

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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

Jean Kendarji

Jean Kendarji

c. (28446)

Commission des lésions professionnelles (Qué.)

Marie-France Bernier

Levasseur Verge

DATE DE PRODUCTION 7.3.2001

**ORC Management Limited (carrying on business
as the Ontario Racquet Club)**

Inga B. Andriessen

Andriessen & Associates

v. (28445)

Infinite Maintenance Systems Ltd. (Ont.)

Martin Banach

Meyer, Wassenaar & Banach

FILING DATE 7.3.2001

Marvin Androschuk, et al.

J. Royal Nickerson

Nickerson Roberts

v. (28447)

Kenneth Bell, et al. (Alta.)

L.W. Olesen, Q.C.

Bryan & Company

FILING DATE 8.3.2001

Sandra Buschau, et al.

John N. Laxton, Q.C.

Laxton & Company

v. (28448)

**Rogers Communications Incorporated (formerly
known as Rogers CableSystems Incorporated), et
al. (B.C.)**

Irwin G. Nathanson, Q.C.

Nathanson, Schachter & Thompson

FILING DATE 9.3.2001

**La Compagnie d'Assurance-Vie Union
Commercial du Canada**

Michel Gendron

Mannella et Associés s.e.n.c.

c. (28449)

Gilbert Blais, et al. (Qué.)

Louise Larivière

Deveau, Lavoie & Associés

DATE DE PRODUCTION 9.3.2001

Doug Collins

Douglas H. Christie

v. (28452)

Harry Abrams, et al. (B.C.)

Thomas Bulmer

FILING DATE 12.3.2001

Karen Pluzak

Lawrence A. Pick

Bennett Best Burn

v. (28442)

Gerling Global Life Insurance Company (Ont.)

D. Gordon Bent

Lafleur Brown

FILING DATE 12.3.2001

Pfizer Canada Inc., et al.

Anthony Creber
Gowling Lafleur Henderson

v. (28453)

c. (28458)

Logistik Unicorp Inc. (Qué.)

Pierre G. Hébert
Dufresne, Hébert, Comeau

Apotex Inc., et al. (F.C.)

Harry Radomski
Goodmans LLP

DATE DE PRODUCTION 16.3.2001

FILING DATE 12.3.2001

Abdelhafidh Ben-Hafsia

Abdelhafidh Ben-Hafsia

v. (28454)

City of Vancouver, et al. (F.C.)

Kathleen S. Duffield
City of Vancouver

FILING DATE 13.3.2001

Her Majesty the Queen

Robert W. Hubbard
A.G. of Ontario

v. (28457)

Minh Khuan Mac (Ont.)

Minh Khuan Mac

FILING DATE 15.3.2001

Julien Losier

Sylvie Champagne
Zaurrini & Associés

c. (28456)

Trust la Laurentienne du Canada Inc. (Qué.)

Serge Brunet
Brunet & Brunet

DATE DE PRODUCTION 15.3.2001

Stéphane Boucher, et al.

Marie Pepin
Sauvé et Roy

MARCH 26, 2001 / LE 26 MARS 2001

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

Richard Bastien

c. (28320)

Sa Majesté la Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Directives au jury - Doute raisonnable - Directives antérieures à l'arrêt *R. c. Lifchus*, [1997] 2 R.C.S. 320 - Les directives au jury sont-elles irrémédiablement entachées par l'utilisation des expressions «certitude morale», «fermement convaincus» et «pas certain» pour expliquer la notion du doute raisonnable? - Cette erreur peut-elle être mise de côté par l'application de l'article 686(1)b)(iii) du *Code criminel*, L.R.C. 1985, c. C-46? - Une directive erronée au sujet du principe fondamental du fardeau de la preuve de la poursuite porte-elle atteinte à l'article 11d) de la *Charte Canadienne des droits et libertés*?

HISTORIQUE PROCÉDURAL

Le 16 septembre 1997
Cour supérieure
(Trottier j.c.s.)

Demandeur trouvé coupable de meurtre au premier degré

Le 13 juin 2000
Cour d'appel du Québec
(Rousseau-Houle, Pidgeon et Thibault jj.c.a.)

