

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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**CONTENTS****TABLE DES MATIÈRES**

---

Applications for leave to appeal filed	1925 - 1926	Demandes d'autorisation d'appel déposées
Applications for leave submitted to Court since last issue	1927 - 1933	Demandes soumises à la Cour depuis la dernière parution
Oral hearing ordered	-	Audience ordonnée
Oral hearing on applications for leave	-	Audience sur les demandes d'autorisation
Judgments on applications for leave	1934 - 1936	Jugements rendus sur les demandes d'autorisation
Judgment on motion	-	Jugement sur requête
Motions	1937 - 1947	Requêtes
Notices of appeal filed since last issue	1948	Avis d'appel déposés depuis la dernière parution
Notices of intervention filed since last issue	-	Avis d'intervention déposés depuis la dernière parution
Notices of discontinuance filed since last issue	-	Avis de désistement déposés depuis la dernière parution
Appeals heard since last issue and disposition	-	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	1949	Jugements rendus sur les appels en délibéré
Rehearing	-	Nouvelle audition
Headnotes of recent judgments	-	Sommaires des arrêts récents
Agenda	-	Calendrier
Summaries of the cases	-	Résumés des affaires
Appeals inscribed - Session beginning	-	Appels inscrits - Session commençant le
Notices to the Profession and Press Release	-	Avis aux avocats et communiqué de presse
Deadlines: Motions before the Court	1950	Délais: Requêtes devant la Cour
Deadlines: Appeals	1951	Délais: Appels
Judgments reported in S.C.R.	-	Jugements publiés au R.C.S.

**APPLICATIONS FOR LEAVE TO  
APPEAL FILED**

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

**J.J.M.**

R. Ian Histed  
Downtown Legal Action

v. (28856)

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

Rodney Garson  
A.G. of Manitoba

FILING DATE 17.10.2001

---

**Communauté urbaine de Montréal**

Michel Locas  
Dunton Rainville

c. (28854)

**Investissements Canpro Ltée (Qué.)**

Daniel Chénard

DATE DE PRODUCTION 9.10.2001

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**Sam Lévy & Associés Inc.**

Daniel Des Aulniers  
Grondin, Poudrier, Bernier

c. (28857)

**La procureure générale du Canada (Qué.)**

Robert Monette  
Deblois & Associés

DATE DE PRODUCTION 12.10.2001

---

**Restaurant Marsillo-Deli Inc., et al.**

Franco Iezzoni  
Pateras & Iezzoni

c. (28858)

**2638-7639 Québec Inc. (Qué.)**

Danielle Ouaknine  
Oiknine & Associés

DATE DE PRODUCTION 17.10.2001

---

**James MacEachern**

Henry S. Brown, Q.C.  
Gowling Lafleur Henderson

v. (28861)

**Bishop & McKenzie, et al. (Ont.)**

Barbara A. McIsaac  
McCarthy Tétrault

FILING DATE 17.10.2001

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**Ian McLachlan, et al.**

John B. Laskin  
Torys

v. (28851)

**Trent University, et al. (Ont.)**

John C. Murray  
Heenan Blaikie

FILING DATE 10.10.2001

---

**Cory Mitchell King**

Loran V. Halyn  
Sugimoto & Company

v. (28852)

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

Joshua Hawkes  
A.G. of Alberta

FILING DATE 15.10.2001

---

**Rénald Héroux**

Marie Pepin  
Sauvé et Roy

c. (28855)

**Groupe Forage Major (Qué.)**

Jean-Pierre Gervais  
Geoffroy, Matte, Kélada et associés

DATE DE PRODUCTION 15.10.2001

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

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

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OCTOBER 22, 2001 / LE 22 OCTOBRE 2001

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

**Mark Edward George Wells**

**v. (28683)**

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

**NATURE OF THE CASE**

Criminal Law - Trial - Competence of counsel - Whether Court of Appeal erred in dismissing appeal from conviction - Whether conduct of trial counsel reasonably competent or resulted in a miscarriage of justice.

**PROCEDURAL HISTORY**

October 24, 1991 Ontario Court (General Division) (McGarry J.)	Convictions by jury: 2 counts first degree murder and 2 counts second degree murder
November 12, 1991 Ontario Court (General Division) (McGarry J.)	Sentence: life imprisonment with parole ineligibility for 25 years
January 17, 2001 Court of Appeal for Ontario (McMurty C.J., Charron and MacPherson JJ.A.)	Appeal against conviction and sentence dismissed
July 6, 2001 Supreme Court of Canada	Applications for leave to appeal and extension of time filed

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**Sun Media (Toronto) Corporation**

**v. (28688)**

**United States of America and Douglas John M (Crim.)(Ont.)**

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Freedom of the press - Publication ban - Procedure - Whether notice must be provided to the media when an application for a discretionary publication ban is brought before the court - If notice is not provided to the media, what means are available to challenge the ban - Whether a judge presiding over extradition proceedings has the common law jurisdiction to incorporate sections of the *Criminal Code* dealing with mandatory publication bans and sealing orders into the extradition proceeding if those sections of the *Criminal Code* are not expressly incorporated into the *Extradition Act*

