

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

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

A.K. and N.K.

James C. Fleming
Fleming, Breen

v. (27697)

Her Majesty the Queen (Ont.)

Susan L. Reid
A.G. for Ontario

FILING DATE 10.1.2000

JANUARY 24, 2000 / LE 24 JANVIER 2000

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

Ken Toby Ltd.

v. (27326)

British Columbia Buildings Corporation (B.C.)

NATURE OF THE CASE

Commercial law - Contracts - Tendering process - Whether tender calling authority is contractually bound or owes a duty of care to sub-contractors submitting bids to general contractors to adhere to the rules governing the Bid Depository System -Torts - Economic loss - Whether duty of care owed by Tender Calling Authority to subcontractors not to alter bidding procedures

PROCEDURAL HISTORY

May 7, 1997 Supreme Court of British Columbia (Burnyeat J.)	Action for damages for economic loss resulting from breach of contract and breach of duty to bargain in good faith allowed.
April 1, 1999 Court of Appeal for British Columbia (Hollinrake,Goldie and Rowles JJA.)	Appeal allowed
May 31, 1999 Supreme Court of Canada	Application for leave to appeal filed

**Saskferco Products Inc. and Her Majesty The Queen in Right of the Province of
Saskatchewan as represented by Crown Investment
Corporation of Saskatchewan**

v. (27218)

Wellington Insurance Company

and

**BWV Investments Limited (Bennett & Wright
Contractors) and UHDE - GmbH, et al (Sask.)**

NATURE OF THE CASE

Commercial law - Mechanics' liens - Statement of claim - Cause of action - Subcontractor bringing lien action by filing statement of claim - Liens vacated upon contractor's filing of letter of credit - Whether Applicant owners entitled to be removed as defendants to action because there was no reasonable cause of action against them.

PROCEDURAL HISTORY

May 18, 1993 Court of Queen's Bench of Saskatchewan (MacPherson C.J.Q.B.)	Portions of statement of claim against Applicants struck; Applicants granted leave to reapply for an order striking the remaining portions of the statement of claim and/or removing Applicants from the action
December 2, 1997 Court of Queen's Bench of Saskatchewan (MacPherson C.J.Q.B.)	Applicants struck from being defendants in the action
February 1, 1999 Court of Appeal for Saskatchewan (Tallis, Cameron and Lane JJ.A.)	Appeal allowed
March 30, 1999 Supreme Court of Canada	Application for leave to appeal filed

Stuart Jordan, suing by his Litigation Guardian, Irene Jordan, and the said Irene Jordan, on her own behalf

v. (27404)

Dr. Luis Salgado de Leon (Sask.)

NATURE OF THE CASE

Procedural law - Admissibility of documentary evidence - Did the lower courts err in failing to admit certain documents offered into evidence by the Applicant?

PROCEDURAL HISTORY

November 6, 1998 Court of Queen's Bench for Saskatchewan (Archambault J.)	Applicants' action in medical malpractice against Respondent dismissed
May 10, 1999 Court of Appeal for Saskatchewan (Bayda C.J., Cameron, and Lane JJ.A.)	Appeal dismissed
July 26, 1999 Supreme Court of Canada	Application for leave to appeal filed

**Maritimes and Northeast Pipeline Management Limited, a body
corporate, and Maritimes and Northeast pipeline limited Partnership,
a limited partnership as Applicant**

v. (27262)

**Union of Nova Scotia Indians, a body corporate, on behalf of itself and its
members and the Acadian, Chapel Island, Eskasoni, Membertou, Shubenacadie,
Wagmatcook, and Whycomomagh Indian Bands, and their members, and
Confederacy of Mainland Micmacs, a body corporate, on behalf of itself and its
members and the Afton, Annapolis, Bear River, Horton, Millbrook and Pictou Landing Indian Bands, and
their members, Assembly of Nova Scotia Mi'kmaq Chiefs (F.C.A)**

NATURE OF THE CASE

Administrative law - Judicial review - Whether s. 18.5 of the *Federal Court Act* prohibits a party from proceeding with an application for judicial review where the administrative tribunal's constituting legislation contains a statutory mechanism for challenge by way of a leave to appeal application - Whether the decision of the Federal Court of Appeal provides non-parties to administrative proceedings broader rights to challenge administrative decisions than are provided to the parties to the actual process

PROCEDURAL HISTORY

February 22, 1999
Federal Court of Appeal
(Isaac C.J., Létourneau, and Noël J.J.A.)

Applicants cross-motion dismissed; ordered that Applicants should proceed with their application for judicial review

April 22, 1999
Supreme Court of Canada

Application for leave to appeal filed

**Casimir Leon Kadziolka, Rose Marie Kadziolka,
Marc Leonard Kadziolka and Luc Casimir Kadziolka**

v. (27220)

Royal Bank of Canada (Sask.)

NATURE OF THE CASE

Procedural law - Civil procedure - Striking of defence and counterclaim - *Res judicata* - Abuse of process.

PROCEDURAL HISTORY

September 30, 1997
Court of Queen's Bench of Saskatchewan
(Hrabinsky J.)

Order granted striking paragraphs 9, 12 and 14 of the Applicants' counterclaim in QB 694/90
Order granted striking paragraphs 11 to 19 and paragraphs 26, 34 and part (a) of para. 43 from Applicants' counterclaim in QB 148/97

January 26, 1999
Court of Appeal for Saskatchewan

Applicants' appeal dismissed

(Vancise, Wakeling, and Jackson JJ.A.)

Respondent's appeal allowed; order striking paragraphs 5 and 6 of the Statement of Defence and the Applicants' entire Counterclaim

March 30, 1999
Supreme Court of Canada

Application for leave to appeal filed

Bernard Austie and Tony Austie

v. (27248)

Alfons Aksnowicz (Alta.)

NATURE OF THE CASE

Property law - Real property - Sale of land - Writing requirements - Whether the signature placed by a vendor on an offer to purchase to acknowledge his receipt of it was subsequently adopted by him orally as a signature accepting the terms of the offer so as to satisfy the *Statute of Frauds* - Whether the Court of Appeal erred in reversing the trial judge's findings of fact.

PROCEDURAL HISTORY

December 22, 1997
Court of Queen's Bench of Alberta
(MacLean J.)

Applicants' action allowed; order declaring that there is a binding contract for the sale of land and directing specific performance by the Respondent

February 16, 1999
Court of Appeal of Alberta
(Hetherington, Côté, and O'Leary JJ.A.)

Appeal allowed; Applicants' suit dismissed, caveat registered against the land discharged

April 13, 1999
Supreme Court of Canada

Application for leave to appeal filed

Twin City Mechanical a division of Babcon of Waterloo Limited

v. (27196)

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

NATURE OF THE CASE

Commercial law - Contracts - Tendering process - Regulation of tendering process in construction industry by Bid Depository System - Whether tender calling authority has a duty to prevent or avoid breaches of the rules of the Bid Depository System by the general contractor which it selects - Whether the Crown, in its capacity as tender calling authority, has a duty to ensure that the general contractors responding to the tender call do not engage in bid shopping

PROCEDURAL HISTORY

December 16, 1996 Ontario Court of Justice (General Division) (Dandie J.)	Applicant's action allowed; Respondent and Bradsil (1967) Limited jointly and severally liable in the amount of \$1,250,648.66
January 20, 1999 Court of Appeal for Ontario (Morden A.C.J.O., Doherty, Moldaver JJ.A)	Appeal allowed; Applicant's claim against Respondent, Ontario, dismissed
March 19, 1999 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**

**Cleavon Francis, Daniella Francis and Shanice Francis
through their Litigation Guardian MacDonald Scott**

v. (27615)

**Minister of Citizenship and Immigration
and Maria Joyce Francis (Ont.)**

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Family Law - Immigration Law - *Parens patria* jurisdiction of the Courts - Alien mother and son ordered deported - Rights of Canadian-born children - Right of a child to seek a constitutional *Charter of Rights and Freedoms* remedy before a provincial Superior Court - Whether the Court of Appeal erred by simply adopting the decision of *Baker v. Canada* (the Minister of Citizenship and Immigration) without any apparent review or consideration of the distinguishing fact that the Court of first instance had found the actions of the state to contravene the children's liberty rights pursuant to section 7 of the *Charter of Rights and Freedoms* - Whether the Court of Appeal erred in law in discharging its responsibility to the interests of the Applicant children pertaining to the remedies and rights available to Canadian children and the corresponding duties of the courts to safeguard and protect their interests - Whether Court of Appeal erred by appearing to ignore or refusing to deal with the issue of how the one immigrant child of the three Applicant children can possibly afford to pay the \$500.00 processing fee required for a further humanitarian and compassionate application.

PROCEDURAL HISTORY

May 6, 1998 Ontario Court of Justice (General Division) (McNeely J.)	Application for an injunction against the Minister's deportation order granted: all deportation orders against Respondent Francis and any directions concerning Canadian born children quashed
October 19, 1999 Court of Appeal for Ontario (Krever, Doherty and Rosenberg JJ.A.)	Appeal allowed: order of McNeely J. set aside and order staying the Applicants' application brought in General Division granted
November 29, 1999 Supreme Court of Canada	Application for leave to appeal and motion to expedite filed

Carl Lenhardt

v. (27396)

**Her Majesty The Queen as represented by
the Royal Canadian Mounted Police (F.C.A.)**

NATURE OF THE CASE

Procedural law - Courts - Judgments and orders - Several orders dismissing applications to file amended statement of claim in Court of Appeal after dismissal of action in Trial Division - Whether the Federal Court of Appeal erred in dismissing the applications.

PROCEDURAL HISTORY

November 18, 1998 Federal Court, Trial Division (Denault J.F.C.C.)	Action dismissed
March 4, 1999 Federal Court of Appeal (Rothstein J.A.)	Interlocutory motions (filed on November 30, 1998 and December 11, 1998) seeking to file amended statement of claim and other materials dismissed
April 14, 1999 Federal Court of Appeal (McDonald J.A.)	Interlocutory motion (filed on March 19, 1999) seeking various forms of relief and reinstatement of motions of November 30 and December 11, 1998 dismissed
April 16, 1999 Federal Court of Appeal (McDonald J.A.)	Interlocutory motion (filed on March 5, 1999) dismissed
May 3, 1999 Federal Court of Appeal (McDonald J.A.)	Order issued dismissing Applicant's request made by letter for reinstatement of March 5 and 19 motions
June 24, 1999 Supreme Court of Canada	Application for leave to appeal filed

Emballage Graham du Canada Limitée

c. (27336)

Commission des droits de la personne et des droits de la jeunesse (Qué.)

NATURE DE LA CAUSE

Libertés publiques - *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12 - Discrimination en raison d'un handicap - Distinction, exclusion ou préférence fondée sur les aptitudes ou les qualités requises par l'emploi - Devoir d'accommodement de l'employeur - La Cour d'appel a-t-elle erré en jugeant que la question qui lui était soumise était une question de faits? - La Cour d'appel a-t-elle erré en statuant qu'elle devait faire preuve de retenue judiciaire face à une question de faits? - La Cour d'appel devait-elle accorder la permission d'appeler?

HISTORIQUE PROCÉDURAL

Le 23 février 1999
Tribunal des droit de la personne (Sheehan j.)

Action de l'intimée pour perte de salaire et dommages
moraux accueillie

Le 9 avril 1999
Cour d'appel du Québec (Forget j.c.a.)

Requête pour permission d'appeler rejetée

Le 7 juin 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Ronald J. Béliard

c. (27241)

Norma Gough Husbands (Qué.)

NATURE DE LA CAUSE

Droit commercial - Contrats - Dommages-intérêts - Annulation de contrat - Évaluation du montant des dommages - Y a-t-il eu inexécution contractuelle? - L'intimée a-t-elle qualité pour réclamer des dommages en son nom personnel? - Le premier juge a-t-il été partial? - Le premier juge a-t-il rendu une décision contraire à la *Charte canadienne des droits et libertés*? - Dans l'éventualité où l'intimée a contracté en son nom personnel, quel est le montant déboursé et récupérable? - La théorie de l'enrichissement sans cause est-elle applicable dans les circonstances?

HISTORIQUE PROCÉDURAL

Le 2 octobre 1998
Cour supérieure du Québec
(Décarie j.c.s.)

Action en dommages-intérêts de l'intimée accueillie

Le 1er février 1999
Cour d'appel du Québec
(Michaud, Gendreau et Delisle jj.c.a.)

