Applicant
May 28, 1999 Federal Court - Trial Division (Richard A.C.J.)	Motion to strike Applicant's application for judicial review of the Direction granted
September 22, 1999 Federal Court of Appeal (Décary, MacKay and McDonald JJ.A.)	Appeal dismissed
November 12, 1999 Supreme Court of Canada	Application for leave to appeal filed

27553 **LEONARDO G. GALUEGO v. THE CANADIAN HUMAN RIGHTS COMMISSION AND THE ATTORNEY GENERAL OF CANADA** (F.C.A.)

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

Civil rights - Did lower courts err in disposition of case.

PROCEDURAL HISTORY

July 11, 1997 Federal Court of Canada, Trial Division (Jerome, A.C.J.)	Application for judicial review of decision of the Canadian Human Rights Commission to dismiss Applicant's complaint dismissed
August 19, 1999 Federal Court of Appeal (Linden, Robertson and MacDonald JJ.A.)	Motion for reconsideration dismissed
October 18, 1999	Application for leave to appeal and motion to extend time

Supreme Court of Canada

filed

27722 **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK AS REPRESENTED BY THE MINISTER OF FINANCE v. IAN P. MACKIN and between HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK AS REPRESENTED BY THE MINISTER OF FINANCE v. DOUGLAS E. RICE** (N.B.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is granted with costs.

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

NATURE OF THE CASE

Constitutional Law - Judicial Independence - Right to elect supernumerary status - Legislative amendment eliminated a Provincial Court judge's right to elect supernumerary status - Whether amendment should be struck as being unconstitutional - Whether an award of damages is appropriate in conjunction with a declaration of constitutional invalidity - Whether solicitor and client costs are appropriate - *An Act to Amend the Provincial Court Act*, S.N.B. 1995, c. 6, s. 2

PROCEDURAL HISTORY

July 6, 1998 Court of Queen's Bench of New Brunswick (Deschênes J.)	Repeal of the right of Provincial Court judges to elect supernumerary status under s.2 of <i>An Act to Amend the Provincial Court Act</i> declared unconstitutional; Declaration of invalidity suspended; Pension scheme found to be constitutional; Damages denied; party and party costs awarded
November 26, 1999 Court of Appeal of New Brunswick (Daigle C.J. [<i>dissenting</i>], Ryan and Drapeau JJ.A.)	Respondents' Appeal allowed; Applicant's cross-appeal dismissed
January 24, 2000 Supreme Court of Canada	Application for leave to appeal filed

27861 **NU-PHARM INC. v. MERCK & CO., INC., MERCK FROSST CANADA & CO. AND THE MINISTER OF HEALTH** (F.C.A.)

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

Property law - Patents - Statutes - Interpretation - Whether s. 5(1) of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/98-1066 is engaged when an abbreviated new drug submission is filed if the Canadian reference product

named is not the subject of a patent list, but the notice of compliance for the Canadian reference product was obtained by comparison to a drug that is the subject of a patent list - Whether the *Patented Medicines (Notice of Compliance) Regulations* ought to be strictly construed - Whether this decision conflicts with *Bayer Inc. v. Canada (Attorney General)* (1999), 84 C.P.R. (3d) 129 (F.C.A.).

PROCEDURAL HISTORY

November 23, 1999 Federal Court of Canada, Trial Division (McGillis J.)	Decision to issue a notice of compliance quashed
March 13, 2000 Federal Court of Appeal (Robertson, Rothstein and Sharlow JJ.A.)	Appeal dismissed
April 18, 2000 Supreme Court of Canada	Application for leave to appeal filed

27607 **DAVID ASKEY v. HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS REPRESENTED BY THE MINISTER OF HEALTH AND EMERGENCY HEALTH SERVICES COMMISSION** (B.C.)

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 laws - Whether decision of Court of Appeal was correct.

PROCEDURAL HISTORY

November 8, 1999 Court of Appeal for British Columbia (Southin, Donald and Saunders JJ.A.)	Applicant's appeal from decision of British Columbia Labour Relations Board quashed for want of jurisdiction
November 24, 1999 Supreme Court of Canada	Application for leave to appeal filed

27685 **DR. WILLIAM N. CAMPBELL v. HER MAJESTY THE QUEEN** (F.C.A.)

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 - Judgments and orders - Pre-trial procedure - Federal Court of Appeal - Delay in filing a Memorandum of Fact and Law - Whether the Court erred by not granting a further extension of delay in these circumstances.

PROCEDURAL HISTORY

December 23, 1997 Tax Court of Canada (Bell J.T.C.C.)	Appeal allowed in part: proceeds of disposition of “12 th Avenue” agreed to be \$1,248,000
November 3, 1999 Federal Court of Appeal (Strayer, Robertson and Noël JJ.A.)	Motion for extension of time and appeal dismissed
December 16, 1999 Federal Court of Appeal (Strayer, Robertson and Noël JJ.A.)	Motion for reconsideration dismissed
January 4, 2000 Supreme Court of Canada	Application for leave to appeal filed

27687 **DR. WILLIAM N. CAMPBELL PROFESSIONAL CORPORATION v. HER MAJESTY THE QUEEN** (F.C.A.)

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 - Judgments and orders - Pre-trial procedure - Federal Court of Appeal - Delay in filing a Memorandum of Fact and Law - Whether the Court erred by not granting a further extension of delay in these circumstances.