**PROCEDURAL HISTORY**

February 9, 2001 Superior Court of Justice (Whealy J.)	Respondents' application for an order sealing the Application Record and banning the publication of information that could reveal the identity of the minor complainants granted
May 29, 2001 Superior Court of Justice (Grossi J.)	Applicant's application for an order rescinding the sealing of the Application Record dismissed
July 10, 2001 Supreme Court of Canada	Motion to expedite filed
July 12, 2001 Supreme Court of Canada	Application for leave to appeal filed
July 13, 2001 Supreme Court of Canada	Response to the motion to expedite filed by the Respondent United States of America
July 16, 2001 Supreme Court of Canada	Response to the motion to expedite filed by the Respondent Douglas M.
July 26, 2001 Supreme Court of Canada LeBel J.	Motion to expedite dismissed

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**Darrell Wayne Trociuk**

**v. (28726)**

**Attorney General of British Columbia and the Director of Vital Statistics and Reni Ernst (B.C.)**

**NATURE OF THE CASE**

*Charter of Rights and Freedoms* - Equality rights - Vital Statistics - Birth registration - Family law - Children born outside marriage - Mother not acknowledging father on birth registration forms - Children taking mother's surname - Father's application to be acknowledged on birth registrations and to change children's surnames denied by Director of Vital Statistics - Whether statutory discretion of a mother not to acknowledge biological father on birth registration forms and not to include surname of father in child's surname infringes *Charter* equality rights on the basis of sex - *Vital Statistics Act*, R.S.B.C. 1996, c. 479, ss. 3(1), 3(6), 4(1), 29(3), 29(4).

**PROCEDURAL HISTORY**

February 25, 1999 Supreme Court of British Columbia (Collver J.)	Order to strike names of infant petitioners from style of cause
May 17, 1999 Supreme Court of British Columbia (Collver J.)	Applicant's Petition for <i>mandamus</i> and claim for <i>Charter</i> relief dismissed

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October 14, 1999 Court of Appeal for British Columbia (Lambert, J.A.)	Order adding the Respondent, Reni Ernst, as a party; Order for <i>amicus curiae</i> to represent interests of the children adjourned for consideration by panel hearing appeal
May 1, 2000 Court of Appeal for British Columbia (Southin, Prowse and Newbury JJ.A.)	Order for <i>amicus curiae</i> to represent interests of the children
May 23, 2001 Court of Appeal for British Columbia (Southin, Prowse [ <i>dissenting</i> ] and Newbury JJ.A.)	Applicant's appeal dismissed
August 20, 2001 Supreme Court of Canada	Application for leave to appeal filed

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

**Pierre Brochu**

**c. (28621)**

**Irène Camden-Bourgault (personnellement et en reprise d'instance) (Qué.)**

**NATURE DE LA CAUSE**

Responsabilité civile - Négligence - Faute reconnue d'un médecin - Obligation de divulgation d'information dans le cadre du suivi médical - La Cour d'appel a-t-elle erré en droit en évaluant la conduite du demandeur suivant une analyse rétrospective de la preuve, pour conclure comme elle l'a fait? - La Cour d'appel impose-t-elle erronément aux médecins une obligation de résultat en exigeant qu'ils avisent leurs patients entrant en période post-opératoire, post-traitement ou post-consultation, non seulement des symptômes relatifs aux complications raisonnablement prévisibles, mais aussi de ceux reliés à toute autre complications, si rare soit-elle, si les conséquences de telles complications sont susceptibles d'être sérieuses pour le patient? - La Cour d'appel a-t-elle également erré en omettant de considérer l'obligation d'un patient de suivre les consignes de départ qui lui ont été données par son médecin - La Cour d'appel a-t-elle manifestement erré en faits et en droit dans son appréciation de la question de la causalité puisqu'elle aurait dû conclure à l'inexistence de tout lien entre cette prétendue faute et le dommage subi.

**HISTORIQUE PROCÉDURAL**

Le 19 avril 1996 Cour supérieure du Québec (Martin j.c.s.)	Action de l'intimée statuant sur la responsabilité médicale du demandeur accueillie
Le 2 avril 2001 Cour d'appel du Québec (Forget, Pidgeon et Rochon [ <i>ad hoc</i> ] jj.c.a.)	Appel rejeté
Le 31 mai 2001 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**Syndicat des chauffeurs de la Société de transport de la Ville de Laval**

**c. (28475)**

**Me Gilles Ferland, en sa qualité d'arbitre de griefs (Qué.)**

**NATURE DE LA CAUSE**

Code civil — Interprétation — *Code civil du Québec*, L.Q. 1991, ch. 64, art. 2858 — Admissibilité d'une preuve obtenue en violation du droit à la vie privée — La preuve ainsi obtenue a-t-elle pour effet de déconsidérer l'administration de la justice? — Droit du travail — Congédiement— Grief à l'encontre du congédiement — Enregistrement sur vidéocassette d'un employé qui aurait exercé des activités incompatibles avec son état d'invalidité — Audition du grief par un arbitre — Objection à l'admissibilité de la vidéocassette en preuve — Droit à la vie privé — *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12, art. 5 — Authenticité de la vidéocassette — Droit à une défense pleine et entière — Droit au contre-interrogatoire d'un témoin— *Charte des droits et libertés de la personne*, art. 35 — La Cour supérieure et la Cour d'appel ont-elles erré refusant d'intervenir afin de réviser judiciairement une décision arbitrale erronée quant à une application de la *Charte des droits et libertés de la personne* et du *Code civil du Québec*? — Quelles sont les circonstances qui justifient une filature par un employeur d'un de ses salariés? — Quelles sont les conditions d'admissibilité des résultats d'une telle filature en preuve devant un arbitre de grief?