Requête en rejet d'appel accueillie; appel rejeté

Le 9 avril 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

White Spot Limited

v. (27249)

British Columbia Labour Relations Board

and

**National Automobile, Aerospace and
Agricultural Implement Workers of Canada
(CAW-Canada), Local 300 (B.C.)**

NATURE OF THE CASE

Labour law - Labour relations - Statutes - Interpretation - Successor rights and obligations - Common employer declaration - Purchaser of restaurant with franchise agreement becoming bound by terms of collective agreement as a successor pursuant to s. 35 of *Labour Relations Code*, R.S.B.C. 1996, c. 244 - Labour Relations Board granting “common employer” declaration under s. 38 of *Code* - Whether fact that s. 35 created an automatic severance of the bargaining unit on succession precluded the Board from invoking its s. 38 jurisdiction.

PROCEDURAL HISTORY

June 17, 1997 Supreme Court of British Columbia (Mackenzie J.)	Petition to quash decisions of the Labour Relations Board declaring White Spot Limited and Gilley Restaurants Ltd. to be a common employer dismissed
February 15, 1999 Court of Appeal for British Columbia (Hollinrake, Goldie and Finch JJ.A.)	Appeal dismissed
April 13, 1999 Supreme Court of Canada	Application for leave to appeal filed

**Tom Dunmore, Salame Abdulhamid
and Walter Lumsden and Michael Doyle,
on their own behalf and on behalf of the
United Food and Commercial Workers International Union**

v. (27216)

**Attorney General for the Province of Ontario,
Highline Produce Limited, Kingsville
MushroomFarm Inc., Fleming Chicks (Ont.)**

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil - Freedom of Association - Equality rights - Labour law - Labour relations - Unions - Collective bargaining - Sections 2(d) and 15(1) of the Canadian Charter of Rights and Freedoms - Whether the exclusion of agricultural workers from Ontario’s statutory labour relations system violates their freedom of association under s. 2(d) of the Charter - Whether the enactment of legislation which directly or indirectly results in the limitation of a fundamental freedom, through the intermediary, of private power constitutes government action subject to review under the Charter - Whether the exclusion of agricultural workers from Ontario’s statutory labour relations system violates their rights to equal protection and benefit of the law under s. 15(1) of the Charter - Whether discrimination on the basis of membership in a group defined by occupational status, in circumstances where that status is associated with disadvantage and powerlessness in society, may constitute discrimination on a ground analogous to the enumerated grounds in s. 15(1) of the Charter?

PROCEDURAL HISTORY

December 9, 1997
Ontario Court of Justice (General Division)
(Sharpe J.)

Application dismissed

January 26, 1999
Court of Appeal for Ontario
(Krever, Doherty and Rosenberg JJ.A.)

Appeal dismissed

March 29, 1999
Supreme Court of Canada

Application for leave to appeal filed

**The Dominion of Canada General
Insurance Company**

v. (27244)

Maryanne Marchand and Henry Marchand (Ont.)

NATURE OF THE CASE

Commercial law - Insurance - Insurance policies - Interpretation - Respondents sued for damages for personal injuries sustained in watercraft incident - Respondents holding two insurance policies providing coverage - Both policies containing "other insurance" clauses - Whether responsibility for judgment liability and defence costs should be divided evenly between insurers.

PROCEDURAL HISTORY

January 29, 1998
Ontario Court (General Division)
(McMahon J.)

Respondent Maryanne Marchand entitled to coverage under the Dominion policy and Respondent Henry Marchand not entitled to coverage; Applicant liable for one-half of judgment liability and defence costs of both Respondents

February 12, 1999
Court of Appeal for Ontario
(Carthy, Abella, and Goudge JJ.A.)

Appeal dismissed

April 12, 1999
Supreme Court of Canada

Application for leave to appeal filed

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

Roshan Ali Tejani

v. (27459)

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

NATURE OF THE CASE

Criminal Law - Offences - Attempt to launder proceeds of crime - Whether the phrase “intent to convert” in s. 19.2 of the *Narcotic Control Act*, R.S.C. 1985, c. N-1, is satisfied by a simple intent to exchange one currency into another or requires an intent to disguise - Whether the Applicant’s conviction was not unreasonable - Whether the trial judge could and did find requisite knowledge that funds were proceeds of a specified narcotics offence committed in Canada - Whether the trial judge could and did find that an element of knowledge was made out based upon wilful blindness - Whether the trial judge proceeded on an objective basis as opposed to a requisite subjective basis with respect to wilful blindness - Whether the Applicant progressed beyond mere preparation and committed the *actus reus* of attempting to launder money.

PROCEDURAL HISTORY

December 11, 1997
Ontario Court of Justice (General Division)
(Grossi J.)

Conviction: Attempt to launder proceeds of crime
Sentence: Two years imprisonment and \$20,000 fine

August 26, 1999
Court of Appeal for Ontario
(Osborne A.C.J. and Laskin and Borins JJ.A.)

Appeal from conviction dismissed; Appeal from sentence allowed in part, reduced to two years less a day in community and \$20,000 fine

October 25, 1999
Supreme Court of Canada

Application for leave to appeal filed

Harry Cobb

v. (27610)

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

AND BETWEEN:

Allen Grossman

v. (27610)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Extradition - Whether the Court of Appeal erred in finding that considerations relating to abuse of process and s. 7 of the *Charter* are beyond the jurisdiction of the extradition judge at the committal stage of extradition proceedings, and thus are only engaged following the time of the decision of the Minister of Justice to surrender the fugitive - Whether the Court of Appeal erred in limiting the jurisdiction of the extradition judge solely to consideration of whether or not there was a *prima facie* case.

PROCEDURAL HISTORY

October 28, 1997 Ontario Court of Justice (General Division) (Hawkins J.)	Stay of extradition proceedings granted
September 13, 1999 Court of Appeal for Ontario (Brooke, Krever and Goudge JJ.A.)	Stay set aside and matter remitted to trial judge
November 26, 1999 Supreme Court of Canada	Application for leave to appeal filed by Applicant Cobb
December 16, 1999 Supreme Court of Canada	Application for leave to appeal filed by Applicant Grossman
January 4, 2000 Supreme Court of Canada (Bastarache J.)	Motions to extend time in both leave applications granted

Ian Vincent Golden

v. (27547)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Whether s. 8 of the *Charter* mandates a warrant as a prerequisite for a complete strip search conducted incident to an individual's arrest - Whether the minimum standards for a reasonably conducted strip search under s. 8 of the *Charter* were met.

PROCEDURAL HISTORY

January 28, 1998 Ontario Court of Justice (General Division) (McNeely J.)	Conviction: guilty of possession of a narcotic for the purpose of trafficking
April 16, 1998 Ontario Court of Justice (General Division) (McNeely J.)	Application for violation of section 8 of the <i>Charter</i> dismissed
September 23, 1999 Court of Appeal for Ontario (Osborne, Doherty and Charron JJ.A.)	Appeal against conviction and sentence dismissed
October 15, 1999 Supreme Court of Canada	Application for leave to appeal filed

Ulybel Enterprises Limited

v. (27543)

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

NATURE OF THE CASE

Criminal law - Seizure - Defence - Evidence - Maritime law - Fisheries - Procedural law - Evidence - Disclosure - Courts - Jurisdiction - Statutes - Interpretation - Seizure and sale of ship Forfeiture of sales proceeds - Nationality of Ship - North Atlantic Fisheries Convention - Permitting use of a fishing vessel to fish in North Atlantic Fisheries Organization's Convention area without a vessel registration card or a license - Determining nationality of ship - Whether principles of international law apply as part of Canadian law in determining nationality of a ship - Whether Canadian registration of a ship automatically ends once ship acquires foreign registration, flag, certificates, operator, master, and crew - Whether the Superintendent of Ships' Registry has a duty to delete a ship from the Canadian Registry once he learns that the vessel is sailing as a foreign fishing vessel - Whether the Crown is entitled to renege on a promise of disclosure - Whether an accused ship owner is entitled to see documents concerning Canadian efforts to have the foreign registration closed - Whether disclosure properly withheld - Whether Minister's personal consent is necessary to overturn prohibition against registration of foreign built vessels in the *Canada Shipping Act* - Whether owner who gives a Bare Boat Charter of its fishing vessel is responsible for the actions of the Charter - Whether a reasonable and honest belief defence in *Fisheries Act*, R.S.C., 1985, c. F-14 is the subjective belief of the accused - Whether requiring continued detention by the Crown of a thing seized for forfeiture conflicts with other provisions of *Fisheries Act* - Jurisdiction of Federal Court of Canada.

PROCEDURAL HISTORY

December 4, 1999 Supreme Court of Newfoundland, Trial Division (Russell J.)	Motion for disclosure dismissed
May 21, 1997 Supreme Court of Newfoundland, Trial Division (Russell J.)	Conviction: four counts of permitting use of a fishing vessel to fish without a registration card or a licence in an NAFO convention area
July 2, 1997 Supreme Court of Newfoundland, Trial Division (Russell J.)	Sentence: fines of \$120,000, forfeiture of proceeds of sale of cargo and \$50,000 of proceeds of sale of fishing vessel
August 17, 1999 Supreme Court of Newfoundland, Court of Appeal (Gushue, Cameron and Green JJ.A.)	Appeal from convictions dismissed; Appeal from sentence allowed in part, order of forfeiture set aside; Cross-appeal from sentence dismissed
October 13, 1999 Supreme Court of Canada	Application for leave to appeal filed by Applicant
October 18, 1999 Supreme Court of Canada	Application for leave to cross-appeal filed by Respondent

Hemchand Ramlall, B.A., M.D., D.O.H.S.

v. (27444)

**The Ontario International Medical Graduate Program
and The Council of Ontario Faculties of Medicine (Ont.)**

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil - Equality rights - Administrative law - Judicial review - Admissions examinations to professional academic program for students from non-accredited schools abroad - Admissions examinations restricted to four attempts - Whether additional requirements for students of non-accredited schools abroad breaching equality provisions of Charter - If so, whether s. 1 applicable - Whether standard of review “correctness” and not “manifest unfairness” as found below - Whether courts below erred in law - Whether program breached rules of procedural fairness - Whether Committee had jurisdiction to effect four-year restriction - Whether implementation of four-year restriction fettering discretion of program - Whether program should be considered as agency of government rather an university program.

PROCEDURAL HISTORY

November 24, 1998 Ontario Court (Divisional Court) (Flinn, Taliano and Ferguson JJ.)	Applicant's application for judicial review of the decisions of the Ontario International Medical Graduate Program dismissed
May 26, 1999 Court of Appeal for Ontario (Osborne, Catzman and O'Connor JJ.A.)	Applicant's motion for leave to appeal dismissed
August 26, 1999 Supreme Court of Canada	Application for leave to appeal filed

The Waterloo County Board of Education

v. (27481)

**Gregory Kennedy, Cecil Kennedy, Shirley Kennedy,
Rhonda Nogueira and Heather Dowling (Ont.)**

NATURE OF THE CASE

Torts - Negligence - Occupiers' liability - Whether government agencies are exempted from tortious liability when they make policy as opposed to operational decisions if they are subject to a contemporaneous statutory duty - Whether the Court of Appeal erred in interfering with the finding of a trial judge with respect to the apportionment of liability in negligence -

PROCEDURAL HISTORY

October 25, 1996 Ontario Court of Justice (General Division) (Mossop J.)	Action by Respondents dismissed
June 21, 1999 Court of Appeal for Ontario (Morden A.C.J.O., Catzman and Feldman JJ.A.)	Appeal allowed: judgment below set aside and judgment granted in favour of the Respondents
September 15, 1999 Supreme Court of Canada	Applications for leave to appeal and cross-appeal filed

Amanda Marie Lord, Nicola Joan Lord, Cameron James Westbury, minors by their Litigation Guardian Rolf Patrick Leigh Lord, Rolf Patrick Leigh Lord personally, Kathleen Jean Lord, Greta Joan Travis, Susan Patricia MacKay, Gina Marie Lord and Lisa Williams

v. (27630)

The Maritime Life Assurance Company (Ont.)

NATURE OF THE CASE

Family Law - Statutes - Interpretation - Damages - Whether a defendant who intentionally causes the death of a person is potentially liable for punitive damages under section 61 of the *Family Law Act*, R.S.O. 1990, c. F-3 - Whether Ontario's *Family Law Act* and comparable legislation in the other provinces contemplate damages of a non-compensatory nature, specifically, aggravated damages - Whether a court is precluded from expanding the remedies available to a plaintiff because the common law bar to recovery has been partially removed by legislation? - If not, should aggravated and punitive damages, as a matter of public policy, be made available in cases of intentional tort causing death?

PROCEDURAL HISTORY

June 17, 1998 Ontario Court of Justice (General Division) (Granger J.)	Motion by the Respondent Maritime Life to strike out Applicants' claim for punitive, exemplary and aggravated damages granted
October 6, 1999 Court of Appeal for Ontario (Doherty, Austin and Sharpe JJ.A.)	Appeal dismissed
December 6, 1999 Supreme Court of Canada	Application for leave to appeal filed

Aditya Narayan Varma

v. (27662)

Canada Post Corporation (F.C.A.)