PROCEDURAL HISTORY

December 23, 1997 Tax Court of Canada (Bell J.T.C.C.)	Appeal dismissed
November 3, 1999 Federal Court of Appeal (Strayer, Robertson and Noël JJ.A.)	Motion for extension of time and appeal dismissed
December 16, 1999 Federal Court of Appeal (Strayer, Robertson and Noël JJ.A.)	Motion for reconsideration dismissed
January 4, 2000 Supreme Court of Canada	Application for leave to appeal filed

27688 **ALLAN N. RAUW v. HER MAJESTY THE QUEEN** (F.C.A.)

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 - Judgments and orders - Pre-trial procedure - Federal Court of Appeal - Delay in filing a Memorandum of Fact and Law - Whether the Court erred by not granting a further extension of delay in these circumstances.

PROCEDURAL HISTORY

December 23, 1997 Tax Court of Canada (Bell J.T.C.C.)	Appeal dismissed
November 3, 1999 Federal Court of Appeal (Strayer, Robertson and Noël JJ.A.)	Motion for extension of time and appeal dismissed
December 16, 1999 Federal Court of Appeal (Strayer, Robertson and Noël JJ.A.)	Motion for reconsideration dismissed
January 4, 2000 Supreme Court of Canada	Application for leave to appeal filed

27686 **DR. GERALD E. GAVELIN v. HER MAJESTY THE QUEEN** (F.C.A.)

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 - Judgments and orders - Pre-trial procedure - Federal Court of Appeal - Delay in filing a Memorandum of Fact and Law - Whether the Court erred by not granting a further extension of delay in these circumstances.

PROCEDURAL HISTORY

December 23, 1997 Tax Court of Canada (Bell J.T.C.C.)	Appeal dismissed
November 3, 1999 Federal Court of Appeal	Motion for extension of time and appeal dismissed

(Strayer, Robertson and Noël JJ.A.)

December 16, 1999
Federal Court of Appeal
(Strayer, Robertson and Noël JJ.A.)

Motion for reconsideration dismissed

January 4, 2000
Supreme Court of Canada

Application for leave to appeal filed

27621 **MICHELINE MONTREUIL - c. - DIRECTEUR DE L'ÉTAT CIVIL** (Qué.)

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

La demande d'autorisation d'appel est rejetée avec dépens. Le juge L'Heureux-Dubé est dissidente.

The application for leave to appeal is dismissed with costs, L'Heureux-Dubé J. dissenting.

NATURE DE LA CAUSE

Charte canadienne - civil - Code civil - Changement de nom - La Cour d'appel a-t-elle commis une erreur de droit en imposant un délai minimal de cinq ans sans fixer de délai maximal pour autoriser une demande de changement de nom? - L'article 58 du *Code civil du Québec* ainsi que l'interprétation faite par la Cour d'appel constituent-ils une discrimination basée sur le sexe ou l'origine nationale ou ethnique contrevenant ainsi à l'article 15 (1) de la *Charte canadienne des droits et libertés* et à l'article 10 de la *Charte des droits et libertés de la personne du Québec*? - La Cour d'appel a-t-elle commis une erreur de droit en transformant un droit garanti par l'article 58 du *Code civil du Québec* en simple privilège soumis à la discrétion du directeur de l'état civil?

HISTORIQUE PROCÉDURAL

Le 27 octobre 1998
Cour supérieure du Québec
(Rioux j.c.s.)

Requête en révision judiciaire d'une décision du directeur de l'état civil ayant refusé à la demanderesse de sexe masculin l'autorisation d'ajouter un prénom féminin à ses prénoms masculins rejetée

Le 1 novembre 1999
Cour d'appel du Québec
(Beaudouin, Rousseau-Houle et Thibault jj.c.a.)

Appel rejeté

Le 30 novembre 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27557 **2849-6180 QUÉBEC INC. - c. - 3099-2325 QUÉBEC INC.** (Qué.)

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

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

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

NATURE DE LA CAUSE

Procédures - Preuve - Jugements et ordonnances - Requête en jugement déclaratoire - Interprétation des clauses d'un bail - Contradiction des termes d'un écrit par témoignage - L'interprétation des clauses du bail par la Cour d'appel est-elle erronée? - La Cour d'appel peut-elle aller au-delà des conclusions demandées en première instance et ainsi condamner une partie à payer une somme d'argent dans le cadre d'une requête pour jugement déclaratoire?

HISTORIQUE PROCÉDURAL

Le 28 juin 1994 Cour supérieure (Forget j.c.s.)	Jugement déclaratoire: la lettre de crédit au montant de 30,000.00\$ couvre tout défaut de l'intimée aux termes du bail
Le 10 août 1999 Cour d'appel du Québec (Vallerand [dissident], Nuss et Zerbisias jj.c.a.)	Appel accueilli; Murphy Savoie déclaré responsable seulement des obligations résultant de l'article 28.4 du contrat de bail; demanderesse condamnée à payer à l'intimée la somme de 30,000.00\$ avec intérêts et l'indemnité additionnelle depuis l'assignation
Le 15 novembre 1999 Cour suprême du Canada	Demande d'autorisation d'appel déposée

27614 **INSURANCE CORPORATION OF BRITISH COLUMBIA - v. - PAULO BEVACQUA** (B.C.)

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 - Insurance law - Evidence - Burden of proof - Vandalism - Whether the Court of Appeal erred in holding that, when denying coverage under a policy of insurance that covers loss due to vandalism, the insurer bears the legal burden of proving that the insured caused or procured the alleged loss.