**HISTORIQUE PROCÉDURAL**

Le 27 avril 1999  
Cour supérieure du Québec  
(Maughan, j.c.s.)

Requête du demandeur en révision judiciaire d'une  
sentence arbitrale interlocutoire rejetée

Le 31 janvier 2001  
Cour d'appel du Québec  
(Gendreau, Mailhot et Forget, jj.c.a.)

Appel rejeté

Le 30 mars 2001  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**R.O.P.**

**c. (28758)**

**C.A.G. (Qué.)**

**NATURE DE LA CAUSE**

Droit de la famille — Divorce — Partage des biens — Lorsqu'elle révisé un dossier, une cour d'appel doit-elle tenir compte que les régimes enregistrés d'épargne-retraite (RÉER) encaissés ont servi à rembourser les dettes familiales du demandeur à la date d'ouverture du partage du patrimoine familial? — *Code civil du Québec*, L.Q. 1991, ch. 64, art. 415, 416, 417, 421 et 422 — Suite au partage du patrimoine familial, une somme globale peut-elle être accordée par une cour d'appel ou une cour de première instance si le patrimoine du créancier est inférieur à celui de l'intimée? — Comment doit-on déterminer les paramètres d'attribution d'une somme globale, suite à un partage du patrimoine familial? — *Loi sur le divorce*, L.R.C. 1985, ch. 3 (2<sup>e</sup> suppl.), art. 15.2

**HISTORIQUE PROCÉDURAL**

Le 18 mai 2000  
Cour supérieure du Québec  
(Sévigny, j.c.s.)

Demande de l'intimée pour le partage inégal du patrimoine familial accueillie ; demandeur ordonné de payer à l'intimée un montant forfaitaire de 45 000\$

Le 1 juin 2001  
Cour d'appel du Québec  
(Vallerand, Deschamps et Pelletier, jj.c.a.)

Appel rejeté

Le 31 août 2001  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

**Ernest Lionel Joseph Blais**

**v. (28645)**

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

**NATURE OF THE CASE**

Criminal law - Constitutional law - Native law - Métis - Hunting rights - Métis convicted of hunting on unoccupied Crown land in an area where hunting was prohibited - Whether Applicant, as a Métis person, falls within the constitutional meaning of the term "Indian" under s. 13 of the Natural Resources Transfer Agreement (NRTA)- Whether s. 26 of Manitoba's *Wildlife Act* is inapplicable in respect to the Applicant, and of no force or effect to the extent that it infringes or limits the Applicant's right to hunt under s. 13 of the NRTA - Whether evidence of the hunting customs and practices of Manitoba Métis before 1930 should be weighed and considered when considering the meaning of the term "Indian" under s. 13 of the NRTA - Whether weight should have been placed lack of evidence of the hunting practices of the Applicant and his direct ancestors - Whether weight should have been placed on geographical location of where the alleged offence took place and on the lack of evidence of Métis hunting in that area of Manitoba.

**PROCEDURAL HISTORY**

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August 22, 1996 Provincial Court of Manitoba (Swain Prov. Ct. J.)	Applicant convicted of unlawfully hunting deer out of season contrary to s. 26 of the <i>Wildlife Act</i> of Manitoba; Métis not included as “Indians” in Natural Resource Transfer Agreement
September 9, 1998 Court of Queen's Bench of Manitoba (Wright J.)	Applicant’s summary conviction appeal dismissed
April 11, 2001 Court of Appeal of Manitoba (Scott C.J.M., Twaddle and Helper JJ.A.)	Appeal dismissed
June 7, 2001 Supreme Court of Canada	Application for leave to appeal filed

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**Subhash Chander Jain**

**v. (28816)**

**Veena Jain, Toronto Police Service, John Doe and certain members of the Toronto Police whose identities are unknown at the present time (Ont.)**

**NATURE OF THE CASE**

Procedural law - Family law - Motions to strike out statement of claim - Finding that action against Police Respondents statute barred - Finding that no reasonable cause of action - Whether the Respondent wife could not be held liable for the alienation of affection of the children of the marriage and be subject to an award of damages for same - Whether the Police Respondents were entitled to summary judgment based on their own obstruction.

**PROCEDURAL HISTORY**

April 6, 2000 Superior Court of Justice (Epstein J.)	Respondent “Toronto Police Services”’s motion to strike out the Applicant’s statement of claim granted: action dismissed
August 1, 2000 Superior Court of Justice (Spiegel J.)	Respondent Veena Jain’s motion to strike out the Applicant’s statement of claim granted: action dismissed
September 22, 2000 Court of Appeal for Ontario (Catzman J.A.)	Motion for extension of time to appeal from order of Epstein J. of April 6, 2000 dismissed
June 20, 2001 Court of Appeal for Ontario (Abella, Goudge and Simmons JJ.A.)	Appeal from order of Spiegel J. of August 1, 2000 dismissed
September 18, 2001 Supreme Court of Canada	Application for leave to appeal filed

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**MOTIONS FOR RECONSIDERATION / DEMANDES DE RÉEXAMEN**

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

Léonildo Pirès c. André L. Monty, avocat, et al. (Qué.) (28139)

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

Alexander MacBain Cameron, et al. v. The Attorney General of Nova Scotia, representing Her Majesty the Queen in Right of the Province of Nova Scotia, et al. (N.S.) (27584)

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OCTOBER 25, 2001 / LE 25 OCTOBRE 2001

**28672**            **George Alexander Hardy - v. - Her Majesty the Queen** (Alta.) (Criminal)

CORAM:            The Chief Justice, Gonthier and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Evidence - Whether the *Charter of Rights and Freedoms* guarantees appellate review of convictions for serious crimes accompanied by lengthy terms of imprisonment - Whether an appellant has the right to effective counsel at the appellate review - Whether the Court of Appeal erred in deciding that it was irrelevant whether the defence experts were asked whether the Applicant knew that he was doing wrong under s. 16(1) of the *Criminal Code* - Whether the trial judge erred in instructing the jury - Even if no individual error was sufficient to warrant a new trial, did the cumulative effect of the errors mandate that a new trial be directed?