NATURE OF THE CASE

Procedural law - Judgments and orders - Directions concerning procedure - Interlocutory order made extending time to serve and file appearance - Application made for directions - Judge rendering directions finding Applicant had right to compel completion of undertakings but failed to do so in time permitted - Avenue of appeal from decision.

PROCEDURAL HISTORY

October 13, 1999 Federal Court of Appeal (Rothstein J.A.)	Motion of the Respondent for extension of time to serve and file notice of appearance granted
November 4, 1999 Federal Court of Appeal (Strayer J.A.)	Decision on motion for directions
December 8, 1999 Supreme Court of Canada	Application for leave to appeal filed

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

JANUARY 27, 2000 / LE 27 JANVIER 2000

27017 **HER MAJESTY THE QUEEN - v. - VERA LYNN DEW** (Crim.)(Man.)

CORAM: The Chief Justice and Iacobucci and Major JJ.

The application for 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 - Sentencing - Conditional sentences - Whether the Court of Appeal misinterpreted s. 742.1 of the *Criminal Code* and therefore imposed an unfit sentence on the Respondent.

PROCEDURAL HISTORY

June 15, 1998 Court of Queen's Bench of Manitoba (Hewak C.J.Q.B.)	Conviction: conspiracy to traffic in cocaine; Sentence: 16 months imprisonment to be served in jail
September 18, 1998 Court of Appeal of Manitoba (Philp, Twaddle, and Monnin JJ.A.)	Sentence appeal allowed; conditional sentence imposed
December 9, 1998 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

27114 **SA MAJESTÉ LA REINE - c. - PAUL KÉBREAU** (Crim.) (Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit criminel - Détermination de la peine - Preuve - Le juge du procès a-t-il erré en concluant qu'il n'était pas convaincu que le fait de purger la peine dans la collectivité ne mettait pas en danger la sécurité de celle-ci strictement, à partir de sa position de juge des faits et de son appréciation personnelle de la preuve, puisque la défense avait présenté deux témoins qui avait émis des opinions contraires sur le sujet? - Le juge du procès a-t-il erré en concluant le fait de purger la peine dans un cas où il est évident que l'accusé représente une menace réelle pour la victime quoiqu'il ne représente qu'une menace potentielle pour la société? - La Cour d'appel a-t-elle erré en estimant qu'une peine d'emprisonnement était manifestement non-indiquée dans les circonstances: considérant la planification, l'extrême violence et l'utilisation d'une arme à feu dans un contexte de difficultés dans une relation de travail?

HISTORIQUE PROCÉDURAL

Le 23 octobre 1998
Cour du Québec
(Dutil j.c.s.)

Intimé trouvé coupable de chefs d'accusation de voies de fait graves, de voies de fait alors qu'en possession d'une arme, d'avoir braqué une arme à feu et de menaces de mort

Le 1 décembre 1998
Cour d'appel du Québec
(Brossard, Rousseau-Houle et Biron (*ad hoc*))j.c.a.)

Appel accueilli

Le 28 janvier 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27443 **DWAYNE W. HYNES - v. - HER MAJESTY THE QUEEN** (Crim.) (Nfld.)

CORAM: **The Chief Justice and Iacobucci and Major JJ.**

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Procedure - Whether a preliminary inquiry (under Part XVIII of the *Criminal Code*) is "a court of competent jurisdiction" within the meaning of subsection 24(1) of the *Charter* for the purpose of excluding evidence pursuant to subsection 24(2) of the *Charter*.

PROCEDURAL HISTORY

June 11, 1997
Provincial Court of Newfoundland
(Power J.)

Application by Applicant for a declaration that a Provincial Court judge, sitting as justice at a preliminary inquiry, constitutes "a court of competent jurisdiction" under s. 24(1) of the *Charter* for the purpose of excluding evidence under section 24(2) of the *Charter* dismissed

June 27, 1997
Supreme Court of Newfoundland, Trial Division
(O'Regan J.)

Application by Applicant for orders in the nature of *certiorari* and *mandamus* to direct the preliminary inquiry justice to conduct the inquiry dismissed

July 2, 1999
Supreme Court of Newfoundland, Court of Appeal
(Gushue, Marshall and Green [dissenting] JJ.A.)

Appeal dismissed

September 29, 1999
Supreme Court of Canada

Application for leave to appeal filed

27424 **RUI WEN PAN - v. - HER MAJESTY THE QUEEN** (Crim.) (Ont.)

CORAM: The Chief Justice and Iacobucci and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Sections 7 and 11(d) of the *Charter* - Trial - Juries - Jury secrecy - Sections 649 and 653(2) of the *Criminal Code*, R.S.C., 1985, c. C-46 - Mistrial - Abuse of process - Whether s. 649 of the *Criminal Code* violates the rights guaranteed by ss. 7 and 11(d) of the *Charter* - Whether the common law jury secrecy rules violate the rights guaranteed by ss. 7 and 11(d) of the *Charter* - Whether s. 653(2) of the *Criminal Code* violates the rights guaranteed by ss. 7 and 11(d) of the *Charter* - Whether a decision to declare a mistrial is subject to review on the basis of abuse of process or breach of ss. 7 or 11(d) of the *Charter* - Whether juror misconduct causing a mistrial, is subject to review on the basis of abuse of process or breach of ss. 7 or 11(d) of the *Charter* - Whether the right of the accused to make full answer and defence extends to the right to adduce necessary and relevant evidence in support of an application for a stay of proceedings - Whether a ruling on a motion for a stay of proceedings may be reviewed on appeal from a resulting conviction - Whether the trial judge erred in failing to direct a stay of proceedings on the basis of abuse of process and/or breach of ss. 7 or 11(d) of the *Charter* - Whether the Court of Appeal erred in refusing to admit as fresh evidence the audio-taped interviews and statements of the jurors at the Applicant's second trial, which related to alleged juror misconduct - Whether the Court of Appeal erred in dismissing the appeal and in failing to order a stay of proceedings?

PROCEDURAL HISTORY

May 1, 1992 Ontario Court of Justice (General Division) (Watt J.)	Conviction: first degree murder
April 13, 1999 Court of Appeal for Ontario (McMurtry C.J.O., Finlayson, Osborne, Labrosse and Charron JJ.A.)	Appeal dismissed
August 17, 1999 Supreme Court of Canada	Application for leave to appeal filed

27183 **LINDA STROMBERG, BLAIR DOWN AND WORLD PROJECT MANAGEMENT INC. - v. -
HER MAJESTY THE QUEEN** (Crim.)(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

Canadian Charter - Criminal - Procedural Law - Appeal - Whether s. 206(7) of the *Criminal Code* is contrary to s. 7 of the *Charter* for vagueness - Whether Court of Appeal erred in law in ruling that a 'new mode chance' is not required to come within s. 206 of the *Criminal Code* - Whether the Court of Appeal erred in law in deciding an issue that did not form part of the order appealed from.

PROCEDURAL HISTORY

August 20, 1997
Provincial Court of British Columbia
(Baird-Ellan J.)

Information quashed; s. 206(7) of the *Criminal Code* declared unconstitutional

January 13, 1999
Court of Appeal for British Columbia
(Lambert, Donald, and Braidwood JJ.A.)

Appeal allowed; new trial ordered

September 29, 1999
Supreme Court of Canada

Application for leave to appeal filed

27200 **SUE HAMMELL AND GRAEME BOWBRICK - v. - LEONARD FRIESEN, HOLLY KUZENKO AND MILDRED UMBARGEN AND ED CONROY - AND BETWEEN - ED CONROY AND LEONARD FRIESEN, HOLLY KUZENKO AND MILDRED UMBARGEN AND SUE HAMMELL AND GRAEME BOWBRICK (B.C.)**

CORAM: The Chief Justice, Iacobucci and Major JJ.

The applications for leave to appeal are dismissed.

Les demandes d'autorisation d'appel sont rejetées.

NATURE OF THE CASE

Civil Rights - Elections - Statutes - Interpretation - *Election Act*, R.S.B.C. 1996, c. 106 - Section 256 of the *Election Act* - Rule 19(24) of the *Supreme Court Rules* - Whether the petition disclosed no cause of action within the court's jurisdiction - Whether the conduct alleged in the petition constituted "fraudulent means" within the meaning of s. 256(2)(c) of the *Election Act* - Whether untrue representations of fact made during election campaigns and aimed at influencing the electorates' choice of candidate can constitute an election offence - Relationship between the legislative and judicial branches of government, and, in particular, the role of judiciary in supervising the content of political campaigns - Whether the Court of Appeal erred by concluding that the term "fraudulent means" in s. 256 of the *Election Act* can include untrue representations of fact made to the general public during election campaigns that are aimed at influencing the formation of political judgment - Whether the decision of the Court of Appeal has eroded parliamentary privilege by giving jurisdiction to the B.C. Supreme Court to adjudicate allegations concerning statements made during an election aimed at the formation of political judgment, a matter that heretofore had been within the jurisdiction of the Legislature - Whether a consequence of this decision is to restrict the freedom of speech of candidates for public office.

PROCEDURAL HISTORY

November 4, 1997 Supreme Court of British Columbia (Williams C.J.)	Proceedings dismissed
December 18, 1997 Supreme Court of British Columbia (Williams C.J.)	Proceedings dismissed
January 20, 1999 Court of Appeal for British Columbia (Cumming, Prowse and Braidwood JJ.A.)	Appeals dismissed
March 19, 1999 Supreme Court of Canada	Applications for leave to appeal filed

27465 **LYLE GORDON STENSET -v- HER MAJESTY THE QUEEN** (Crim.) (Alta.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The motion for extension of time is dismissed.

La demande de prorogation de délai est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Whether Court of Appeal erred in holding that the Applicant's right to counsel pursuant to section 10(b) of the *Charter of Rights and Freedoms* did not impose a duty upon the arresting peace officer to disclose to counsel for the Applicant the reasonable and probable grounds for his belief that the Applicant had committed an offence under section 253 of the *Criminal Code*.

PROCEDURAL HISTORY

November 26, 1996 Provincial Court of Alberta (Stevenson J.)	Acquittal: failing or refusing to provide samples of his breath contrary to section 254(3) of the <i>Criminal Code</i>
December 11, 1997 Court of Queen's Bench of Alberta (LoVecchio J.)	Appeal from acquittal allowed: conviction entered
March 31, 1999 Court of Appeal of Alberta (Côté, Picard and Sulatycky JJ.A.)	Appeal from conviction dismissed
September 3, 1999 Supreme Court of Canada	Application for leave to appeal filed

27322 **FRED KIELING -v- SASKATCHEWAN WHEAT POOL, ET AL, THE CANADIAN PACIFIC RAILWAY COMPANY, ET AL, AND THE CANADIAN NATIONAL RAILWAY COMPANY, ET AL** (Sask.)

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 - Judicial discretion - Whether the Court of Appeal erred when it affirmed the order of the Court of Queen's Bench dismissing the *ex parte* application for mandamus - Rules of the Court of Appeal and the Rules of the Court of Queen's Bench.

PROCEDURAL HISTORY

December 10, 1998
Court of Queen's Bench of Saskatchewan
(Archambault J.)

Ex parte application by the Applicant for an order of *mandamus* to the Provincial Court Judge to receive informations dismissed

April 7, 1999
Court of Appeal for Saskatchewan
(Tallis, Gerwing and Sherstobitoff JJ.A.)

Appeal dismissed

May 31, 1999
Supreme Court of Canada

Application for leave to appeal filed

27337 **ABDELHAFIDH BEN-HAFSIA -v- CITY OF VANCOUVER AND BLAKE ELLIOTT, JR.**
(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 law - Judgments and orders - Application for extension of time for filing appeal books and transcripts dismissed - Whether the trial judge erred in law in not taking real and documentary evidence into consideration - Whether the Court of Appeal erred in deferring to the trial judge's decision before hearing the appeal, and in not properly exercising its jurisdiction as a court of error - Whether the appeal judge unjustly dismissed the application for extension of time when the delay imposed by court's registry and no prejudice occurring by granting application.

PROCEDURAL HISTORY

January 8, 1999 Supreme Court of British Columbia (Smith J.)	Applicant's action for damages for defamation, malicious prosecution and conspiracy, trespass, violation of privacy, and breach of his rights under the <i>Charter</i> dismissed
January 18, 1999 Court of Appeal for British Columbia (Mackenzie J.A.)	Application for indigent status dismissed
March 30, 1999 Court of Appeal for British Columbia (Hollinrake, Goldie and Ryan JJ.A.)	Application to review order dismissed
April 12, 1999 Court of Appeal for British Columbia (Proudfoot J.A.)	Application for extension of time for filing appeal books and transcripts dismissed
June 8, 1999 Supreme Court of Canada	Application for leave to appeal filed

27470 **STEVE SERRÉ - c. - SA MAJESTÉ LA REINE** (Crim.)(Qué.)