Appel rejeté

Le 5 janvier 2001
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Sonya Faye Courterelle

v. (28405)

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

NATURE OF THE CASE

Criminal Law - Second degree murder - Self-defence - Jury directions - Whether the Court of Appeal erred in upholding the trial judge's decision that s. 37 of the *Criminal Code*, R.S.C. 1985, c. C-46 was not a viable route to a self-defence justification for killing in the circumstances of this case

PROCEDURAL HISTORY

January 30, 1999 Supreme Court of British Columbia (Blair J.)	Applicant convicted of second degree murder; sentenced to life imprisonment without parole eligibility for 14 years
January 11, 2001 British Columbia Court of Appeal (Donald, Huddart and Low JJ.A.)	Appeal against conviction dismissed
February 5, 2001 Supreme Court of Canada	Application for leave to appeal filed

Her Majesty the Queen

v. (28337)

Donald Lester Lockyer (Crim.)(Nfld.)

NATURE OF THE CASE

Criminal Law - Sentencing - Manslaughter - Majority of Court of Appeal substitutes fifteen years imprisonment for life imprisonment - Whether life imprisonment was a fit sentence in the circumstances - Whether trial judge treated accused as a dangerous offender.

PROCEDURAL HISTORY

December 9, 1988 Supreme Court of Newfoundland (Lang J.)	Sentence of life imprisonment for manslaughter
November 2, 2000 Court of Appeal of Newfoundland (Roberts, O'Neill and Marshall JJ.A.)	Sentence varied to 15 years
December 28, 2000 Supreme Court of Canada	Application for leave to appeal filed

Solomon Ogheneochu Igor

v. (28399)

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

NATURE OF THE CASE

Criminal Law - Fraud - Proof of fraud - Whether evidence amounts to proof beyond a reasonable doubt - Whether accused's evidence gave rise to reasonable doubt.

PROCEDURAL HISTORY

February 18, 2000
Provincial Court of Saskatchewan
(Bell J.)

Conviction for falsely claiming a theft and attempted
fraud; sentenced to \$5000 fine

November 14, 2000
Court of Appeal of Saskatchewan
(Vancise, Sherstobitoff and Zarzeczny [*ad hoc*] JJ.A.)

Appeal from conviction dismissed

January 26, 2001
Supreme Court of Canada

Application for leave to appeal filed

Thomas Richard Jackson

v. (28141)

The Attorney General of Canada (F.C.)

NATURE OF THE CASE

Statutes - Interpretation - Whether the Federal Court of Appeal erred in determining that pedigreed wheat seed is “grain” for the purposes of the *Canada Grain Act*, S.C. 1970-71-72, c. 7 - Whether the Motions Judge erred in holding that the fact that the appellant’s pedigreed wheat seed had not been graded under the *Canada Grain Act* was of no legal consequence - Does the *Canada Grain Act* require that seed wheat be inspected and graded in order to fall within the jurisdiction of the *Canada Grain Act* - Does the Canadian Wheat Board have a legal obligation to buy, market, and sell pedigreed seed grain, in a fair manner that recognizes its extra intrinsic value.

PROCEDURAL HISTORY

August 21, 1997
Federal Court of Canada, Trial Division
(Rothstein J.)

Application for judicial review dismissed

June 26, 2000
Federal Court of Appeal
(Robertson, McDonald and Sexton JJ.A.)

Appeal dismissed

September 25, 2000
Supreme Court of Canada

Application for leave to appeal filed

British Columbia Institute of Technology

v. (28240)

Student Association of the British Columbia Institute of Technology (B.C.)

NATURE OF THE CASE

Property law - Leases - Arbitration - Appeal to court - Arbitration board ruling that Applicant had lawfully withheld its approval of Respondent's proposed new uses of leased premises - Court of Appeal granting Respondent leave to appeal arbitrator's award under s. 31 of *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55 - Standard for court to apply in deciding whether to review a final and binding award made in a consensual arbitration under domestic commercial arbitration legislation.