**PROCEDURAL HISTORY**

December 5, 1997  
Court of Queen's Bench of Alberta  
(Brooker J.)

Applicant convicted by jury on 3 counts of trafficking in a narcotic and 1 count of possession for the purpose of trafficking respectively contrary to s. 4(1) and 4(2) of the *Narcotic Control Act*

April 26, 2001  
Court of Appeal of Alberta  
(Côté, Sulatycky and Fruman JJ.A.)

Appeal against conviction dismissed

June 25, 2001  
Supreme Court of Canada

Application for leave to appeal filed

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**28675**            **Sadrudin Jessani - v. - The Minister of Citizenship and Immigration** (FC) (Civil)

CORAM:            The Chief Justice, Iacobucci 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**

Immigration law - Statutes - Interpretation - Jurisdiction - Immigration and Refugee Board, Appeal Division - Permanent resident - Loss of status as permanent resident under *Immigration Act*, R.S.C. 1985, c. I-2, s. 24, due to an absence from Canada of more than 183 consecutive days in a 12-month period - Whether the Immigration and Refugee Board, Appeal Division has equitable jurisdiction over a person who has abandoned his status as a permanent resident of Canada - Whether the Court of Appeal correctly identified the standard of review applied to the review of factual findings of the Immigration Appeal Division.

**PROCEDURAL HISTORY**

April 5, 2000 Federal Court (Trial Division) (Campbell J.)	Applicant's application for judicial review of Immigration and Refugee Board, Appeal Division allowed
April 27, 2001 Federal Court of Appeal (Isaac, Sexton and Malone JJ.A.)	Appeal allowed; application for judicial review dismissed
June 26, 2001 Supreme Court of Canada	Application for leave to appeal filed

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**28596**      **Peggy Ann Sheppard - v. - The Royal Institution for the Advancement of Learning (McGill University)** (Que.) (Civil)

CORAM:      The Chief Justice, Iacobucci and Bastarache JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Administrative law - Judicial review - Whether the Court of Appeal erred in holding that the first judge did not allow an appeal from the arbitration decision by failing to recognize that the first judge redefined the orders given in a final and binding arbitration decision - Whether the Court of Appeal erred in failing to recognize that the first judge made a series of palpable and determining errors that gravely affected the Superior Court's assessment of the facts and the testimony of witnesses - Whether the Court of Appeal disregarded the principles of the law of evidence in holding that no witness established that the arbitration order with respect to the removal of a letter from the Applicant's file had not been obeyed and also in holding that it was necessary to deposit the file in the court record in order to prove that the letter was not withdrawn - Whether the Court of Appeal erred by failing to recognize that the Superior Court judgment did not fairly or reasonably interpret the burden of proof when applied to proving beyond a reasonable doubt the *actus reus* and the *mens rea* with respect to the Respondent's failure to comply with the orders rendered in an arbitration award.

**PROCEDURAL HISTORY**

February 17, 1998 Superior Court of Quebec (Lévesque J.)	Applicant's motion for condemnation for contempt of court dismissed
March 16, 2001 Court of Appeal of Quebec (Mailhot, Dussault and Letarte [ad hoc] JJ.A.)	Appeal dismissed
May 15, 2001 Supreme Court du Canada	Application for leave to appeal filed

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16.10.2001

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai imparti pour signifier et déposer les mémoire, dossier et recueil de jurisprudence et de doctrine de l'appelante**

Her Majesty the Queen

v. (28385)

Jeffrey Fink (Crim.)(Ont.)

**GRANTED / ACCORDÉE** Time extended to October 10, 2001.

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16.10.2001

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de jurisprudence et de doctrine de l'intimée**

Transamerica Life Insurance Company of Canada

v. (28163)

Maria Oldfield (Ont.)

**GRANTED / ACCORDÉE** Time extended to October 4, 2001.

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17.10.2001

Before / Devant: LEBEL J.

**Further order on motions for leave to intervene**

**Autre ordonnance sur des requêtes en autorisation d'intervention**

BY/PAR: Attorney General of Canada  
Canadian Motion Picture Distributors Association  
DIRECTV Inc.  
Canadian Alliance for Freedom of Information and Ideas  
Congres Iberoamericain du Canada

IN/DANS: Bell ExpressVu Limited Partnership

v. (28227)

Richard Rex, et al. (B.C.)