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

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

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

NATURE DE LA CAUSE

Charte canadienne des droits de la personne - Droit criminel - Recours - Arrêt des procédures - Demandeur commis voies de faits à l'endroit d'agent des services correctionnels lors de tentative d'évasion - Demandeur subséquentement objet de sévices de la part d'agents - La Cour d'appel a-t-elle erré en droit en intervenant dans l'exercice du pouvoir discrétionnaire du juge de première instance d'accorder un arrêt des procédures? - La Cour d'appel a-t-elle erré en droit en concluant que le juge de première instance a erré en choisissant comme mesure de réparation, en vertu de l'article 24(1) de la *Charte canadienne*, l'arrêt des procédures suite à la violation des droits du demandeur, car la mesure choisie heurte l'intérêt de la collectivité.

HISTORIQUE PROCÉDURAL

Le 7 mai 1996 Cour du Québec (Chevalier j.c.q.)	Arrêt des procédures ordonné
Le 11 mai 1999 Cour d'appel du Québec (Beauregard, Brossard et Nuss jj.c.a.)	Pourvoi accueilli, ordre d'arrêt de procédures de première instance infirmé
Le 8 septembre 1999 Cour suprême du Canada	Demande d'autorisation d'appel déposée

27252 **COMMITTEE FOR THE EQUAL TREATMENT OF ASBESTOS MINORITY SHAREHOLDERS - v. - SA MAJESTÉ DU CHEF DU QUÉBEC ONTARIO SECURITIES COMMISSION AND SOCIÉTÉ NATIONALE DE L'AMIANTE** (Ont.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Commercial law - Securities - Minority shareholders - Jurisdiction - Public Interest Jurisdiction - Ontario Securities Commission - *Securities Act*, R.S.O. 1990, c. S. 5, s. 127(1)3 - Whether as a result of this decision securities regulators may now decline to exercise their "public interest" jurisdiction in change of control transactions because of the lack of geographic transactional connection, even when the transaction is "abusive of" "manifestly unfair to" minority shareholders - Whether this decision is detrimental to the fair and efficient functioning of the Canadian capital markets - Whether the Court of Appeal erred in allowing the OSC to require a finding of "conscious motive" to structure the transaction as an extra-provincial one for the purpose of evading regulatory scrutiny, as a pre-condition to the exercise of its "public interest" jurisdiction - Whether the Court of Appeal erred in construing the "public interest" jurisdiction of the OSC as purely a jurisdiction over future conduct - Whether the Court of Appeal erred in its application of the standard of review.

PROCEDURAL HISTORY

May 2, 1997
Ontario Court of Justice
(General Division)(Divisional Court)
(O'Driscoll, Steele [*dissenting in part*], and Crane JJ.)

Applicant's appeal from the decision of the Ontario Securities Commission which found that the actions of the Quebec government and the SNA were abusive to the minority of shareholders of Asbestos allowed; ordered that the Commission failed to exercise its public interest jurisdiction

February 18, 1999
Court of Appeal for Ontario
(Doherty, Laskin, and Rosenberg JJ.A.)

Respondents' appeals allowed; order of the Divisional Court set aside and in its place order that the Applicant's appeal be dismissed; decision of the OSC restored

April 16, 1999
Supreme Court of Canada

Application for leave to appeal filed

27266 **JOHN GORENKO AND GOR-CAN CANADA INC. AND JOHN GORENKO HOLDINGS LTD. AND ALPHA-LEATHER CANADA INC. AND HERBERT A. WALTER -v- HER MAJESTY THE QUEEN in right of Canada and THE ATTORNEY GENERAL OF CANADA AND THE MINISTER OF NATIONAL REVENUE AND JACQUES ALBERT, CLAUDE ASSELIN, SYLVAIN BÉLAIR, FRANÇOIS BERNIER, MARIO CARON, MARC CHATILLON, GAÉTAN CÔTÉ, YVES CRÉPIN, ROBERT CROTEAU, GUY DAIGNEAULT, ANDRÉ DELISLE, YVON DESCHÊNES, SYLVAIN DESHARNAIS, LYNDA DRAINVILLE, PAUL DUCHARME, GEORGES DUMONT, GILLES ÉTHIER, GILBERT FAFARD, ANDRÉ FARIBAUT, KENNETH FERNANDEZ, ANNE FRENETTE, RENÉ GAGNIÈRE, LOUIS GAGNON,**

GHISLAIN GODARD, WILLIAM HAGUE, GEORGES HOLZ, FRANÇOIS JOLY, ROBERT LAPORTE, YVON L'ÉCUYER, MICHEL LEDUC, ROBERT LEDUC, SYLVIE LÉVESQUE, JACQUES LONGTIN, ROBERT MARTIN, JEAN-PIERRE PAQUETTE, CATHERINE PENNORS, JOSÉE RODRIGUE, DANIELLE ROULEAU, RICHARD SÉGUIN, RONALD SMITH, PIERRE SOUCY, PIERRE ST-AUBIN, NICOLE ST-PIERRE, MICHEL VIOLETTE, ROBERT WILSON AND HIS HONOUR JUDGE ROBERT B. GIROUX (Qué.)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit constitutionnel - Droit criminel - Fiscalité - Protection contre les fouilles, les perquisitions et les saisies abusives - Impôt sur le revenu - Enquête en vertu des dispositions de la *Loi de l'impôt sur le revenu*, L.R.C. 1985, 5e suppl., c.1, (ci-après *LIR*) - L'article 231.1 *LIR* porte-t-il atteinte aux articles 7 et 8 de la *Charte canadienne*?

HISTORIQUE PROCÉDURAL

Le 17 juillet 1997
Cour supérieure du Québec
(Côté j.)

Requête en *certiorari* et en réparation en vertu de l'article 24 de la *Charte canadienne des droits et libertés* visant à obtenir l'annulation de six mandats de perquisition rejetée

Le 23 février 1999
Cour d'appel du Québec
(Proulx, Otis and Robert jj.c.a.)

Appel rejeté

Le 23 avril 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27303 **ANNY POULIN - c. - LA SOLIDARITÉ, COMPAGNIE D'ASSURANCE SUR LA VIE** (Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit commercial - Législation - Interprétation - Assurance - Suicide - Délai d'exclusion de deux ans - Déchéance de la police - Remise en vigueur de la police - L'expression «court à nouveau» contenu au deuxième alinéa de l'article 2524 du C.c.B.-C. et à l'article 2434 du C.c.Q. signifie-t-elle que le délai jusqu'alors suspendu est poursuivi ou signifie-t-elle que le délai repart à zéro? - Le délai d'exclusion de garantie en cas de suicide peut-il courir plus d'une fois à l'intérieur d'un même contrat d'assurance qui fut remis en vigueur après sa résiliation?

HISTORIQUE PROCÉDURAL

Le 2 décembre 1994 Cour supérieure du Québec (Desmeules j.c.s.)	Action de la demanderesse en réclamation du produit d'une assurance individuelle sur la vie accueillie
Le 19 mars 1999 Cour d'appel du Québec (Gendreau, Delisle jj.c.a. et Letarte (<i>ad hoc</i>) j.c.a.)	Appel accueilli
Le 18 mai 1999 Cour suprême du Canada	Demande d'autorisation d'appel déposée

27302 **1858-0894 QUÉBEC INC. - c. - LA COMPAGNIE D'ASSURANCE STANDARD LIFE** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit commercial - Législation - Interprétation - Assurance - Suicide - Délai d'exclusion de deux ans - Déchéance de la police - Remise en vigueur de la police - L'expression «court à nouveau» contenu au deuxième alinéa de l'article 2524 du C.c.B.-C. et à l'article 2434 du C.c.Q. signifie-t-elle que le délai jusqu'alors suspendu est poursuivi ou signifie-t-elle que le délai repart à zéro? - Le délai d'exclusion de garantie en cas de suicide peut-il courir plus d'une fois à l'intérieur d'un même contrat d'assurance qui fut remis en vigueur après sa résiliation?

HISTORIQUE PROCÉDURAL

Le 22 septembre 1997 Cour supérieure du Québec (Lemelin j.c.s.)	Action de la demanderesse en réclamation du produit d'une assurance individuelle sur la vie rejetée
Le 19 mars 1999 Cour d'appel du Québec (Québec) (Gendreau, Delisle jj.c.a. et Letarte (<i>ad hoc</i>) j.c.a.)	Appel rejeté
Le 18 mai 1999 Cour suprême du Canada	Demande d'autorisation d'appel déposée

27291 **VILLE DE SEPT-ÎLES - c. - LE SYNDICAT CANADIEN DE LA FONCTION PUBLIQUE, SECTION LOCALE 2589, TRIBUNAL DU TRAVAIL, 2862-3775 QUÉBEC INC. ET SERVICES SANITAIRES DU ST-LAURENT INC.** (Qué.)

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

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Droit du travail - Droit administratif - Accréditation - Contrôle judiciaire - Concession partielle d'une entreprise - Enlèvement d'ordures ménagères - Transmission des droits et obligations selon l'art. 45 du *Code du travail*, L.R.Q. 1977, ch. C-27 - L'octroi d'un simple contrat de sous-traitance, sans transfert d'employés, de technologie, d'équipement ou de quoi que ce soit, hormis des fonctions, peut-il constituer une concession d'entreprise en vertu de l'art. 45 du *Code du travail*? - L'absence de latitude et de pouvoir de gestion autonome de même que la subordination juridique de l'entrepreneur dans l'accomplissement des tâches confiées en sous-traitance, sont-ils des facteurs pertinents dans la détermination de l'application de l'art. 45 du *Code du travail*? - La jurisprudence du Tribunal du travail, à l'effet que l'unique cession d'un droit d'exploitation est suffisant pour constituer une cession d'entreprise au sens de l'art. 45 du *Code du travail*, va-t-elle à l'encontre des enseignements de la Cour suprême en ce qu'elle ressuscite la théorie fonctionnelle de l'entreprise rejetée dans l'arrêt *U.E.S., local 298 c. Bibeault*, [1988] 2 R.C.S. 1048? - Le simple transfert d'un droit d'exploitation sans autre attribut peut-il constituer un ensemble organisé d'activités ou une partie de l'entreprise susceptible d'être distinguée d'un tout capable d'une existence autonome au sens de l'arrêt *Lester (W.W.) (1978) Ltd. c. Association unie des compagnons et apprentis de l'industrie de la plomberie et de la tuyauterie, section locale 740*, [1990] 3 R.C.S. 644? - La modification législative de l'art. 46 du *Code du travail*, postérieure à l'arrêt *Bibeault*, autorise-t-elle les tribunaux inférieurs à faire fi des enseignements de la Cour suprême?

HISTORIQUE PROCÉDURAL

Le 12 mai 1995
Tribunal du travail du Québec
(Yergeau j.c.q.)

Appels rejetés et décision du commissaire du travail accueillant les requêtes du Syndicat en vertu de l'art. 45 *C.t.* confirmée

Le 21 février 1996
Cour supérieure du Québec
(Corriveau j.c.s.)

Requêtes en évocation accueillies et décision du Tribunal du travail annulée

Le 16 mars 1999
Cour d'appel du Québec
(Rothman, Thibault et Philippon [*ad hoc*] jj.c.a.)

Appel accueilli et décision du Tribunal du travail rétablie

Le 11 mai 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27529 **MARTHA METZNER - v. - LOUIS METZNER** (B.C.)

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

The Court of Appeal having rendered its decision on the basis of the impact on custodial arrangements occasioned by the application of the *Federal Child Support Guidelines*, and under s. 17(6.2) of the *Divorce Act*, without the benefit of the judgment of this Court in *Francis v. Baker*, [1999] 3 S.C.R. 250, which provides for support corresponding to the actual living conditions of the children, the matter is remanded to the Court of Appeal to be disposed of in accordance with the decision in *Francis v. Baker*.

Étant donné que la Cour d'appel a rendu sa décision en fonction de l'incidence de l'application des *Lignes directrices fédérales sur les pensions alimentaires pour enfants* sur les modalités de la garde, et du par. 17(6.2) de la *Loi sur le divorce*, sans bénéficier de l'arrêt de notre Cour *Francis c. Baker*, [1999] 3 R.C.S. 250, qui prescrit une pension alimentaire correspondant aux conditions de vie réelles des enfants, l'affaire est renvoyée à la Cour d'appel pour que celle-ci la tranche conformément à l'arrêt *Francis c. Baker*.