PROCEDURAL HISTORY

April 29, 1998 Supreme Court of British Columbia (Spencer J.)	Respondent's claim dismissed: he has the burden of proof to persuade the court of his account of vandalism
October 1, 1999 Court of Appeal for British Columbia (Hinds, Rowles, and Finch JJ.A.)	Appeal allowed: trial judge's dismissal of the Applicant's claim set aside and new trial ordered
November 29, 1999 Supreme Court of Canada	Application for leave to appeal filed

27647 **GURJIT SINGH SEKHON - v. - HER MAJESTY THE QUEEN - and between - SARBDEEP KAUR SEKHON - v. - HER MAJESTY THE QUEEN - and between - JASBIR SINGH GILL - v. - HER MAJESTY THE QUEEN - and between - SUKHWINDER KAUR GILL - v. - HER MAJESTY THE QUEEN - and between - JUBRAJ BHINDER - v. - HER MAJESTY THE QUEEN - and between - TARSEM KAUR BHINDER - v. - HER MAJESTY THE QUEEN - and between - SURINERJIT JHAJJ - v. - HER MAJESTY THE QUEEN** (B.C.)

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

Municipal law - Municipal by-laws - Residential property - Truck parking - Applicants acquitted of illegally parking overweight trucks on residential properties after applicable zoning by-law found to be unenforceable owing to ambiguity - Acquittals of Applicants set aside on appeal and convictions entered - Whether Court of Appeal erred in affirming appeal judge's decision.

PROCEDURAL HISTORY

January 5, 1998 Provincial Court of British Columbia (Judge Stewart)	Charges against the Applicants Bhinder, Sekhon and Gill dismissed; Applicant Jhajj ordered to remove second truck and to pay a fine of \$100
June 11, 1998 Supreme Court of British Columbia (Smith J.)	Acquittals of Applicants Bhinder, Sekhon and Gill set aside and convictions entered; conviction of Applicant Jhajj affirmed; amounts of fines and date for removal of trucks remitted to trial court for determination
October 15, 1999 Court of Appeal for British Columbia (Donald, Newbury and Mackenzie JJ.A.)	Appeals of all Applicants dismissed; issue of sentencing remitted to trial court for determination
December 14, 1999 Supreme Court of Canada	Application for leave to appeal filed

27595 **EASTERN POWER LIMITED - v. - AZIENDA COMUNALE ENERGIA & AMBIENTE** (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

International law - Conflict of Laws - Proper law of the Contract - *Forum non conveniens* - Procedural law - Civil Procedure - Pre-trial Procedure - Whether there are conflicting authorities - Whether the Court of Appeal erred in applying the test of *forum non conveniens* to uphold the order staying the action - Whether the Court of Appeal erred in affirming the decision to set aside service of the statement of claim on the basis that the claim did not meet the test required by Rule 17.02 of the *Rules of Civil Procedure* of Ontario.

PROCEDURAL HISTORY

February 9, 1999 Ontario Court of Justice (General Division) (Juriansz J.)	Order setting aside the service <i>ex juris</i> of the statement of claim and staying the proceeding on the ground of <i>forum non conveniens</i> granted with fixed costs
September 14, 1999 Court of Appeal for Ontario (Abella, Laskin, and MacPherson JJ.A.)	Appeal dismissed with costs
November 15, 1999 Supreme Court of Canada	Application for leave to appeal filed

27573 **YVETTE SCOTT and JESSE SCOTT BY HIS LITIGATION GUARDIAN SHIRLEY LEGROS**
- v. - **THE CONTINENTAL INSURANCE COMPANY OF CANADA** (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

Commercial law - Insurance - Reasonable expectation of coverage under a standard form contract - Whether an insurer has a duty in tort or contract to notify policyholders when legislative change compromises previous coverage based on its participation with government in production of standard form contracts - Does an insurer owe a duty to advise of removals of pre-existing coverage.

PROCEDURAL HISTORY

June 27, 1998 Ontario Court (General Division) (Wright J.)	Damages awarded under O.E.F. 44 Family Protection Endorsement
September 7, 1999 Court of Appeal for Ontario (Abella, O'Connor and Sharpe JJ.A.)	Appeal dismissed; cross-appeal granted, action dismissed
November 3, 1999 Supreme Court of Canada	Application for leave to appeal filed

27623 **THÉRÈSE PRÉVOST-MASSON, EN SA QUALITÉ DE REPRÉSENTANT LÉGAL DE FEU HENRI MASSON - c. - ALBAN PERRAS** (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

Code civil - Droit commercial - Contrats - Dommages-intérêts - Intérêts - Effet relatif des contrats - Obligations - Obligation indivisible - Obligation *in solidum* - Obligation solidaire - La Cour d'appel a-t-elle erré en condamnant Feu Henri Masson au solde du prix de vente en l'absence de toute preuve de l'insolvabilité des débiteurs contractuels? - La Cour d'appel a-t-elle erré en déclarant que la dette de 2639-1565 Québec inc., Les Immeubles Les Castels de Greenfield Park inc., Alfred Céré et André Pelletier ainsi que la dette de Feu Henri Masson, étaient des obligations indivisibles au sens de l'article 1124 C.c.B.-C.? - La Cour d'appel a-t-elle erré en faisant porter à la condamnation de Feu Henri Masson le taux d'intérêt prévu par une convention à laquelle il était étranger?

HISTORIQUE PROCÉDURAL

Le 28 janvier 1994
Cour supérieure du Québec
(Hurtubise j.c.s.)

Action de l'intimé accueillie; demanderesse condamnée à payer la somme de 206 743, 79\$ à l'intimé

Le 4 octobre 1999
Cour d'appel du Québec
(Gendreau, Rousseau-Houle et Denis [*ad hoc*] jj.c.a.)

Appel de l'intimé accueilli en partie; jugement de première instance modifié

Le 3 décembre 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27775 **HAL RANDALL DOBSON - v. - HER MAJESTY THE QUEEN** (Crim.)(N.B.)