**GRANTED / ACCORDÉES**

**UPON APPLICATION** by the Attorney General of Canada, the Canadian Motion Picture Distributors Association, DIRECTV Inc., the Canadian Alliance for Freedom of Information and Ideas and the Congres Iberoamericain du Canada for leave to intervene in the above appeal and pursuant to the order of September 11, 2001;

**IT IS HEREBY FURTHER ORDERED THAT** the said interveners are granted permission to present oral argument at the hearing of the appeal not to exceed the time allowed respectively to each of them as follows:

- |    |  |            |
|----|--|------------|
| 1. | Attorney General of Canada                             | 15 minutes |
| 2. | Canadian Motion Picture Distributors Association       | 10 minutes |
| 3. | DIRECTV Inc.   | 10 minutes |
| 4. | Canadian Alliance for Freedom of Information and Ideas | 10 minutes |
| 5. | Congres Iberoamericain du Canada                       | 10 minutes |

17.10.2001

Before / Devant: THE CHIEF JUSTICE

**Motions for additional time to present oral argument**

**Requêtes en prorogation du temps alloué pour les plaidoiries**

Louise Gosselin

c. (27418)

Le procureur général du Québec (Qué.)

**DISMISSED / REJETÉES** Les requêtes présentées par l'appelante et l'intimé en vue de prolonger le temps de présentation lors de l'audition de l'appel sont rejetées.

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18.10.2001

Before / Devant: ARBOUR J.

**Motion to expedite the application for leave to appeal**

**Requête visant à accélérer la demande d'autorisation d'appel**

BCTV, a division of Global Communications Limited,  
et al.

v. (28823)

Her Majesty the Queen, et al. (Crim.)(B.C.)

**DISMISSED / REJETÉE**

The applicants BCTV, CKVU, CTV INC et al ( the media) are seeking an order expediting their application for leave to appeal from a decision of Madam Justice Bennett dismissing their application for Expanded Media Coverage of the respondents' trial. The judgment of Bennett J. was rendered Sept. 25, 2001, at the opening of the trial. The first four weeks of the trial have been occupied by voir dire proceedings, and the trial proper, which is expected to last eight weeks before judge alone, was to begin around October 15.

The applicants argue that the issue of radio and television access to courtrooms is a question of national importance and that they will not be granted the access that they claim there are entitled to in this case unless they can get immediate appellate review.

All respondents oppose the motion. In short, counsel for the accused submit that they are fully occupied in the defence of their case, which is now at trial, and that they do not have the means and the capacity to respond adequately to the proposed appeal on an expedited basis. As for the Crown, it opposes the application to expedite unless the applicants undertake not to seek a delay of the trial, regardless of the outcome of the leave application. The media being unwilling to commit to that position, the crown opposes the motion.

This brings home the reality of the situation. Even if this matter were to be expedited as per the Media's request, (the respondents would have 10 days to respond to the Leave Application, and the applicants 3 days to reply), and even if the leave panel could render its decision within days thereafter, it is obvious that if leave were granted, the appeal could not possibly be prepared, including with the participation of hypothetical interveners, argued, and decided in time to permit the coverage of this trial on the terms requested by the applicants.

This illustrates once again the obvious fact that this Court is not designed to have first level error-correcting appellate jurisdiction. That function is normally performed by provincial courts of appeal, which can respond in a timely fashion to situations that present a time sensitive issue. Matters such as this one cannot be appealed to courts of appeal under the terms of the Criminal Code. Appeal rights being entirely statutory, the applicants must avail themselves of s. 40 of the *Supreme Court Act* since the judgment at trial on their Charter claim is final and not subject to review by any other court.

This statutory deficiency has been noted in the past (see *Dagenais v. CBC*, [1994] 3 S.C.R. 835, at paras. 18 & 66; *R. v. McClure* [2001] 1 S.C.R. 445 at para. 66). In *Dagenais*, Lamer C.J.C. made the following forceful comments:

It is important to note once more that the current situation is deplorable. Fundamental rights are at stake, but no truly satisfactory avenue of appeal has been established by statute. I hope that Parliament will soon consider filling this jurisdictional lacuna and establishing statutory rights of appeal for third parties such as the media [at para. 66].



I am conscious of the fact that while the applicants may succeed in pursuing their broad-based legal claim ultimately before this court, the reality of the situation is that they have no forum in which to obtain redress, assuming redress is due, in the case at bar. The corrective measure to this situation can only come from Parliament.

In these circumstances, the motion to expedite must fail. It would serve no practical purpose while unduly distracting trial counsel from the important task of trying the case. If and when this issue comes before this Court, it should be accorded all the time and attention that it deserves, without interfering with the proper administration of justice at the trial level.

Motion dismissed.

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18.10.2001

Before / Devant: ARBOUR J.

**Motion for additional time to present oral argument**

**Requête en prorogation du temps alloué pour les plaidoiries**

Patrick Berry, et al.

v. (27992)

Chris Pulley, et al. (Ont.)

**DISMISSED / REJETÉE** Motion by the appellants for an additional 15 minutes to present oral argument is dismissed.

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18.10.2001

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai de signification et de dépôt de la réponse de l'intimée**

Donna Louise Barrow

v. (28772)

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

**GRANTED / ACCORDÉE** Time extended to October 17, 2001.

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19.10.2001

Before / Devant: ARBOUR J.

**Motion by the applicant for a stay of execution**

**Requête de la part du requérant en vue de surseoir à l'exécution**

Alfred Mayor

c. (28724)

Jean-Pierre Semeniuk (Qué.)

**DISMISSED / REJETÉE**

19.10.2001

Before / Devant: ARBOUR J.

**Motion for leave to intervene**

**Requête en autorisation d'intervention**

BY/PAR: The Advocates' Society

IN/DANS: Fellowes, McNeil

v. (28199)

Kansa General International  
Insurance Company Ltd., et al. (Ont.)