NATURE OF THE CASE

Family law - Child support - Variation - *Federal Child Support Guidelines* - Whether *Guidelines* should apply where pre-existing order awards custody to payor spouse and residence of children to recipient spouse

PROCEDURAL HISTORY

July 20, 1993 Supreme Court of British Columbia (Preston J.)	Custody of children awarded to Respondent, with the children to reside with the Applicant during the week; Spousal support of \$7,000 per month for period of seven years and child support of \$1,200 per month per child awarded to Applicant; All recreational, educational, medical, dental, and clothing expenses of children to be borne by Respondent.
April 16, 1997 Court of Appeal for British Columbia (McEachern C.J., Rowles, Ryan JJ.A.)	Applicant's appeal dismissed
December 30, 1997 Supreme Court of British Columbia (Saunders J.)	Order for variation of child support to total of \$12,800 per month
July 8, 1999 Court of Appeal for British Columbia (Southin, Hollinrake and Rowles [dissenting] JJ.A)	Respondent's appeal allowed: order of Saunders J. set aside
September 1, 1999 Court of Appeal for British Columbia (Esson J.A., in chambers)	Order for partial stay of execution; Respondent ordered to pay \$6,500 per month in child support until conclusion of appeal proceedings
September 30, 1999 Supreme Court of Canada	Application for leave to appeal filed

27334 **BRIAN DOODY - v. - PROFESSIONAL TRAINING COMMITTEE OF THE BARREAU DU QUÉBEC, BAR SCHOOL OF THE BARREAU DU QUÉBEC** (Que.)

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

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

La requête en arrêt des procédures est rejetée. La demande de prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Civil procedure - Subpoenas - Superior Court judge dismissing Applicant's motion not to proceed and quashing *subpoena duces tecum* - Whether Court of Appeal erred in law in denying leave to appeal.

PROCEDURAL HISTORY

February 15, 1999 Superior Court of Quebec (Hilton J.)	Applicant's motion not to proceed because minute book was incomplete or incorrect dismissed; Respondents' application to quash a subpoena granted
March 31, 1999 Court of Appeal of Québec (Robert J.C.A.)	Applicant's motion for leave to appeal dismissed
June 7, 1999 Supreme Court of Canada	Application for leave to appeal filed

27602 **M.E.P. - v. - K.R.O.** (Que.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Family law - Custody - Whether the Court of Appeal erred in setting aside the rules of procedure and evidence and principles of fundamental justice in a matter concerning the custody of a child - Whether the Court of Appeal erred in hearing the child, thereby involving him directly in a custody dispute - Whether the Court of Appeal erred when it substituted its judgment for the judgment rendered by the trier of fact in the absence of clear and palpable error - Whether the Court of Appeal erred when it found that because the child was twelve years old his opinion carried significant weight and treated what it believed to be his wishes as determinative of custody - Whether the Court of Appeal erred in separating siblings without any evidence on the effects of separating the children having been adduced before the trial judge, and without giving any consideration to the fundamental and irreparable loss the children would suffer as a result of the separation.

PROCEDURAL HISTORY

August 24, 1999
Superior Court of Quebec
(Maughan J.)

Custody of all three children granted to Applicant; Applicant authorized to live in Vancouver; access rights granted to Respondent; Respondent to pay child support of \$1,903 per month; Respondent to pay spousal support of \$500 per month; Applicant to pay for three round trips per year to Montreal for children

September 22, 1999
Court of Appeal of Quebec (Montreal)
(Delisle, Otis et Pidgeon JJ.A.)

Custody of eldest child granted to Respondent; access rights to eldest child granted to Applicant; Respondent to pay child support of \$1,472 per month; Respondent and Applicant to pay for travel of child/children in their custody concerning exercise of access rights

November 19, 1999
Supreme Court of Canada

Application for leave to appeal filed

27323

GLORIA DELORESE THOMAS-ROBINSON, FOR HERSELF AND AS LITIGATION GUARDIAN FOR PAULETTE ROBINSON and GLENROY ROBINSON - v. - BRIAN YIK-JIN SONG (Ont.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - Civil procedure - Trial - Civil juries - Challenges for cause - Whether a black plaintiff in a civil action tried in a jurisdiction where racism is rampant has the right or freedom to question prospective jurors about anti-black racism and to challenge for cause those who acknowledge such views?

PROCEDURAL HISTORY

September 18, 1997
Ontario Court of Justice (General Division)
(Jennings J.)

Applicants' action dismissed

April 1, 1999
Court of Appeal for Ontario
(Labrosse, Abella, Charron JJ.A.)

Appeal dismissed

May 31, 1999
Supreme Court of Canada

Application for leave to appeal filed

27528

HAROLD LANTEIGNE et ODETTE DUGUAY - c. - SA MAJESTÉ LA REINE (Crim.)(N.-B.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit criminel - Procédure - Procédure préalable au procès - Aliments et drogues - La Cour d'appel a-t-elle erré en droit en considérant qu'un chef d'accusation, tel que libellé dans le présent cas: renseignait suffisamment les accusés sur l'offense précise qu'on leur reproche au sens de l'article 581(3) du *Code criminel*; permettait d'identifier la transaction à laquelle le chef d'accusation réfère; permettait aux accusés de se préparer adéquatement et était conforme à l'article 11a) de la *Charte canadienne des droits et libertés*? - La Cour d'appel a-t-elle erré en droit en considérant que l'identification de biens ou catégories de biens n'était pas un élément essentiel dans le cas d'une offense de possession, alors que la seule identification dans le chef d'accusation se lit: «ont en leur possession "certains biens"? - La Cour d'appel a-t-elle erré en droit en considérant que le juge de première instance a rendu une décision déraisonnable dans l'exercice de sa juridiction en cassant le chef d'accusation - La Cour d'appel a-t-elle erré en considérant que, dans les circonstances, c'était à la défense de présenter une requête pour précisions (article 587) plutôt qu'à la poursuite de présenter une requête pour amender le chef (article 601) - La Cour d'appel a-t-elle erré en droit dans son analyse de la portée de l'article 19.1 de la *Loi sur les stupéfiants* afin de supporter la validité d'un chef d'accusation formulé comme dans le présent cas.

HISTORIQUE PROCÉDURAL

Le 2 décembre 1997 Cour du Banc de la Reine du Nouveau-Brunswick (Deschênes j.c. n.-b.)	Requête des demandeurs accueillie: acte d'accusation cassé
Le 9 juillet 1999 Cour d'appel du Nouveau-Brunswick (Daigle j.c., Ayles et Drapeau jj.a.)	Appel accueilli: jugement de 1ère instance infirmé, affaire renvoyée au juge afin que les demandeurs subissent leur procès.
Le 30 septembre 1999 Cour suprême du Canada	Demande d'autorisation d'appel déposée

27324 **2858-0702 QUÉBEC INC. et LAC D'AMIANTE DU CANADA LTÉE - c. - LAC D'AMIANTE DU QUÉBEC LTÉE** (Qué.)

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

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Procédure - Procédure civile - Preuve - Interrogatoire préalable - Confidentialité des renseignements et documents communiqués - Art. 397 et 398 du *Code de procédure civile*, L.R.Q., ch. C-25 - La Cour d'appel a-t-elle erré en créant judiciairement une obligation implicite de confidentialité («implied undertaking») à la partie, et à son procureur, qui obtient communication d'informations verbales ou documentaires dans le cadre d'un interrogatoire préalable tenu et régi par le *Code de procédure civile*? - L'importation de cette règle de common law est-elle en contradiction flagrante avec la spécificité du droit québécois, particulièrement l'art. 23 de la *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12, qui établit, comme principe, la publicité des débats judiciaires? - Cette nouvelle règle édictée par la Cour d'appel constitue-t-elle une usurpation des pouvoirs du législateur québécois qui seul possède constitutionnellement la compétence de se prononcer sur l'opportunité d'adopter une telle règle et, le cas échéant, de la promulguer?

HISTORIQUE PROCÉDURAL

Le 23 octobre 1997
Cour supérieure du Québec
(Barbeau j.c.s.)

Requête de l'intimée visant à suspendre les procédures
ou à faire déclarer confidentiels certains documents
rejetée

Le 30 mars 1999
Cour d'appel du Québec
(Mailhot, Fish et Biron *ad hoc* [dissident], jj.c.a.)

Appel du jugement interlocutoire accueilli: les
renseignements et documents que l'intimée doit dévoiler
dans le cadre des interrogatoires préalables sont
confidentiels et ne peuvent être utilisés à d'autres fins
que la présente action

Le 31 mai 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27158 **156036 CANADA INC. - v. - LES PÉTROLES THERRIEN INC.** (Qué.)

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

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

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

NATURE OF THE CASE

Commercial law - Contracts - Restrictive covenants - Interpretation - Whether the Court of Appeal erred in substituting its opinion as to the factual nature of the wholesale distribution business operated by the Applicant for that described by the trial judge - Whether the Court of Appeal erred in ignoring the statutory framework for the sale of petroleum products thereby adopting an unduly broad and liberal interpretation of the restrictive covenant - Whether the Court of Appeal erred in failing to recognize that the "key lock" system introduced for use by selected commercial and industrial customers of the Applicant's wholesale distribution and storage business is simply a mechanism which permits such customers to purchase products without human intervention?

PROCEDURAL HISTORY

November 23, 1993 Superior Court of Quebec (Sévigny J.)	Respondent's action dismissed
November 26, 1998 Court of Appeal of Quebec (Delisle, Chamberland, Robert JJ.A.)	Appeal and action allowed; Respondent awarded \$150,000 in damages
February 17, 1999 Supreme Court of Canada	Application for leave to appeal filed

27478 **PIERRE JOHN NADEAU - v. - HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM: Major, Binnie and Arbour JJ.

The application for 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 - Conviction - Sentencing - Parole - *Res judicata* - Whether the Court of Appeal erred in law in dismissing the Applicant's argument that the multiple robbery and imitation firearm counts offended the doctrine of *res judicata* - Whether the Court of Appeal erred in upholding the s. 743.6 *Criminal Code* order imposed by the sentencing judge.

PROCEDURAL HISTORY

February 5, 1997 Court of Queen's Bench of Alberta (Phillips J.)	Conviction: four counts of robbery; four counts of use of an imitation firearm while committing an indictable offence and one count of being disguised. Sentence: nine years imprisonment; firearm prohibition of ten years; eligible for parole after serving at least one half of the sentence
February 1, 1999 Court of Appeal of Alberta (Irving, O'Leary and Sulatycky JJ.A.)	Appeal from conviction dismissed
June 21, 1999 Court of Appeal of Alberta (Conrad, Veit and Mason JJ.A.)	Appeal from sentence dismissed
September 13, 1999 Supreme Court of Canada	Motion for extension of time to file conviction memorandum and application for leave to appeal from conviction and sentence filed

27341 **TERRA ENERGY LTD. - v. - KILBORN ENGINEERING ALBERTA LTD., WILLIAM STRAND, KILBORN ENGINEERING & CONSTRUCTION LIMITED, KILBORN WESTERN INC., BITMIN RESOURCES INC. and BITMIN CORPORATION** (Alta.)

CORAM: Major, Binnie and Arbour JJ.

The application for leave to appeal is dismissed with costs. The application for oral hearing is dismissed.

La demande d'autorisation d'appel est rejetée avec dépens. La demande pour une audition orale est rejetée.

NATURE OF THE CASE

Commercial law - Contracts - Fiduciary relationship - Fiduciary duty - Duties of loyalty, good faith and avoidance of conflict of interest - Implied terms of a contract - Equitable remedies - Breach of contract - Whether the development and promotion of a competing process by an engineering consultant during the term of its contract with a client constituted a breach of any contractual term or duty owed.

PROCEDURAL HISTORY

May 1, 1997 Court of Queen's Bench of Alberta (Cairns J.C.Q.B.A.)	Applicant's action regarding misuse of confidential information or the existence of fiduciary duties dismissed; Respondent Kilborn Engineering found in breach of implied contractual duties of loyalty, good faith and avoidance of conflict of interest
February 25, 1999 Court of Appeal of Alberta (Calgary) (Hetherington, Irving, O'Leary JJ.A.)	Applicant's appeal dismissed; Respondent Kilborn Engineering's cross-appeal allowed
April 19, 1999 Court of Appeal of Alberta (Hetherington, Irving, O'Leary JJ.A.)	Applicant's application for leave to re-argue dismissed
June 11, 1999 Supreme Court of Canada	Application for leave to appeal filed

27508 **KIM PHUONG CHUNG and HY MINH CHUNG - v.- HER MAJESTY THE QUEEN** (Alta.)

CORAM: Major, Binnie and Arbour JJ.

The application for 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

Charter of Rights and Freedoms - Criminal law - Sections 7 and 11(d) of the *Charter* - Constitutional law - Constitutional validity of s. 9 of the *Court of Appeal Act*, R.S.A. 1980, c. 28 - Composition of panel of judges - Whether the Applicants' rights protected under ss. 7 and 11(d) of the *Charter* were infringed by the Alberta Court of Appeal policy which empanels every sentence appeal panel to comprise two members of the Court of Queen's Bench and one member of the Court of Appeal.