CORAM: Gonthier, Binnie and Arbour JJ.

The application for leave to appeal and the ancillary motions are dismissed, namely: motion that counsel be appointed to act on behalf of the applicant, motion for an order for an extension of time, motion for an order to present fresh evidence and motion for an order that the applicant's defence counsel be examined under oath.

La demande d'autorisation d'appel et les requêtes accessoires sont rejetées, soit: requête pour qu'un avocat soit nommé pour représenter le demandeur, requête en prorogation de délai, requête pour déposer des preuves nouvelles et requête pour interroger sous serment l'avocat du demandeur.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Pleas - Sections 7, 10(b), 11(c), 11(d) and 15(1) of the *Canadian Charter of Rights and Freedoms* - Whether Applicant's guilty plea invalidated by threat of an immediate return to jail - Whether Applicant received competent legal representation at trial - Whether Applicant's guilty plea invalidated by psychological state at time plea was made - Whether trial judge erred in accepting Applicant's guilty plea despite fact

that it was inconsistent with defence counsel's argument on sentencing that Applicant lacked intent to abduct his son - Whether Court of appeal erred in denying Applicant's request for an extension of time to file his Notice of Appeal?

PROCEDURAL HISTORY

July 23, 1999 Court of Queen's Bench of New Brunswick (Strange P.C.J.)	Applicant convicted of one count of abduction under s. 282(1)(a) of the <i>Criminal Code</i> and one count of breach of an undertaking under s. 145(3)(b) of the <i>Criminal Code</i>
December 22, 1999 Court of Appeal of New Brunswick (Ryan J.A.)	Motion for an extension of time to appeal conviction and sentence dismissed
February 21, 2000 Supreme Court of Canada	Application for leave to appeal filed

27592 **LORRAINE GAUTHIER - c. - CLAUDE GAUTHIER et COLOMBE BOUCHARD** (Qué.)

CORAM: Les juges Gonthier, Binnie et Arbour

La demande de prorogation de délai est accordée, la demande d'autorisation d'appel et les requêtes accessoires sont rejetées, soit: requête pour déposer des preuves nouvelles et requête en sursis d'exécution.

The application for extension of time is granted, the application for leave to appeal and the ancillary motions are dismissed, namely: motion for an order to present fresh evidence and motion for a stay of execution.

NATURE DE LA CAUSE

Droit des biens - Testaments - Capacité de tester - Captation - Les tribunaux inférieurs ont-ils erré?

HISTORIQUE PROCÉDURAL

Le 27 mai 1994 Cour supérieure du Québec (LaRue j.c.s.)	Action de la demanderesse et demande reconventionnelle des intimés rejetées
Le 27 janvier 1999 Cour d'appel du Québec (Rousseau-Houle, Pidgeon et Denis [<i>ad hoc</i>] jj.c.a.)	Appel de la demanderesse rejetée
Le 10 novembre 1999 Cour suprême du Canada	Demande d'autorisation d'appel, requête en prorogation de délai, requête en sursis d'exécution de jugement et requête pour déposer l'argumentation et les preuves de première instance refusées en appel déposées

27531 **VALERIE MORROW - v. - ACADEMY MECHANICAL SERVICES LTD.** (Alta.)

CORAM: Gonthier, Binnie and Arbour 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 of Rights and Freedoms - Constitution Act, 1867 - Administration of Justice - Fundamental justice - Commercial law - Contracts - Right of deaf to assistance of interpreter in any proceedings - Dispute as to whether contract to correct deficiencies in gas piping and venting including having gas company turn on gas - Allegation of fraud made against Respondent - Constitutionality of Provincial Court of Alberta (Civil Division) raised but not argued - Denial of Charter right to fundamental justice (s.7) alleged but not argued.

PROCEDURAL HISTORY

February 8, 1999 Provincial Court of Alberta (Maher Prov. Ct. J.)	Claim by Respondent allowed in the amount of \$538.74
June 24, 1999 Court of Queen's Bench of Alberta (Kent J.)	Appeal by Applicant dismissed
September 20, 1999 Supreme Court of Canada	Application for leave to appeal filed

27590 **BRITISH AVIATION INSURANCE GROUP (CANADA) LIMITED - v. - WEST CENTRAL AIR LTD. and LLOYD GOOD** (Sask.)

CORAM: Gonthier, Binnie and Arbour 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 - Insurance - Whether the Court of Appeal erred in upholding the finding of the Chambers judge that the facts pleaded in a related action involving the Respondents and Bangwyn Farms Ltd. ("Bangwyn") could result in a judgment for amounts which the Respondents would be "legally obligated to pay" Bangwyn, as that phrase is used in the policy - Whether the Court of Appeal erred in upholding the finding of the Chambers judge that the facts pleaded in the Bangwyn action disclosed a claim "arising out of the use, ownership or maintenance" of the aircraft - Whether the Court of Appeal erred in upholding the finding of the Chambers judge that the facts pleaded in the Bangwyn action do not fall within the exclusion for "liability assumed under a contract or agreement" as that phrase is used in the policy - Whether the Court of Appeal erred in upholding the finding of the Chambers judge that the facts pleaded in the Bangwyn action do not fall within the exclusion for "failure to provide transportation services" as that phrase is used in the policy - Whether the Court of Appeal erred in upholding the finding of the Chambers judge that the facts pleaded in the Bangwyn action do not fall outside the scope of liability insurance generally as being part of the business risk retained by Respondent West Central Air Ltd. and not transferred to the Applicant by the policy.