**GRANTED / ACCORDÉE**

**UPON APPLICATION** by The Advocates' Society for leave to intervene in the above appeal;

**AND HAVING READ** the material filed ;

**IT IS HEREBY ORDERED THAT:**

The motion for leave to intervene of the applicant The Advocates' Society is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

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

The intervener shall not be entitled to adduce further evidence or otherwise to supplement the record of the parties.

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

19.10.2001

Before / Devant: ARBOUR J.

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

**Requête en prorogation du délai de signification et de dépôt de la réponse des intimés**

Fellowes, McNeil

v. (28199)

Kansa General International Insurance Company Ltd., et al. (Ont.)

**GRANTED / ACCORDÉE** Motion to extend the time to serve and file the respondents' response to the motion for leave to intervene of The Advocates' Society to September 20, 2001 is granted.

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19.10.2001

Before / Devant: THE REGISTRAR

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

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

David Malmo-Levine

v. (28026)

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

**GRANTED / ACCORDÉE** Motion to extend the time to serve and file the appellant's factum and book of authorities to forty-five (45) days from the decision on the motion to state Constitutional Questions is granted.

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19.10.2001

Before / Devant: THE REGISTRAR

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

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

Victor Eugene Caine

v. (28148)

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

**GRANTED / ACCORDÉE** Motion to extend the time to serve and file the appellant's factum and book of authorities to forty-five (45) days from the decision on the motion to state Constitutional Questions is granted.

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19.10.2001

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file the appellant's factum****Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'appelant**

Clayton Charles Ruby

v. (28029)

The Solicitor General (F.C.)

**GRANTED / ACCORDÉE** Time extended to October 19, 2001.

19.10.2001

Before / Devant: THE CHIEF JUSTICE

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

David Malmo-Levine

v. (28026)

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

**GRANTED / ACCORDÉE** Notices of intervention are to be filed on or before November 26, 2001.

1. Does prohibiting possession of Cannabis (marihuana) for the purpose of trafficking under s. 4(2) of the *Narcotic Control Act*, R.S.C. 1985, c. N-1, by reason of the inclusion of this substance in s. 3 of the Schedule to the Act (now s. 1, Schedule II, *Controlled Drugs and Substances Act*, S.C. 1996, c. 19), infringe s. 7 of the *Canadian Charter of Rights and Freedoms*?
  2. If the answer to Question 1 is in the affirmative, is the infringement justified under s. 1 of the *Charter*?
  3. Does prohibiting possession of Cannabis (marihuana) for the purpose of trafficking under s. 4(2) of the *Narcotic Control Act*, R.S.C. 1985, c. N-1, by reason of the inclusion of this substance in s. 3 of the Schedule to the Act (now s. 1, Schedule II, *Controlled Drugs and Substances Act*, S.C. 1996, c. 19), infringe s. 15(1) of the *Charter* by discriminating against a certain group of persons on the basis of their substance orientation, occupation orientation, or both?
  4. If the answer to Question 3 is in the affirmative, is the infringement justified under s. 1 of the *Charter*?
- 
1. Est-ce que l'interdiction d'avoir en sa possession du Cannabis (marihuana) en vue d'en faire le trafic que prévoit le par. 4(2) de la *Loi sur les stupéfiants*, L.R.C. 1985, ch. N-1, du fait de la mention de cette substance à l'art. 3 de l'annexe de cette loi (maintenant l'art. 1 de l'annexe II de la *Loi réglementant certaines drogues et autres substances*, L.C. 1996, ch. 19), porte atteinte à l'art. 7 de la *Charte canadienne des droits et libertés*?
  2. Si la réponse à la question 1 est affirmative, l'atteinte est-elle justifiée au regard de l'article premier de la *Charte*?
  3. Est-ce que l'interdiction d'avoir en sa possession du Cannabis (marihuana) en vue d'en faire le trafic que prévoit le par. 4(2) de la *Loi sur les stupéfiants*, L.R.C. 1985, ch. N-1, du fait de la mention de cette substance à l'art. 3 de l'annexe de cette loi (maintenant l'art. 1 de l'annexe II de la *Loi réglementant certaines drogues et autres substances*, L.C. 1996, ch. 19), porte atteinte au par. 15(1) de la *Charte* en traitant un certain groupe de personnes

de façon discriminatoire sur le fondement de leur orientation sous l'angle de la substance concernée, de leur orientation sous l'angle de leur occupation ou de leur orientation sous ces deux aspects?

4. Si la réponse à la question 3 est affirmative, l'atteinte est-elle justifiée au regard de l'article premier de la *Charte*?

19.10.2001

Before / Devant: THE CHIEF JUSTICE

**Motion to state a constitutional question**

**Requête pour énoncer une question constitutionnelle**

Victor Eugene Caine

v. (28148)