PROCEDURAL HISTORY

January 12, 1999 Supreme Court of British Columbia (Parrett J.)	Respondent's petition to set aside arbitration award under s. 30 of <i>Commercial Arbitration Act</i> , R.S.B.C. 1996, c. 55, dismissed; leave to appeal award under s. 31 denied
December 16, 1999 Court of Appeal for British Columbia (Hollinrake, Huddart and Saunders JJ.A.)	Appeal under s. 30 dismissed; appeal under s. 31 adjourned to be heard by a five-justice division
September 20, 2000 Court of Appeal for British Columbia (Hollinrake, Ryan, Huddart, Saunders and Proudfoot JJ.A.)	Appeal allowed; leave to appeal arbitrator's award granted
November 17, 2000 Supreme Court of Canada	Application for leave to appeal filed

Casimir Gadzella

v. (28259)

Hindmarsh Holdings Ltd., Cebb Investments Ltd. and Pleasant Hill Plaza Inc. (Sask.)

NATURE OF THE CASE

Torts - Negligence - Personal injury - Occupier's liability - Applicant suffering injury in slip and fall accident - Whether Respondents are liable for Applicant's injury - Application of term "unusual danger" in the circumstances

PROCEDURAL HISTORY

February 11, 1998 Court of Queen's Bench of Saskatchewan (McLellan J.)	Plaintiff's action dismissed with costs.
September 25, 2000	Appeal dismissed with costs.

Court of Appeal for Saskatchewan
(Cameron, Gerwing, and Lane JJ.A.)

November 24, 2000
Supreme Court of Canada

Application for leave to appeal filed

All Seasons Display Inc. et al., David Rowland, Martin Stewart, Concord Security Corporation, David Reynolds, Western Fibres Ltd., Gage Babcock & Associates Ltd.

v. (28185)

Michael Mylett, Jeri Lynne Cox and Frank Frost, City of Surrey, Orange Julius Canada Limited et al.

AND BETWEEN:

All Seasons Display Inc. et al.

v.

Michael Mylett, Jeri Lynne Cox and Frank Frost, Laing Property Corporation, City of Surrey, Orange Julius Canada Limited et al. (B.C.)

NATURE OF THE CASE

Commercial law - Torts - Negligence - Contract - Privity - Effect of a covenant to insure in a lease - Employees of landlord claiming protection accorded landlord under lease requirement that tenants insure landlord as well - Whether protection extends to landlord's employees working within scope of employment.

PROCEDURAL HISTORY

February 4, 1998
Supreme Court of British Columbia
(Lowry J.)

Application to strike third party proceedings against Respondents Laing Property, Mylett, Cox and Frost allowed

August 11, 2000
Court of Appeal of British Columbia
(Rowles, Finch and Huddart JJ.A.)

First appeal dismissed; second appeal allowed; Respondent City of Surrey's appeal against the Order striking out the third party notice dismissed

October 10, 2000
Supreme Court of Canada

Application for leave to appeal filed

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

Willie Gordon

v. (28314)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal Law - Narcotics - Sentencing - Prisons - Native Law - Did the Court of Appeal of Quebec err in law in denying the Applicant, without motives, leave to appeal the legality of the sentence - Does the sentence respect the Applicant's rights as an Inuk under the *James Bay and Northern Québec Agreement (Agreement)* and its ratifying laws - Under the Agreement and its ratifying laws, under which circumstances should an Inuk be detained, confined or imprisoned - Considering the Applicant's rights recognized by the Agreement and its ratifying laws, does the sentence violate his constitutional rights, namely his right to life, liberty and security as well as his rights against cruel and unusual punishment, as provided by section 7 and 12 of the *Canadian Charter* - Should a conflict between the Agreement and its ratifying laws and the *Criminal Code* be resolved by imposing a conditional sentence as provided by section 742.1 of the *Criminal Code* - Considering previous conditional sentences rendered by the same judge in Kuujuaq for the same offense and considering the Applicant's rights recognized by the Agreement, does the sentence violate the Applicant's constitutional right to equal protection and equal benefit of the law, as provided by section 15 of the *Canadian Charter*.

PROCEDURAL HISTORY

November 17, 2000 Quebec Court (Bédard J.)	Applicant sentenced to a 14 month detention term followed by a two-year probation
November 24, 2000 Court of Appeal of Quebec (Rochette J.A.)	Application for leave to appeal from sentence dismissed
December 14, 2000 Supreme Court of Canada	Application for leave to appeal filed

Her Majesty the Queen

v. (28385)

Jeffrey Fink (Crim.)(Ont.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Unreasonable search and seizure - Solicitor and client privilege - Section 488.1 of *Criminal Code* providing procedure for securing privilege in documents seized from law office - Documents seized from law office - Whether s. 488.1 unconstitutional in that it allows or permits an unreasonable search and seizure contrary to s. 8 of the *Charter*.