PROCEDURAL HISTORY

June 6, 1997	Application by Applicant for two declaratory judgments
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Court of Queen's Bench of Saskatchewan
(Hunter J.)

dismissed

September 7, 1999
Court of Appeal for Saskatchewan
(Bayda C.J., Vancise and Gerwing JJ.A.)

Appeal dismissed

November 12, 1999
Supreme Court of Canada

Application for leave to appeal filed

November 25, 1999
Supreme Court of Canada
(Gonthier J.)

Motion for an extension of time granted

27551 **JOEL STARKMAN, SHARON STARKMAN and RHONA FELDMAN - v. - THE TORONTO-DOMINION BANK** (Ont.)

CORAM: Gonthier, Binnie and Arbour 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 - Creditor and debtor - Property law - Personal property - *Personal Property Security Act*, R.S.O. 1990, c. P.10 - Whether the Court of Appeal erred in finding that the funds were identifiable and traceable - What is the definition of identifiable and traceable - Whether a breach of duty of confidentiality by a bank deprives it of equitable relief - Whether there are conflicting authorities.

PROCEDURAL HISTORY

February 10, 1998
Ontario Court of Justice (General Division)
(Macdonald J.)

Respondent's application for declaratory relief pursuant to section 67 of the *Personal Property Security Act* granted with costs

August 17, 1999
Court of Appeal for Ontario
(Carthy, Abella and Goudge JJ.A.)

Appeal dismissed

October 18, 1999
Supreme Court of Canada

Application for leave to appeal filed

27550 **OLYMPIA INTERIORS LTD. and MARY DAVID - v. - HER MAJESTY THE QUEEN**
(F.C.A.)

CORAM: Gonthier, Binnie and Arbour JJ.

The application for reconsideration is dismissed with costs.

La demande de réexamen est rejetée avec dépens.

12.6.2000

Before / Devant: CHIEF JUSTICE McLACHLIN

Motion to state a constitutional question

Requête pour énoncer une question constitutionnelle

Dwayne W. Hynes

v. (27443)

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

GRANTED / ACCORDÉE Notices of intervention are to be filed no later than August 21, 2000.

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

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

IT IS HEREBY ORDERED THAT:

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

- (1) Is a judge or justice presiding at a preliminary inquiry a court of competent jurisdiction for the purpose of an application under section 24(1) of the *Canadian Charter of Rights and Freedoms* to exclude evidence under section 24(2) of the *Charter*?
- (1) Le juge ou juge de paix présidant une enquête préliminaire est-il un tribunal compétent au sens du paragraphe 24(1) de la *Charte canadienne des droits et libertés* pour statuer sur une demande visant l'exclusion d'éléments de preuve en vertu du paragraphe 24(2) de la *Charte*?

14.6.2000

Before / Devant: LE REGISTRAIRE

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

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

Ka Lam Law, et al.

c. (27870)

Sa Majesté la Reine (Crim.)(N.-B.)

GRANTED / ACCORDÉE Délai prorogé au 5 juin 2000.

14.6.2000

Before / Devant: THE REGISTRAR

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

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

Pepsi-Cola Canada Beverages (West) Ltd.

v. (27060)

Retail, Wholesale and Department Store Union Local 558, et al. (Sask.)

GRANTED / ACCORDÉE Time extended to July 1, 2000.

14.6.2000

Before / Devant: THE REGISTRAR

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

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

Her Majesty the Queen in Right of Ontario

v. (27084)

974649 Ontario Inc. c.o.b. as Dunedin Construction (1992), et al. (Ont.)

GRANTED / ACCORDÉE Time extended to August 1, 2000.

14.6.2000

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the appellant's factum to October 1, 2000

Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'appellant le 1^{er} octobre 2000

Ian Vincent Golden

v. (27547)

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

ALLOWED IN PART / ACCORDÉE EN PARTIE Time extended to September 18, 2000.

14.6.2000

Before / Devant: LE JUGE BASTARACHE

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

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

Ville de Beauré

c. (27938)

Station Mont Sainte-Anne Inc. (9007-8635 Québec Inc.)
(Que.)

GRANTED / ACCORDÉE Délai prorogé au 30 juin 2000.

15.6.2000

Before / Devant: THE REGISTRAR

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

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

Mary Danyluk

v. (27118)

Ainsworth Technologies Inc., et al. (Ont.)

GRANTED / ACCORDÉE Time extended to July 4, 2000.

16.6.2000

Before / Devant: CHIEF JUSTICE McLACHLIN

Motion to state a constitutional question

Requête pour énoncer une question constitutionnelle

Ian Vincent Golden

v. (27547)

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

DISMISSED / REJETÉE The application is dismissed on the ground that this case does not raise constitutional questions within the terms of Rule 32 of the Rules of the Supreme Court of Canada.

16.6.2000

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimée Héli-Forex Inc.

Motion to extend the time in which to serve and file the response of the respondent Héli-Forex Inc.

Air Wemindji Inc.

c. (27859)

Héli-Forex Inc., et al. (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 26 mai 2000.

16.6.2000

Before / Devant: LE REGISTRAIRE

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

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

Benoît Proulx

c. (27235)

Le procureur général du Québec (Qué.)

GRANTED/ ACCORDÉE Délai prorogé au 30 juin 2000.

16.6.2000

Before / Devant: CHIEF JUSTICE McLACHLIN

Miscellaneous motions

Autres requêtes

Glen Sebastian Burns, et al.

v. (26211)

United States of America (Crim.)(B.C.)

UPON APPLICATION by counsel on behalf of the Applicants for an order for directions concerning a motion to re-open the application for leave to appeal regarding their committal for extradition and for orders under s. 85 of the *Supreme Court Act* to have the B.C. Law Society and Mr. Sheldon Goldberg produce all documents with respect to Mr. Patrick Beirne's status and competence to practice.