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

**GRANTED / ACCORDÉE** Notices of intervention are to be filed on or before November 26, 2001.

1. Does prohibiting possession of Cannabis (marihuana) for personal use under s. 3(1) of the *Narcotic Control Act*, R.S.C. 1985, c. N-1, by reason of the inclusion of this substance in s. 3 of the Schedule to the Act (now s. 1, Schedule II, *Controlled Drugs and Substances Act*, S.C. 1996, c. 19), infringe s. 7 of the *Canadian Charter of Rights and Freedoms*?
  2. If the answer to Question 1 is in the affirmative, is the infringement justified under s. 1 of the *Charter*?
  3. Is the prohibition on the possession of Cannabis (marihuana) for personal use under s. 3(1) of the *Narcotic Control Act*, by reason of the inclusion of this substance in s. 3 of the Schedule to the Act (now s. 1, Schedule II, *Controlled Drugs and Substances Act*, S.C. 1996, c. 19), within the legislative competence of the Parliament of Canada as being a law enacted for the peace, order and good government of Canada pursuant to s. 91 of the *Constitution Act, 1867*; as being enacted pursuant to the criminal law power in s. 91(27) thereof; or otherwise?
- 
1. Est-ce que l'interdiction d'avoir en sa possession du Cannabis (marihuana) aux fins de consommation personnelle – interdiction prévue au par. 3(1) de la *Loi sur les stupéfiants*, L.R.C. 1985, ch. N-1, du fait de la mention de cette substance à l'art. 3 de l'annexe de cette loi (maintenant l'art. 1 de l'annexe II de la *Loi réglementant certaines drogues et autres substances*, L.C. 1996, ch. 19) –, porte atteinte à l'art. 7 de la *Charte canadienne des droits et libertés*?
  2. Si la réponse à la question 1 est affirmative, l'atteinte est-elle justifiée au regard de l'article premier de la *Charte*?
  3. Est-ce que l'interdiction d'avoir en sa possession du Cannabis (marihuana) aux fins de consommation personnelle – interdiction prévue au par. 3(1) de la *Loi sur les stupéfiants*, L.R.C. 1985, ch. N-1, du fait de la mention de cette substance à l'art. 3 de l'annexe de cette loi (maintenant l'art. 1 de l'annexe II de la *Loi réglementant certaines drogues et autres substances*, L.C. 1996, ch. 19) –, relève de la compétence législative du Parlement du Canada en tant que règle de droit édictée soit en vertu de l'art. 91 de la *Loi constitutionnelle de 1867* pour assurer la paix, l'ordre et le bon gouvernement du Canada, soit en vertu du pouvoir de légiférer sur le droit criminel prévu au par. 91(27) de la *Loi constitutionnelle de 1867*, soit en vertu d'un autre pouvoir?

19.10.2001

Before / Devant: THE CHIEF JUSTICE

**Motion to state a constitutional question**

**Requête pour énoncer une question constitutionnelle**

Christopher James Clay

v. (28189)

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

**GRANTED / ACCORDÉE** Notices of intervention are to be filed on or before November 26, 2001.

1. Does prohibiting possession of Cannabis sativa for personal use under s. 3(1) of the *Narcotic Control Act*, R.S.C. 1985, c. N-1, by reason of the inclusion of this substance in s. 3 of the Schedule to the Act (now s. 1, Schedule II, *Controlled Drugs and Substances Act*, S.C. 1996, c. 19), infringe s. 7 of the *Canadian Charter of Rights and Freedoms*?
  2. If the answer to Question 1 is in the affirmative, is the infringement justified under s. 1 of the *Charter*?
  3. Is the prohibition on the possession of Cannabis sativa for personal use under s. 3(1) of the *Narcotic Control Act*, by reason of the inclusion of this substance in s. 3 of the Schedule to the Act (now s. 1, Schedule II, *Controlled Drugs and Substances Act*, S.C. 1996, c. 19), within the legislative competence of the Parliament of Canada as being a law enacted for the peace, order and good government of Canada pursuant to s. 91 of the *Constitution Act, 1867*; as being enacted pursuant to the criminal law power in s. 91(27) thereof; or otherwise?
- 
1. Est-ce que l'interdiction d'avoir en sa possession du Chanvre indien (*Cannabis sativa*) aux fins de consommation personnelle – interdiction prévue au par. 3(1) de la *Loi sur les stupéfiants*, L.R.C. 1985, ch. N-1, du fait de la mention de cette substance à l'art. 3 de l'annexe de cette loi (maintenant l'art. 1 de l'annexe II de la *Loi réglementant certaines drogues et autres substances*, L.C. 1996, ch. 19) –, porte atteinte à l'art. 7 de la *Charte canadienne des droits et libertés*?
  2. Si la réponse à la question 1 est affirmative, l'atteinte est-elle justifiée au regard de l'article premier de la *Charte*?
  3. Est-ce que l'interdiction d'avoir en sa possession du Chanvre indien (*Cannabis sativa*) aux fins de consommation personnelle – interdiction prévue au par. 3(1) de la *Loi sur les stupéfiants*, L.R.C. 1985, ch. N-1, du fait de la mention de cette substance à l'art. 3 de l'annexe de cette loi (maintenant l'art. 1 de l'annexe II de la *Loi réglementant certaines drogues et autres substances*, L.C. 1996, ch. 19) –, relève de la compétence législative du Parlement du Canada en tant que règle de droit édictée soit en vertu de l'art. 91 de la *Loi constitutionnelle de 1867* pour assurer la paix, l'ordre et le bon gouvernement du Canada, soit en vertu du pouvoir de légiférer sur le droit criminel prévu au par. 91(27) de la *Loi constitutionnelle de 1867*, soit en vertu d'un autre pouvoir?

22.10.2001

Before / Devant: ARBOUR J.

**Motion to strike out**

Her Majesty the Queen, et al. (F.C.)

Ralph Dick, et al.

v. (27641)

**Requête en radiation****DISMISSED / REJETÉE**

The applicants interveners the Gitanmaax Band, the Kispiox Band, and the Glen Vowell Band are seeking to strike paragraphs 95 and 96 of the factum filed by the respondent intervener the Attorney General of British Columbia.