PROCEDURAL HISTORY

September 17, 1998 Kim Phuong sentenced to a global term of four and one

Queen's Bench of Alberta
(Sanderman J.)

half years; Hy Minh sentenced to a term of three years

February 10, 1999
Court of Appeal of Alberta
(Fraser C.J., Costigan and Clark JJ.)

Appeal against Kim Phuong's sentence granted; sentence increased from four and one half years to eight years imprisonment

February 10, 1999
Court of Appeal of Alberta
(Fraser C.J., Costigan and Clark JJ.)

Appeal against Hy Minh's sentence granted; sentence increased from three years to five years imprisonment

September 24, 1999
Supreme Court of Canada

Motion for an extension of time and application for leave to appeal filed

27338 **HER MAJESTY THE QUEEN - v. - MARCUS RULLI** (Crim.)(Ont.)

CORAM: Major, Binnie and Arbour JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Evidence - Admissibility of similar fact evidence - Probative Value - Credibility - Stayed Charges - The Crown sought to adduce similar fact evidence solely in relation to credibility of the adult complainant - Whether the Court of Appeal erred in law in creating a higher standard of admissibility for the similar fact evidence of adult complainants than for child complainants - Whether the Court of Appeal erred in law in prohibiting the use of similar fact evidence in circumstances where the allegations underlying the proposed evidence have been the subject of a judicial stay - Whether the Court of Appeal erred in law in failing to amend the indictment and uphold the conviction for the included offence of assault on count one.

PROCEDURAL HISTORY

April 7, 1995
Ontario Court of Justice (General Division)
(Locke J.)

Applicant found guilty on three of five counts and fined \$750 for the included offence of assault, sentenced to seven months in custody for obstruction of justice, and sentenced to one year consecutive for harassment

April 9, 1999
Court of Appeal for Ontario
(Brooke, Finlayson and O'Connor JJ.A.)

Appeal allowed, conviction quashed and new trial ordered restricted to the counts upon which the Respondent was convicted

June 8, 1999
Supreme Court of Canada

Application for leave to appeal filed

27330 **MICHEL BAREAU - v. - THE GOVERNORS OF THE UNIVERSITY OF ALBERTA** (Alta.)

CORAM: Major, 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

Administrative law - Judicial review - Colleges and universities - Arbitration - Tenured university professor dismissed on the grounds of insubordination, professional irresponsibility and teaching irresponsibly - Arbitration board upholding dismissal - Whether university provided Applicant with proper notice and outlined substance of case against him - Whether duty of procedural fairness and principle of fundamental justice were breached.

PROCEDURAL HISTORY

November 22, 1995 Court of Queen's Bench of Alberta (Phillips J.)	Application for judicial review of the award of the Arbitration Board dismissed
April 6, 1999 Court of Appeal of Alberta (McClung, Irving and O'Leary JJ.A.)	Appeal dismissed
June 2, 1999 Supreme Court of Canada	Application for leave to appeal filed

27328 **LIUBOV SOKOLOV, LEONID SOKOLOV, VIKTOR SOKOLOV - v. - MINISTER OF IMMIGRATION AND CITIZENSHIP (F.C.A.)(Qué.)**

CORAM: Major, Binnie and Arbour JJ.

The application for 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

Immigration law - Judicial review - Appeals - Jurisdiction - Immigration and Refugee Board dismissing claim for refugee status - Federal Court, Trial Division refusing leave to commence application for judicial review - Whether Supreme Court of Canada has jurisdiction to hear matter - Whether board failed to observe principles of natural justice in assessing credibility - Whether board biased.

PROCEDURAL HISTORY

November 18, 1998
Immigration and Refugee Board
(Refugee Division)
(Thibault and Silvestri, members)

Determination that the Applicants are not Convention
refugees and that there was no credible basis for their claim

March 24, 1999
Federal Court of Canada, Trial Division
(Lemieux J.)

Application for leave to commence an application for
judicial review dismissed

May 31, 1999
Supreme Court of Canada

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

14.1.2000

Before / Devant: BINNIE J.

Motion to adduce new evidence

Requête visant à produire de nouveaux éléments de preuve

Public School Boards' Association of Alberta, et al.

v. (26701)

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

(Neutral citation: 2000 SCC 2 /

Référence neutre: 2000 CSC 2)

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

This is an application by the appellants, The Public School Boards' Association of Alberta, The Board of Trustees of the Edmonton School District No. 7 and Cathryn Staring Parrish (hereinafter collectively called "PSBAA") to introduce fresh evidence to demonstrate two "underlying constitutional principles" in the present appeal, which they define as (a) "the reasonable (limited, supervised) governmental autonomy of municipal institutions"; and (b) "the basic constitutional equality of public and separate schools". The fresh evidence sought to be introduced includes several batches of statistics, a couple of newspaper columns, a report by the Canada West Foundation entitled "Cities @ 2000 Report" and the interim report of the Property Tax Committee of the Alberta Legislative Assembly.

The present motion is the latest "fresh evidence" skirmish between the appellants and respondents. Initially, the Attorney General of Alberta sought to adduce fresh statistical evidence. This was opposed by the PSBAA. The application was dismissed by order of McLachlin J. (as she then was) dated May 19, 1999. Subsequently, the Attorney General of Alberta took exception to certain material included in Books of Authorities filed by the PSBAA, and much of the impugned material was struck out by my order dated November 18, 1999, without prejudice to the right of the PSBAA, to bring a motion to adduce fresh evidence in the ordinary way if so advised. The present motion seeks to reinstate some of the material earlier struck out, as well as to adduce additional fresh evidence, including statistical information and two reports.

I am of the view that the motion must be dismissed for the reasons which follow.

Legislative Fact and Adjudicative Fact

In the earlier decision of November 18, 1999, reference was made to the distinction between legislative fact and adjudicative fact. Adjudicative facts are those that concern the immediate parties and disclose who did what, where, when, how and with what motive or intent. Legislative facts are traditionally directed to the validity or purpose of a legislative scheme under which relief is being sought. Such background material was originally put before the courts of the United States in constitutional litigation through what became known as the Brandeis brief. As Sopinka J. pointed out in *Danson v. Ontario*, [1990] 2 S.C.R. 1086, at p. 1099:

Legislative facts are those that establish the purpose and background of legislation, including its social, economic and cultural context. Such facts are of a more general nature, and are subject to less stringent admissibility requirements.

The usual vehicle for reception of legislative fact is judicial notice, which requires that the "facts" be so notorious or uncontroversial that evidence of their existence is unnecessary. Legislative fact may also be adduced through witnesses. The concept of "legislative fact" does not, however, provide an excuse to put before the Court controversial evidence to the prejudice of the opposing party without providing a proper opportunity for its truth to be tested. In this application, PSBAA is endeavouring to adduce apparently controversial material without the intermediary of a knowledgeable witness.

There is a supporting “information and belief” affidavit from a member of the Board of Trustees of Edmonton Public School District No. 7, who essentially identifies the various categories of fresh evidence based on information provided by one of his counsel on this appeal. The deponent does not claim in his affidavit either relevant expertise or relevant personal knowledge.

Test for Fresh Evidence

The traditional test for the admission of fresh evidence on appeal was stated by this Court in *R. v. Palmer*, [1980] 1 S.C.R. 759, at p. 775:

- (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases: see *McMartin v. The Queen*, [1964] S.C.R. 484.
- (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
- (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
- (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

The *Palmer* case dealt with adjudicative fact. A key Crown witness gave a declaration that his trial evidence was untrue, that it had been fabricated in its entirety, and that he had been influenced by threats and inducements, including the promise of payments of money by the police. The evidence was considered wholly unreliable by the court and the application was refused.

A comparable rule in terms of fresh evidence of adjudicative fact is applied in civil cases: see *Dormuth v. Untereiner*, [1964] S.C.R. 122, at pp. 130-31, *Varett v. Sainsbury*, [1928] S.C.R. 72 and *K.V.P. Company Limited v. McKie et al.*, [1949] S.C.R. 698.

A recent application of the fresh evidence test in this Court was in *R. v. Warsing*, [1998] 3 S.C.R. 579, where a psychiatric report was successfully sought to be submitted by the defence over the Crown’s objections. The case illustrates the less strict application in criminal cases of the due diligence requirement in *Palmer*. The accused offered a thin argument on the issue of due diligence, but Major J. held for the majority, at pp. 609-10:

While the fresh evidence failed the due diligence test in *Palmer* [*Palmer v. The Queen*, [1980] 1 S.C.R. 759], the evidence sought to be introduced was credible and if believed could affect the verdict. It is my opinion that the Court of Appeal’s decision to admit the evidence after balancing the factors described was correct and should be upheld. The respondent’s failure to meet the due diligence requirement is serious and in many circumstances would be fatal; however it is overborne by the interests of justice and as Carthy J.A. stated in *R. v. C. (R.)*, (1989), 47 C.C.C. (3d) 84 (Ont. C.A.), at p. 87, a failure to meet the due diligence requirement should not “override accomplishing a just result”.

The requirements of due diligence, relevance, credibility and decisiveness are also pertinent to an application to adduce fresh evidence of legislative fact. While, as pointed out by Sopinka J. in *Danson, supra*, proof of legislative fact is “subject to less stringent admissibility requirements”, this does not mean that the *Palmer* requirements are altogether dispensed with. The *Palmer* principles reflect a broader judicial policy to achieve finality on the factual record at the trial level, with very limited exceptions. The matters in issue should narrow rather than expand as the case proceeds up the appellate ladder. The present application would, if allowed, broaden the field of combat.

Further, it is not fair to the other parties for an applicant seeking to adduce this type of fresh evidence simply to lay a lot of material before the Court with a generalized explanation of its utility, leaving to the other party the need to guess at its precise significance. This is not a case where published social science commentary is adopted as part of

counsel's argument, in which case any "facts" referred to would be treated by the Court simply as unproven assertions. These materials are sought to be established as evidence, albeit legislative fact evidence. They have a direct bearing on the matters in dispute, and they are (according to the respondent) controversial. In these circumstances, where it is sought to adduce such fresh evidence over objection, fairness suggests that the applicant should be precise as to the points sought to be established by the fresh evidence and what, in particular, is relied on in support thereof in the mass of "fresh" material presented. So far as the Court is concerned, such precision allows a better evaluation of the importance and weight of the so-called fresh evidence. So far as opposing counsel are concerned, such precision will enable them to evaluate the extent of the controversy posed by the fresh evidence, and whether, if admitted, it will have to be responded to. A reasonable practice would be to include in the fresh evidence application a draft of the paragraphs to be inserted in the factum, with supporting references, in the event the application is successful. The present application is deficient in this respect. The case is now at the final stage of appeal and as the appellant has chosen to seek the indulgence of the Court to enlarge the factual record, it should have been done in a way that identified in some detail the exact propositions for which the evidence was sought to be adduced, and related thereto the evidence to be relied upon. Neither the Court nor opposing counsel should have to engage in clairvoyance.

Due Diligence

Much of the "fresh" statistics sought to be introduced in this application predates the trial. The applicant seeks to excuse the failure to adduce this material at trial on the basis of this Court's subsequent decision in *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, where the Court identified "respect for minorities" as a fundamental constitutional principle. From this starting point, the applicants seek to excuse the omission to adduce the available evidence at trial as follows:

Because the "protection of minorities" submission did not become possible until this Court decided the *Secession Reference* in 1998, there would have been no reason to tender the statistics in Exhibit "A" to the courts below, which heard the arguments in this case before then.

Such a submission cannot be accepted. The appellate courts bring down decisions in a steady stream. Recent decisions do not authorize a party to relitigate the trial by bringing in evidence that was either withheld or overlooked at the original hearing. Applications for fresh evidence cannot be justified solely on the basis that new jurisprudence has given counsel a new twist on an old argument

Specific Categories of "Fresh" Evidence

1. *Statistics*

PSBAA seeks to adduce a breakdown of the student population by faith (Catholic vs. non-Catholic) in both Edmonton and Calgary Separate Catholic Schools in support of its submission that the bulk of Alberta students affiliated with religious minorities attend public schools. It is not suggested that the student profile today is significantly different from what it was at the time of trial. The introduction of these statistics is challenged by the Alberta Catholic School Trustees' Association, both as to the methodology of their collection and the significance to be drawn. This is a prime illustration of the desirability of having statistical information presented to the Court in a timely way through an expert who can be cross-examined on their provenance and significance. If the evidence was important, it ought to have been led at trial. The post-trial "up-dated" statistics do not provide a bootstrap to get into the record other statistical evidence which, with due diligence, might have been led at trial. Lack of due diligence is fatal to this aspect of the application.