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

IT IS ORDERED that:

1. The request for orders under s. 85 of the *Supreme Court Act* is denied;
2. The Applicants' facts on the motion for reconsideration of their leave application relating to their committal for extradition shall be filed no later than July 17, 2000 and the Respondent's factum shall be filed no later than July 31, 2000;
3. The decision whether to hear oral argument on the motion is reserved.

19.6.2000

Before / Devant: BINNIE J.

Motion for a stay of proceedings

Requête en suspension des procédures

Bettyann L. Elliott

v. (27289)

City of Toronto, et al. (Ont.)

and

Veronica Lynn Elliott, et al.

v. (27888)

Wanda Liczyk, et al. (Ont.)

GRANTED / ACCORDÉE

UPON APPLICATION by the applicants for a stay of proceedings;

AND UPON REVIEWING THE MATERIAL in question;

AND HAVING REGARD TO the terms of s. 65.1 of the *Supreme Court Act* and Rule 27 of the Rules of the Supreme Court of Canada;

IT IS HEREBY ORDERED that execution of the orders for costs against the applicants in favour of the respondent Lone Star Realty Ltd. be stayed pending the disposition of the applications for leave to appeal herein.

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

**APPELS ENTENDUS DEPUIS LA
DERNIÈRE PARUTION ET
RÉSULTAT**

14.6.2000

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

Robert William Latimer

v. (26980)

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

Edward L. Greenspan, Q.C., Mark Brayford, Q.C. and Marie Henein, for the appellant.

Kent Roach, for the intervener Canadian Civil Liberties Association.

R. Douglas Elliott and Patricia A. LeFebour, for the intervener Canadian Aids Society.

Kenneth W. MacKay, Q.C. and Graeme G. Mitchell, Q.C., for the respondent.

Robert J. Frater and Bradley Allison, for the intervener the A.G. of Canada.

Michael Bernstein, for the intervener the A.G. for Ontario.

Robert G. Richards, Q.C. and Heather D. Heavin, for the interveners Council of Canadians with Disabilities, et al.

William J. Sammon, for the intervener Catholic Group for Health, Justice and Life.

David M. Brown and Janet Epp Buckingham, for the interveners Evangelical Fellowship of Canada, et al.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal - Defence - Necessity - Sentence - Constitutional exemption - Should the defence of necessity have been left with the jury - Did the Court of Appeal err in deciding that there was no obligation on a trial judge to rule on whether a defence has met the air of reality test and would be left to the jury prior to the address of counsel - Whether the trial judge provided a misleading answer to jurors that had the effect of undermining why the jury might exercise their power to nullify - Should the trial judge have charged the jury that they could find that the Appellant had the legal right to decide to commit suicide for his daughter as her surrogate decision maker - Whether the *Charter* allows for a constitutional exemption in mandatory minimum sentencing and if so, should an exemption have been granted in these circumstances.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Défense - Nécessité - Détermination de la peine - Exemption constitutionnelle - La défense de nécessité aurait-elle dû être soumise à l'appréciation du jury? - La Cour d'appel a-t-elle commis une erreur en décidant que le juge du procès n'avait pas l'obligation de décider si une défense satisfait au critère de la vraisemblance et devrait être soumise à l'appréciation du jury avant l'exposé des avocats? - Le juge du procès a-t-il fourni une réponse trompeuse aux jurés qui aurait eu pour effet de miner la raison pour laquelle le jury pouvait exercer son pouvoir d'annuler? - Le juge du procès aurait-il dû donner des directives au jury selon lesquelles il pouvait décider que l'appelant avait le droit de décider de mettre fin à la vie de sa fille en tant que personne subrogée dans son droit de prendre des décisions? - La *Charte* permet-elle l'octroi d'une exemption constitutionnelle dans le cas d'une peine minimale obligatoire et le cas échéant, une exemption constitutionnelle aurait-elle dû être octroyée dans ces circonstances?

15.6.2000

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

Adele Rosemary Breese (nee Gruenke)

Terence C. Semenuk, Q.C., for the appellant.

v. (27207)

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

Richard A. Saull, for the respondent.

Neutral citation: 2000 SCC 32 /

Référence neutre: 2000 CSC 32

THE CHIEF JUSTICE (orally):

It will not be necessary to hear from you Mr. Saull, despite the able submissions of Mr. Semenuk on behalf of his client. The Court is prepared to render judgment now.

We are all of the view that the appeal should be dismissed. We are of the view that the Court of Appeal correctly concluded that none of the information obtained by the Self Defence Review Committee would be admissible as fresh evidence. Under the terms of Reference the Admissibility of the information before the Committee as fresh evidence is a precondition to new hearing under s. 690(b) of the *Criminal Code*. The Appellant concedes that if the report of Dr. Shane is not admissible, the appeal must fail. For the reasons given by the Court of Appeal, Dr. Shane's new affidavit is not admissible. Therefore the appeal must fail.

[TRANSLATION]

LE JUGE EN CHEF (oralement):

Il ne sera pas nécessaire de vous entendre M^e Saull, malgré l'excellente argumentation présentée par M^e Semenuk au nom de sa cliente. La Cour est maintenant prête à rendre jugement.