The respondent intervener, the Attorney-General of British Columbia, points to some foundation in the record for the statements contained in paragraphs 95 and 96 of its factum. In my view, these references are sufficient to permit the paragraphs to stand. There is no basis to allow the applicants to supplement the existing record. The applicants may file an amended factum, within 10 days, to advance the arguments contained in their motion to strike. The motion is dismissed.

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12.10.2001

Before / Devant: THE REGISTRAR

**Taxation of costs****Taxation des dépens**

Charles Tétreault

c. (28339)

La Banque Laurentienne du Canada (Qué.)

Suite au rejet de la demande d'autorisation le 12 juillet 2001, l'intimée a demandé la taxation de son mémoire de frais auquel s'oppose en partie le demandeur. Ayant pris en considération les objections du demandeur et la réponse de l'intimée, je réduis à 100 \$ le montant des honoraires supplémentaires pour la rédaction du mémoire des arguments (Tarif d'honoraires et de débours, Partie I, art. 1c)).

Il est bien établi que les parties ont l'obligation de minimiser les coûts. Il ressort du présent mémoire de frais que les montants réclamés au nom de l'intimée en matière de vacations, débours et signification respectent le tarif et la pratique normale des bureaux d'avocats, et ne sont en aucune façon excessifs.

Il est également bien établi que le seul pouvoir du registraire est de taxer les dépens accordés par la Cour. La situation extrinsèque due à d'autres procédures en cours ne rentre pas en ligne de compte.

Les dépens sont taxés en conséquence.

Following the dismissal of the application for leave on July 12, 2001, the respondent sought taxation of its bill of costs to which the applicant partially objected. Having considered the applicant's objections and the respondent's reply, I reduce the additional fee for preparation of memorandum of argument to \$100 (Tariff of Fees and Disbursements, Part I, item 1(c)).

It is well established that the parties have a duty to minimize their costs. In this bill of costs, the amounts claimed on the respondent's behalf for court attendances, disbursements and service comply with the tariff and normal practice of law firms and are not excessive in any way.

It is also well established that the Registrar's sole power is to tax costs awarded by the Court. The extrinsic situation that results from other pending proceedings is not taken into consideration.

Costs are taxed accordingly.

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**NOTICE OF APPEAL FILED SINCE  
LAST ISSUE**

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

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16.10.2001

**James Chamberlain, et al.**

**v. (28654)**

**The Board of Trustees of School District #36  
(Surrey) (B.C.)**

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5.10.2001

**The Minister of Labour for Ontario**

**v. (28396)**

**Canadian Union of Public Employees and Service  
Employees International Union (Ont.)**

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**PRONOUNCEMENTS OF APPEALS  
RESERVED**

**JUGEMENTS RENDUS SUR LES  
APPELS EN DÉLIBÉRÉ**

**Reasons for judgment are available**

**Les motifs de jugement sont disponibles**

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**September 28, 2001 / le 28 septembre 2001**  
**REVISED October 24, 2001 / REVISÉ le 24 octobre 2001**

**27820**            **SAGAZ INDUSTRIES CANADA INC., SAGAZ INDUSTRIES INC. and JOSEPH KAVANA -**  
**v. - 671122 ONTARIO LIMITED formerly DESIGN DYNAMICS LIMITED** (Ont.)

**CORAM:**            **The Chief Justice and Iacobucci, Major, Bastarache Binnie, Arbour and LeBel JJ.**

The appeal is allowed with costs to the appellants in this Court and in the Court of Appeal. The order of the Court of Appeal is set aside. The order of Cumming J., dated December 23, 1998 is restored.

Le pourvoi est accueilli avec dépens en faveur des appelants en notre Cour et en Cour d'appel. L'ordonnance de la Cour d'appel est annulée. L'ordonnance du juge Cumming datée du 23 décembre 1998 est rétablie.

## DEADLINES: MOTIONS

## DÉLAIS: REQUÊTES

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### 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 : November 5, 2001**

Service : October 12, 2001

Filing : October 19, 2001

Respondent : October 26, 2001

**Motion day : December 3, 2001**

Service : November 9, 2001

Filing : November 16, 2001

Respondent : November 23, 2001

### 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 : 5 novembre 2001**

Signification : 12 octobre 2001

Dépôt : 19 octobre 2001

Intimé : 26 octobre 2001

**Audience du : 3 décembre 2001**

Signification : 9 novembre 2001

Dépôt : 16 novembre 2001

Intimé : 23 novembre 2001

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## DEADLINES: APPEALS

## DÉLAIS: APPELS

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The Winter Session of the Supreme Court of Canada will commence January 14, 2002.

La session d'hiver de la Cour suprême du Canada commencera le 14 janvier 2002.

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 du dépôt 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 du mémoire 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 du mémoire de l'intimé, sauf ordonnance contraire.

**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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SUPREME COURT OF CANADA SCHEDULE  
CALENDRIER DE LA COUR SUPREME

- 2001 -

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

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

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

- 2002 -

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

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

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

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

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	M 13	14	15	16	17	18
19	H 20	21	22	23	24	25
26	27	28	29	30	31	

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

Sittings of the court:  
Séances de la cour:

Motions:  
Requêtes:

Holidays:  
Jours fériés:



18 sitting weeks / semaines séances de la cour

79 sitting days / journées séances de la cour

9 motion and conference days / journées requêtes, conférences

2 holidays during sitting days / jours fériés durant les sessions