2. *The Newspaper Articles*

I held in the previous order that the two newspaper articles sought to be adduced by the PSBAA do not constitute "legislative fact". The two columns represent the opinion of two individuals writing in daily newspapers who may or may not have the underlying facts straight and whose opinion may or may not be valid. The authors cannot be cross-examined. The contents are apparently controversial. No basis has been made out by the applicant for admission of this material. It will therefore be rejected.

3. *The Cities @ 2000 Report*

This Report by the Canada West Foundation consists of 78 pages of argument and related information. The executive summary gives an accurate summary of its content:

Cities @ 2000 begins to explore the importance of cities in Canada by meeting three objectives: (1) detailing how urbanization has proceeded in Canada within a national, regional and provincial context, (2) constructing a profile of Canadian cities based on population growth, demographic change and a variety of social and economic indicators, (3) constructing a future research agenda to address the issues facing municipal governments.

While the Report includes a good deal of statistical information, much of it is said to be “*derived* by Canada West from Statistics Canada Census Reports 1966 to 1996” (emphasis added). There is no way of testing either the methodology or the validity of opinions expressed in the Report at this late stage of the litigation. There is no affidavit by an author of the report who could be cross-examined on its contents. In effect, PSBAA seeks to use the report in part as untested expert opinion and in part as a general warehouse of unexplained and (in this litigation) untested extrapolations of statistical data. Neither role is a permissible objective of a fresh evidence application.

4. *The Interim Report: Education Property Tax Committee*

This document was prepared by a committee of members of the Legislative Assembly to assess the education property tax system in Alberta. The document consists of 19 pages highlighting “key issues” that the committee proposes to inquire into, together with a number of comments on process and some interim steps. The report is preliminary in nature. It shows that legislators are pursuing concerns in the area, but such pursuit does not expand or contract the constitutional provisions which are the subject matter of the appeal. This material is too tentative to have any bearing on the outcome of the appeal.

Conclusion

In summary, the evidence offered in this application is controversial. Much of it is not fresh. It is not related in any precise way to the propositions for which it is sought to be adduced, and so far as can be determined none of it could reasonably be expected to affect the result on the matters at issue in this appeal in a significant way. The application is therefore dismissed with costs.

ORDERED ACCORDINGLY.

14.1.2000

Before / Devant: LE JUGE BASTARACHE

Requête visant à obtenir une ordonnance préservant la confidentialité du volume 9 du dossier

Motion for an order maintaining confidentiality of volume 9 of the record

M. le juge Richard Therrien, J.C.Q.

c. (27004)

Ministre de la Justice, et al. (Qué.)

DISMISSED / REJETÉE

18.1.2000

Before / Devant: MAJOR J.

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

Requête pour proroger de nouveau le délai pour signifier et déposer la demande d'autorisation

The Matsqui Indian Band, et al.

v. (27483)

Canadian Pacific Limited, et al. (F.C.A.)

GRANTED / ACCORDÉE Time extended to April 30, 2000.

18.1.2000

Before / Devant: THE 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 demanderesse**

Amanda Marie Lord, et al.

v. (27630)

The Maritime Life Assurance Company (Ont.)

GRANTED / ACCORDÉE Time extended to January 14, 2000.

18.1.2000

Before / Devant: THE REGISTRAR

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

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

Tuan Van Pham

v. (27572)

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

GRANTED / ACCORDÉE Time extended to January 14, 2000.

18.1.2000

Before / Devant: THE REGISTRAR

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

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

Her Majesty the Queen

v. (27581)

Neil Peters (Crim.)(Que.)

GRANTED / ACCORDÉE Time extended to February 1, 2000.

18.1.2000

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file
the appellants' book of authorities**

**Requête en prorogation du délai imparti pour
signifier et déposer le recueil de jurisprudence et de
doctrine des appelants**

Neil Grandmaison, et al.

v. (26898)

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

GRANTED / ACCORDÉE Time extended to December 2, 1999, *nunc pro tunc*.

18.1.2000

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file
the appellants' book of authorities**

**Requête en prorogation du délai imparti pour
signifier et déposer le recueil de jurisprudence et de
doctrine des appelants**

Angela Araujo, et al.

v. (26904)

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

GRANTED / ACCORDÉE Time extended to December 2, 1999, *nunc pro tunc*.

18.1.2000

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file
the appellants' book of authorities**

**Requête en prorogation du délai imparti pour
signifier et déposer le recueil de jurisprudence et de
doctrine des appelants**

Robert Jenkins, et al.

v. (26899)

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

GRANTED / ACCORDÉE Time extended to December 2, 1999, *nunc pro tunc*.

18.1.2000

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai imparti pour
signifier et déposer le recueil de jurisprudence et de
doctrine de l'appelant**

Kevin Lathangue

v. (26943)

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

GRANTED / ACCORDÉE Time extended to December 2, 1999, *nunc pro tunc*.

18.1.2000

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine de l'appelant

Jolene Irons

v. (26968)

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

GRANTED / ACCORDÉE Time extended to December 2, 1999, *nunc pro tunc*.

19.1.2000

Before / Devant: GONTHIER J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY/PAR: Attorney General for Ontario

IN/DANS: Her Majesty the Queen

v. (27250)

Jean-Pierre Hamelin (Crim.)(Qué.)

GRANTED / ACCORDÉE

IT IS HEREBY ORDERED THAT:

1. The motion for leave to intervene of the applicant Attorney General for Ontario is granted, the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 15 minutes.

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

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

19.1.2000

Before / Devant: GONTHIER J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY/PAR: Immigration and Refugee Board

IN/DANS: Ahmad Abdulaal Al Sagban

v. (27111)

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

and between

Huor Chieu

v. (27107)

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

GRANTED / ACCORDÉE

IT IS HEREBY ORDERED THAT:

1. The motion for leave to intervene of the applicant Immigration and Refugee Board is granted, the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 20 minutes.

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

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

21.1.2000

Before / Devant: GONTHIER J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY/PAR: Attorney General for Ontario

IN/DANS: Warren Laverne Knoblauch

v. (27238)

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

DISMISSED / REJETÉE

21.1.2000

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai imparti pour signifier et produire 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

Sa Majesté la Reine

c. (27050)

Marie-Suzanne Caouette (Crim.)(Qué.)

GRANTED / ACCORDÉE Délai prorogé au 22 mars 2000.

21.1.2000

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai imparti pour signifier et déposer le mémoire et le recueil de jurisprudence et de doctrine des intervenants CSD - Construction et al.

Motion to extend the time in which to serve and file the intervener CSD - Construction et al.'s factum and book of authorities

Advance Cutting & Coring Ltd., et al.

c. (26664)

Sa Majesté la Reine (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 17 février 2000.

21.1.2000

Before / Devant: LE JUGE GONTHIER

Requête en autorisation d'intervention

Motion for leave to intervene

BY/PAR: La procureure générale du Canada

IN/DANS: Benoît Proulx

c. (27235)

La procureure générale du Québec
(Qué.)

GRANTED / ACCORDÉE

L'ORDONNANCE SUIVANTE EST RENDUE:

1. La demande d'autorisation d'intervenir présentée par la Procureure générale du Canada est accueillie; la requérante aura le droit de signifier et déposer un mémoire de 20 pages tout au plus et de présenter une plaidoirie d'une durée maximale de 15 minutes;

L'intervenante n'aura pas le droit de produire d'autres éléments de preuve ni d'ajouter quoi que ce soit au dossier outre sa plaidoirie et son mémoire.

Conformément au par. 18(6) des *Règles de la Cour suprême du Canada*, l'intervenante paiera à l'appelant et à l'intimée tous débours supplémentaires résultant de son intervention.

21.1.2000

Before / Devant: THE REGISTRAR

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

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

James Kloepfer

v. (27453)

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

GRANTED / ACCORDÉE Time extended to January 13, 2000.

21.1.2000

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file
the intervener Equality Now book of authorities**

**Requête en prorogation du délai imparti pour
signifier et déposer le recueil de jurisprudence et de
doctrine de l'intervenant Equality Now**

Little Sisters Book and Art Emporium, et al.

v. (26858)

Minister of Justice, et al. (B.C.)

GRANTED / ACCORDÉE Time extended to January 7, 2000.

21.1.2000

Before / Devant: GONTHIER 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

P.E.A.

v. (27695)

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

REFERRED to the panel seized of the application for leave to appeal /RÉFÉRÉE à la formation saisie de la demande d'autorisation

21.1.2000

Before / Devant: CHIEF JUSTICE McLACHLIN

Motion to state a constitutional question

Requête pour énoncer une question constitutionnelle

The Minister of National Revenue

v. (27066)

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

GRANTED / ACCORDÉE The notices of intention to intervene are to be filed no later than March 6, 2000.

(1) Are sections 17, 31, 153(c) and 159 of the *Customs Act*, S.C. 1986, c. 1, constitutionally inapplicable to a Mohawk of Akwesasne, resident in Canada, by reason of an Aboriginal right within the meaning of s. 35(1) of the *Constitution Act*, 1982, when he or she enters Ontario or Quebec from New York State with goods from the State of New York for personal use or consumption, or for the collective use or consumption by the members of the community of Akwesasne, or for non-commercial trade with First Nations communities in Ontario and Quebec?

(1) Les articles 17, 31, 153c) et 159 de la *Loi sur les douanes*, S.C. 1986, ch. 1, sont-ils constitutionnellement inapplicables à un Mohawk d'Akwesasne résidant au Canada, en raison d'un droit ancestral au sens du par. 35(1) de la *Loi constitutionnelle de 1982*, lorsqu'il rapporte en Ontario ou au Québec des marchandises achetées dans l'État de New York pour son usage ou sa consommation personnelle, ou pour l'usage ou la consommation collective des membres de la communauté d'Akwesasne, ou encore à des fins d'échanges non commerciaux avec d'autres Premières nations en Ontario et au Québec?

**NOTICE OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

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

26.1.2000

Norman Elder

v. (27219)

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

(leave)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

24.1.2000

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

**British Columbia Human Rights Commission,
Commissioner of Investigation and Mediation**

v. (26789)

Robin Blencoe

- and between -

Andrea Willis

v. (26789)

**Robin Blencoe, British Columbia Human Rights
Commission, Commissioner of Investigation and
Mediation, British Columbia Human Rights
Tribunal**

- and between -

British Columbia Human Rights Tribunal

v. (26789)

**Robin Blencoe, British Columbia Human Rights
Commission, Commissioner of Investigation and
Mediation and Andrea Willis (B.C.)**

John J. L. Hunter, Q.C., Thomas F. Beasley, K. Michael Stephens and Stéphanie L. McHugh, for the appellants B.C. Human Rights Commission and the Commissioner of Investigation and Mediation.

Robert B. Farvolden, for the appellant Andrea Willis.

No one appearing for the appellant B.C. Human Rights Tribunal. (Written submission only)

Hart Schwartz, for the intervener the A.G. for Ontario.

Harvey M. Groberman, Q.C., for the intervener the A.G. of British Columbia.

Mark C. Stacey and Rosy M. Mondin, for the intervener Irene Schell.

Aaron L. Berg and Denis Guénette, for the intervener Manitoba Human Rights Commission.

Lara J. Morris and Maureen E. Shebib, for the intervener the Nova Scotia Human Rights Commission.

Hélène Tessier, pour l'intervenante la Commission des droits de la personne et des droits de la jeunesse.

Fiona Keith, for the intervener Canadian Human Rights Commission.

Milton Woodard, Q.C., for the intervener Saskatchewan Human Rights Commission.

Cathryn Pike and Jennifer Scott, for the intervener Ontario Human Rights Commission.

Jennifer L. Conkie and Dianne Pothier, for the intervener Women's Legal Education and Action Fund.

Frances Kelly and James Pozer, for the intervener B.C. Human Rights Coalition.

Joseph J. Arvay, Q.C. for the respondent Robin Blencoe.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Administrative law - Whether the delay in processing human rights complaints violates the Respondent's s. 7 *Charter* right to liberty and security of the person- Whether a stay of proceedings is justified.

Nature de la cause:

Charte canadienne des droits et libertés - Droit administratif - Le retard pour donner suite à des plaintes en matière de droits de la personne contrevient-il au droit de l'intimé à la liberté et la sécurité de sa personne prévu à l'art. 7 de la *Charte*? - Un arrêt des procédures est-il justifié?

25.1.2000

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

British Columbia Securities Commission

v. (26887)

Global Securities Corporation (B.C.)

James A. Angus and Stephen M. Zolnay, for the appellant.

Roslyn J. Levine, Q.C., for the intervener the A.G. of Canada.

Michel Y. Hélie, for the intervener the A.G. for Ontario.

Alain Gingras, pour l'intervenante la procureure générale du Québec.