Nous sommes tous d'avis que le pourvoi doit être rejeté. Nous estimons que la Cour d'appel a, à juste titre, jugé qu'aucune information obtenue par le comité d'examen de la légitime défense n'était admissible comme élément de preuve nouveau. Aux termes des questions renvoyées, l'admissibilité -- en tant qu'élément de preuve nouveau -- de toute information dont disposait le comité était une condition préalable à la tenue d'une nouvelle audition de la cause en vertu de l'al. 690*b*) du *Code criminel*. L'appelante concède que, si le rapport du D^r Shane n'est pas admissible, le pourvoi ne saurait être accueilli. Pour les motifs exposés par la Cour d'appel, le nouvel affidavit du D^r Shane n'est pas admissible. Par conséquent, le pourvoi doit être rejeté.

15.6.2000

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

Arthur David Gabriel, et al.

v. (27161)

Harvey J. Slobodzian and Paul E. Kammerloch, for the appellants.

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

and between

Robert Joseph Houle, et al.

v. (27161)

Gregg Lawlor, for the respondent.

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

Neutral citation: 2000 SCC 33

Référence neutre: 2000 CSC 33

Motion to quash Keith P. Catcheway's Notice of Appeal filed by the Crown is granted.

Motion adding Keith P. Catcheway as an Appellant under rule 17(7) is granted.

Motion to state a constitutional question filed by Keith P. Catcheway is dismissed.

THE CHIEF JUSTICE:

Mr. Kammerloch and Mr. Slobodzian, it will not be necessary to hear from you. The Court is ready to pronounce judgment. Mr. Justice Iacobucci will give the judgment for the Court.

IACOBUCCI J. (orally):

This appeal arises out of a dispute between two political factions on the Waterhen Indian Reserve, near Portage la Prairie, Manitoba. After losing political control, the faction known as the “quorum” set up a blockade on the provincial highway leading into the reserve in order to keep out supporters of the other faction, led by the band’s Chief. They were charged with mischief and other crimes, which this appeal raises for review.

The appellants submit that the trial judge’s conduct prior to and during the trial gives rise to a reasonable apprehension of bias. They seek to support this allegation with a motion to file fresh evidence in the form of two affidavits deposed by appellant Arthur David Gabriel. The first affidavit explains their failure to introduce the evidence in the courts below, and the second sets out the evidence of bias. Essentially, it reveals that the trial judge’s law firm, in his prior practice as a lawyer, had represented certain groups within the reserve. In addition, the trial judge personally adjudicated an unjust dismissal hearing for the wife of one of the appellants, represented one of the first people to be charged for participating in the barricade incident at a contested bail hearing (not an appellant before this Court), and consulted the appellants regarding the charges against them. The appellants also submit that the trial judge’s conduct during the trial, in peremptorily dismissing the unrepresented appellant’s motion to recuse himself, also raise a reasonable apprehension of bias.

The appellants also argue that the Manitoba Court of Appeal erred in not granting the adjournment requested by them, while they were unrepresented, to seek legal advice concerning the possibility of bringing a motion to admit fresh evidence. This request was denied without reasons. The appellants suggest that it is not clear why this motion was denied, assuming it may be owing to the fact that, in the opinion of the Court of Appeal, the evidence to support the conviction of each of the appellants was overwhelming.

The Crown essentially concedes that there was a reasonable apprehension of bias. Although it submits that the Court of Appeal did not err in denying the motion to adjourn to seek legal advice, it notes that the material submitted by the appellants “clearly demonstrates that the trial judge had professional dealings with some of the appellants while he was a practising lawyer”. It also notes that, “of great concern is the fact that the trial judge, while still a practising lawyer, acted for the co-accused (who was not tried before him) on a bail application, and apparently had access to the full police report respecting the accused who would eventually appear before him at trial”. The Crown also agrees with the appellants that the fresh evidence should be admitted.

Accordingly, we are all of the view that in the special circumstances of this case, the fresh evidence should be admitted. On that new evidence, we find that the trial judge’s prior involvement raised a reasonable apprehension of bias in accordance with the well- established jurisprudence on the issue. Therefore, we would allow the appeal, set aside the judgment of the Manitoba Court of Appeal and the convictions of the appellants, and return the matter to the trial court for a new trial before a different trial judge.

[TRADUCTION]

LE JUGE EN CHEF:

M. Kammerloch et M. Slobodzian, il ne sera pas nécessaire de vous entendre. La Cour est prête à rendre jugement. M. le juge Iacobucci prononcera le jugement au nom de la Cour.

LE JUGE IACOBUCCI (oralement) :

Le présent pourvoi découle d'un litige opposant deux factions politiques au sein de la réserve indienne de Waterhen, près de Portage la Prairie au Manitoba. Après avoir été incapable de s'assurer le pouvoir politique, la faction connue sous le nom de « quorum » a dressé un barrage sur l'autoroute provinciale menant à la réserve afin d'interdire l'accès de celle-ci aux partisans de l'autre faction, dirigée par le chef de la bande. Les appelants ont été accusés de méfait et d'autres crimes, qui font l'objet du présent pourvoi.

Les appelants prétendent que la conduite du juge du procès, avant et pendant le procès, a fait naître une crainte raisonnable de partialité. Au soutien de cette prétention, ils demandent par voie de requête à déposer des éléments de preuve nouveaux, en l'occurrence deux affidavits souscrits par l'appelant Arthur David Gabriel. Le premier affidavit explique leur omission de déposer ces éléments de preuve devant les juridictions inférieures, tandis que le deuxième expose la preuve relative à la partialité. Essentiellement, cette preuve révèle que, lorsque le juge du procès pratiquait le droit, le cabinet dont il faisait partie a représenté certains groupes au sein de la réserve. En outre, en tant qu'arbitre dans une affaire de congédiement injustifié, il a tranché en faveur de l'épouse de l'un des appelants; lors d'une enquête sur cautionnement contestée, il a représenté l'une des premières personnes qui a été accusée (mais qui n'est pas appelante devant notre Cour) d'avoir participé aux événements de la barricade; et il a été consulté par les appelants au sujet des accusations portées contre eux. Les appelants affirment également que la conduite du juge pendant le procès, savoir le rejet péremptoire par celui-ci de la requête en récusation déposée par les appelants non représentés, fait aussi naître une crainte raisonnable de partialité.