No one appearing for the intervener the A.G. of Nova Scotia. (Written submission only) (Louise Walsh Poirier)

Eugene Szach, for the intervener the A.G. of Manitoba.

Harvey Groberman, Q.C., for the intervener the A.G. of British Columbia.

Roderick Wiltshire, for the intervener the A.G. of Alberta.

Neil R. Finkelstein and Russell Cohen, for the intervener the Ontario Securities Commission.

Gérald R. Tremblay, c.r. et Richard Proulx, pour l'intervenante la Commission des valeurs mobilières du Québec.

Anne J. Brown and Lisa Rudan, for the intervener the Alberta Securities Commission.

Murray Clemens, Q.C., Julia E. Lawn and Douglas R. Garrod, for the respondent.

THE CHIEF JUSTICE (orally for the court):

Despite Mr. Clemens' able submission, we do not find it necessary to hear from the appellant or the supporting interveners.

We are all of a view that the appeal should be allowed, reasons to follow.

[TRANSLATION]

LE JUGE EN CHEF (oralement au nom de la Cour):

Malgré l'habile argumentation de M. Clemens, nous n'estimons pas nécessaire d'entendre l'appelante ou les intervenants qui appuient sa thèse.

Nous sommes tous d'avis que le pourvoi devrait être accueilli, motifs à suivre.

27.1.2000

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

Her Majesty the Queen

Wayne Gorman, for the appellant.

v. (27305)

Walter Parrott (Crim.)(Nfld.)

Robin Reid, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Evidence - Hearsay - Whether the majority of the Court of Appeal erred in concluding that it was absolutely necessary to call the complainant as a witness, on the *voir dire*, for the "necessity criteria" to be established - Whether the complainant's out-of-court statements were inadmissible pursuant to this Honourable Court's rulings in *Regina v. Khan* and *Regina v. Smith* - Whether the majority of the Court of Appeal erred in ignoring the trial judge's acceptance of Dr. Gillespie's evidence - If the statements were inadmissible, whether this was a proper case for the application of s. 686(1)(b)(iii) of the *Criminal Code of Canada*.

Nature de la cause:

Droit criminel - Preuve - Oui-dire - La Cour d'appel a-t-elle commis une erreur en concluant à la majorité qu'il était absolument nécessaire que la partie plaignante témoigne lors du voir-dire pour qu'il soit satisfait au «critère de nécessité»? - Les déclarations extrajudiciaires de la plaignante étaient-elles inadmissibles conformément aux arrêts de la Cour dans les affaires *La Reine c. Khan* et *La Reine c. Smith*? - La Cour d'appel a-t-elle commis une erreur en décidant à la majorité de ne pas tenir compte de la décision du juge du procès d'admettre la preuve présentée par le Dr Gillespie? - Si les déclarations étaient inadmissibles, était-ce un cas d'application de l'art. 686(1)b)iii) du *Code criminel du Canada*?

WEEKLY AGENDA

**ORDRE DU JOUR DE LA
SEMAINE**

**AGENDA for the week beginning January 31 and February 7, 2000.
ORDRE DU JOUR pour les semaines commençant les 31 janvier et 7 février 2000.**

Date of Hearing/
Date d'audition

Case Number and Name/
Numéro et nom de la cause

The Court will not be sitting on those weeks

La Cour ne siègera pas durant ces semaines

NOTE:

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

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

**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
*02	Refused with costs/Refusée avec dépens		
*03	Granted/Accordée		
*04	Granted with costs/Accordée avec dépens	*B	Submitted to the Court/Soumises à la Cour
*05	Discontinuance filed/Désistement produit	*C	Oral Hearing/Audience
*06	Others/Autres	*D	Reserved/En délibéré

CASE/AFFAIRE	Status/ Statut	Page	Disposition/ Résultat
1858-0894 <i>Québec Inc. c. Compagnie d'assurance Standard Life</i> (Qué.), 27302, *02 27.1.00	1752(99)		157(00)
2849-6180 <i>Québec Inc. c. 3099-2325 Québec Inc.</i> (Qué.), 27557, *A	1815(99)		
2858-0702 <i>Québec Inc. c. Lac D'Amiante du Québec Ltée</i> (Qué.), 27324, *03 27.1.00	15(00)		162(00)
2859-8803 <i>Québec Inc. c. Jean Fortin & Associés Inc.</i> (Qué.), 27368, *A	1075(99)		
156036 <i>Canada Inc. c. Les Pétroles Therrien Inc.</i> (Qué.), 27158, *02 27.1.00	16(00)		163(00)
539938 <i>Ontario Ltd. v. Derksen</i> (Ont.), 27524, *A	1519(99)		
610990 <i>Ontario Inc. v. Business Development Bank of Canada</i> (Ont.), 27479, *B	19(00)		
656203 <i>Ontario Inc. v. Soloway, Wright</i> (Ont.), 27525, *A	1519(99)		
<i>A.K. v. The Queen</i> (Ont.), 27697, *A	132(00)		
<i>Abbott Laboratories, Ltd. v. Nu-Pharm Inc.</i> (F.C.A.), 27051, *B	787(99)		
<i>AGB Halifax Enterprises Inc. v. Wood Street Developments Inc.</i> (Ont.), 27668, *A	88(00)		
<i>Agricore Cooperative Ltd. v. The Queen</i> (F.C.A.), 27347, *A	1044(99)		
<i>Ahluwalia v. College of Physician and Surgeons of Manitoba</i> (Man.), 27382, *A	1146(99)		
<i>Albert v. Albert</i> (Ont.), 27637, *A	4(00)		
<i>Ali c. Compagnie d'Assurance Guardian du Canada</i> (Qué.), 27458, *A	1319(99)		
<i>Alpha Laboratories Inc. v. The Queen in Right of Ontario</i> (Ont.), 27419, *A	1202(99)		
<i>Arcand c. Denharco Inc.</i> (Qué.), 27372, *A	1145(99)		
<i>Ashmore v. Van Mol</i> (B.C.), 27171, *01 20.1.00	2013(99)		98(00)
<i>Askey v The Queen in Right of the Province of British Columbia</i> (B.C.), 27607, *A	2010(99)		
<i>Association des policiers provinciaux du Québec c. Lauzon</i> (Qué.), 27619, *A	1(00)		
<i>Association des radiologistes du Québec c. Rochon</i> (Qué.), 27313, *02 20.1.00	1968(99)		101(00)
<i>Atlas Industries v. Saskatchewan Labour Relations Board</i> (Sask.), 27402, *A	1150(99)		
<i>Atomic Energy Control Board v. Danilow</i> (Ont.), 27632, *A	3(00)		
<i>Attorney General of Canada v. Matthews</i> (F.C.A.), 27456, *A	1322(99)		
<i>Austie v. Aksnowicz</i> (Alta.), 27248, *B	136(00)		
<i>B. G. Schickedanz Investments Ltd. v. Szasz</i> (Ont.), 27557, *A	1718(99)		
<i>Backman v. The Queen</i> (F.C.A.), 27561, *A	1961(99)		
<i>Bacon v. Saskatchewan Crop Insurance Corporation</i> (Sask.), 27469, *A	1490(99)		
<i>Bagola v. Ovadya</i> (Ont.), 27691, *A	91(00)		
<i>Bailey c. The Queen in Right of Canada</i> (F.C.A.), 27427, *A	1317(99)		

<i>Banca Commerciale Italiana of Canada c. Soeurs du Bon Pasteur de Québec</i> (Qué.), 27627, *A	2(00)	
<i>Banque nationale du Canada v. Sous-ministre du Revenu du Québec</i> (Qué.), 26988, *B	1153(99)	
<i>Bareau v. Governors of the University of Alberta</i> (Alta.), 27330, *02 27.1.00	2015(99)	167(00)
<i>Barreau de Montréal c. Association professionnelle des sténographes officiels du</i> <i>Québec</i> (Qué.), 27472, *A	1319(99)	
<i>Bayer Inc. v. Attorney General of Canada</i> (F.C.A.), 27436, *A	1318(99)	
<i>BDO Dunwoody Ltd. v. Superintendent of Bankruptcy</i> (Man.), 27501, *A	1516(99)	
<i>Beaver Lumber Co. v. Epoch</i> (Ont.), 27193, *01 20.1.00	1912(99)	104(00)
<i>Béliard c. Husbands</i> (Qué.), 27241, *B	139(99)	
<i>Belships (Far East) Shipping (Pte.) Ltd. v. Canadian Pacific Forest Products Ltd</i> (F.C.A.), 27471, *A	1323(99)	
<i>Benard v. The Queen</i> (Man.), 27175, *A	1815(99)	
<i>Ben-Hafsia c. City of Vancouver</i> (B.C.), 27337, *02 27.1.00	18(00)	153(00)
<i>Berendsen v. The Queen in right of Ontario</i> (Ont.), 27312, *A	937(99)	
<i>Bernier c. Fédération des producteurs de lait du Québec</i> (Qué.), 27416, *A	1204(99)	
<i>Bertrix Corp. c. Valeurs mobilières Desjardins Inc.</i> (Qué.), 27401, *A	1150(99)	
<i>Bérubé c. La Reine</i> (Qué.), 27530, *01 20.1.00	1966(99)	99(00)
<i>Bhandar v. Bains</i> (B.C.), 27199, *B	13(00)	
<i>Biron c. Arthur Anderson Inc.</i> (Qué.), 27426, *A	87(00)	
<i>Bloom v. Meditrust Healthcare Inc.</i> (Ont.), 27571, *A	1789(99)	
<i>Bonamy v. The Queen</i> (B.C.), 27631, *A	3(00)	
<i>Boston v. Boston</i> (Ont.), 27682, *A	90(00)	
<i>Boudreault c. Procureur général du Canada</i> (C.A.F.), 27660, *A	87(00)	
<i>Braintech Inc. v. Kostiuik</i> (B.C.), 27296, *A	778(99)	
<i>Brault & Bisaillon (1986) Inc. c. Éditions Le Canada Français Ltée</i> (Qué.), 27409, *A	1200(99)	
<i>Breriton v. The Queen</i> (Alta.), 26669, *A	7(00)	
<i>Brett v. Halifax Regional Municipality</i> (N.S.), 27640, *A	4(00)	
<i>Bri-Mel Developments Ltd. v. McLaren</i> (Ont.), 27411, *A	1200(99)	
<i>British Aviation Insurance Group (Canada) Ltd. v. West Central Air Ltd.</i> (Sask.), 27590, *A	1790(99)	
<i>British Columbia Hydro and Power Authority v. Tenneco Canada Inc.</i> (B.C.), 27507, *A	1517(99)	
<i>Brotherhood of Maintenance of Way Employees v. Litke</i> (Man.), 27622, *A	1(00)	
<i>Brown v. Synchronics Inc.</i> (F.C.A.), 27405, *A	1318(99)	
<i>Bruce Agra Foods Inc. v. Trilwood Investments Ltd</i> (Ont.), 27260, *A	775(99)	
<i>Bryan v. The Queen</i> (Man.), 27222, *B	94(00)	
<i>Buhlers v. Superintendent of Motor Vehicles for the Province of British Columbia</i> (B.C.), 27268, *A	776(99)	
<i>Butcher v. Government of St. Lucia</i> (Ont.), 27375, *A	1145(99)	
<i>Cadillac Fairview Corp. v. The Queen</i> (F.C.A.)(Ont.), 27214, *B	92(00)	
<i>Cadillac Fairview Corp. v. Saskatchewan Human Rights Commission</i> (Sask.), 27537, *A	1716(99)	
<i>Comeau c. Comeau</i> , (Qué.), 27692, *A	91(00)	
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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 : February 14, 2000
Service : January 24, 2000
Filing : January 28, 2000
Respondent : February 4, 2000

Motion day : March 13, 2000
Service : February 21, 2000
Filing : February 25, 2000
Respondent : March 3, 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 : 14 février 2000
Signification : 24 janvier 2000
Dépôt : 28 janvier 2000
Intimé : 4 février 2000

Audience du : 13 mars 2000
Signification : 21 février 2000
Dépôt : 25 février 2000
Intimé : 3 mars 2000

DEADLINES: APPEALS

DÉLAIS: APPELS

The Winter Session of the Supreme Court of Canada will commence January 17, 2000.

La session d'hiver de la Cour suprême du Canada commencera le 17 janvier 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'appelant, 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'appelant.

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.

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24						
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DECEMBER - DECEMBRE						
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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	13	14	15
16	17	18	19	20	H 21	22
23	H 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	4	5	6
7	8	9	10	11	12	13
14	M 15	16	17	18	19	20
21	H 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
11	M 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
77 sitting days / journées séances de la cour
9 motion and conference days / journées requêtes, conférences
4 holidays during sitting / jours fériés durant les sessions