Les appelants plaident en outre que la Cour d'appel du Manitoba a fait erreur en leur refusant l'ajournement qu'ils ont demandé, lorsqu'ils n'étaient pas représentés, en vue de pouvoir consulter un avocat relativement à la possibilité de présenter une requête visant à faire admettre des éléments de preuve nouveaux. Leur demande a été rejetée sans motifs. Les appelants affirment que la raison du rejet de cette demande n'est pas évidente et ils supposent que le rejet pourrait être imputable au fait que la Cour d'appel estimait que la preuve étayant la déclaration de culpabilité de chaque appelant était accablante.

Essentiellement, le ministère public concède qu'il y avait une crainte raisonnable de partialité. Bien qu'il soutienne que la Cour d'appel n'a commis aucune erreur en rejetant la requête demandant un ajournement en vue de consulter un avocat, le ministère public souligne que les documents déposés par les appelants [TRADUCTION] « démontrent clairement que le juge du procès a eu des rapports professionnels avec certains des appelants pendant qu'il exerçait le droit ». Le ministère public mentionne également qu'il [TRADUCTION] « est très préoccupant que, lorsqu'il pratiquait le droit, le juge du procès ait représenté le coaccusé (qui n'a pas subi son procès devant lui) dans le cadre d'une demande de cautionnement, et qu'il ait apparemment eu accès à l'ensemble du rapport de police relatif à l'accusé qui allait éventuellement comparaître devant lui au procès ». Le ministère public convient également avec les appelants que les éléments de preuve nouveaux devraient être admis.

Par conséquent, nous sommes tous d'avis que, eu égard aux circonstances particulières de la présente affaire, les éléments de preuve nouveaux doivent être admis. À la lumière de ces éléments, nous estimons que les activités antérieures du juge du procès ont fait naître une crainte raisonnable de partialité, conformément à la jurisprudence bien établie en la matière. Nous sommes donc d'avis d'accueillir le pourvoi, d'infirmier l'arrêt de la Cour d'appel du Manitoba, d'annuler les déclarations de culpabilité des appelants et de renvoyer l'affaire à la cour de première instance pour la tenue d'un nouveau procès devant un juge différent.

16.6.2000

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major, Binnie, Arbour and LeBel JJ.

The Minister of National Revenue

v. (27066)

**Grand Chief Michael Mitchell also known as
Kanentakeron (F.C.A.)**

Graham Garton, Q.C., and Sandra Phillips, for the
appellant.

René Morin, pour l'intervenante la procureure générale
du Québec.

Gabriel Bourgeois, pour l'intervenant le procureur
général du Nouveau-Brunswick.

Kenneth J. Tyler and Robert J.C. Deane, for the
intervener the A.G. of Manitoba.

Timothy P. Leadem and Kathryn Kickbush, for the
intervener the A.G. of British Columbia.

Peter W. Hutchins, Anjali Choksi, Micha J. Menczer
and Paul Williams, for the respondent.

Murray Marshall and François Dandonneau, for the
intervener Mohawk Council of Kahnawake.

Jack R. London, Q.C., and Martin S. Minuk, for the
intervener Assembly of First Nations.

Henry J. Bear, for the intervener Union of New
Brunswick Indians.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Native Law - Aboriginal rights - Right to bring goods
into Canada for personal or community use, or for non-
commercial scale trade with First Nation Communities
in Ontario or Quebec, without paying any duty or taxes
on the goods to the Government of Canada - Whether
such an aboriginal right was reconcilable with the
sovereignty of the Crown - Whether such an aboriginal
right had not been extinguished by the *Customs Act* -
Whether an aboriginal right to an exemption or
immunity from any duty or tax had been extinguished by
section 49 of *An Act to Amend the Income Tax Act and
the Income War Tax Act*, S.C. 1949, chap. 25.

Nature de la cause:

Droit des autochtones - Droits ancestraux - Droit
d'apporter des marchandises au Canada pour utilisation
personnelle ou communautaire, ou pour le commerce sur
une échelle non commerciale avec des communautés des
premières nations en Ontario ou au Québec, sans payer
de droits ou taxes sur ces marchandises au
gouvernement du Canada - Pareil droit ancestral a-t-il
été éteint par la *Loi sur les douanes*? - Le droit ancestral
à une exemption de tous droits ou taxes a-t-il été éteint
par l'article 49 de la *Loi modifiant la Loi de l'impôt sur
le revenu et la Loi de l'impôt de guerre sur le revenu*,
S.C. 1949, ch. 25?

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 July 21, 2000.
Le prochain bulletin des procédures sera publié le 21 juillet 2000.

**CUMULATIVE INDEX -
APPLICATIONS FOR LEAVE TO
APPEAL**

**INDEX CUMULATIF - REQUÊTES
EN AUTORISATION DE POURVOI**

This index includes applications for leave to appeal standing for judgment at the beginning of 2000 and all the applications for leave to appeal filed or heard in 2000 up to now.

Cet index comprend les requêtes en autorisation de pourvoi en délibéré au début de 2000 et toutes celles produites ou entendues en 2000 jusqu'à maintenant.

*01	Refused/Refusée	*A	Applications for leave to appeal filed/Requêtes en autorisation de pourvoi produites
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DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

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

Motion day : 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

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

DÉLAIS: APPELS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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:



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