PROCEDURAL HISTORY

January 6, 2000
Superior Court of Justice
(Dambrot J.)

Application for order declaring s. 488.1 of *Criminal Code* in breach of ss. 7 and 8 of *Charter* and thus constitutionally invalid dismissed

December 4, 2000
Court of Appeal for Ontario
(Morden, Austin and Goudge JJA.)

Appeal allowed; s. 488.1 of *Criminal Code* declared unconstitutional and of no force and effect

January 15, 2001
Supreme Court of Canada

Application for leave to appeal filed

Her Majesty the Queen

v. (28384)

Terry Claus and Bay-Walsh Ltd. (Crim.)(Ont.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Unreasonable search and seizure - Solicitor and client privilege - Section 488.1 of *Criminal Code* providing procedure for securing privilege in documents seized from law office - Documents seized from law office - Whether s. 488.1 unconstitutional in that it allows or permits an unreasonable search and seizure contrary to s. 8 of the *Charter*.

PROCEDURAL HISTORY

September 24, 1999
Superior Court of Justice
(Kozak J.)

S. 488.1 of *Criminal Code* declared unconstitutional as being inconsistent with ss. 7 and 8 of *Charter* and of no force and effect

December 4, 2000
Court of Appeal for Ontario
(Morden, Austin and Goudge JJA.)

Appeal dismissed

January 15, 2001
Supreme Court of Canada

Application for leave to appeal filed

DANS L'AFFAIRE DE LA FAILLITE DE:

Canouxa Import Export Co. Ltd.

Lorenzo Egido Sr.

c. (28160)

le Sous-ministre du Revenu du Québec

- et -

Le Groupe Serpone Syndic de faillite es-qualité de syndic

et Yvon Monfette es-qualité de séquestre officiel (Qué.)

NATURE DE LA CAUSE

Droit commercial -- Faillite -- Contestation de la régularité de l'assemblée des créanciers et de la validité du vote du Sous-ministre -- Interprétation législative -- Appels de *plano* -- Le demandeur a-t-il un droit d'appel de *plano* contre la décision rendue par la Cour supérieure du Québec, division de faillite ? -- *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, ch. B-3, al. 193 a) et c).

HISTORIQUE PROCÉDURAL

Le 28 avril 2000
Cour supérieure du Québec
(Lévesque j.c.s.)

Requête rejetée

Le 12 juillet 2000
Cour d'appel du Québec
(Chamberland, Nuss, Forget jj.c.a.)

Requête en permission d'appel rejetée;
Requête en rejet d'appel accueillie

Le 28 septembre 2000
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Ville de Montréal

c. (28129)

Syndicat canadien de la fonction publique, section locale 301 (Qué.)

NATURE DE LA CAUSE

Droit administratif -- Révision judiciaire -- Droit du travail -- Syndicat dépose grief pendant grève -- L'arbitre a-t-il compétence pour entendre et disposer du grief entrepris par l'intimé? -- *Code du travail*, L.R.Q. c. C-27, art. 59.

HISTORIQUE PROCÉDURAL

Le 6 mai 1996
Tribunal d'arbitrage
(Dulude, arbitre)

Compétence arbitrale reconnue

Le 7 novembre 1996
Cour supérieure du Québec
(Rochon j.c.s.)

Requête en révision judiciaire accueillie

Le 19 juin 2000
Cour d'appel du Québec
(Fish, Forget et Denis [*ad hoc*] jj.c.a.)

Appel accueilli

Le 18 septembre 2000
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Kailash Chandra Dhawan

v. (28122)

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

NATURE OF THE CASE

Civil Rights - Discrimination on the basis of sex - Sexual harassment - Sections 10 and 10.1 of the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12 - Prescription - Whether the Respondent's action or virtually all of it was prescribed under the Quebec civil law - Whether the events complained of meet the minimum standard of seriousness and the other legal requirements for sexual harassment - What is the effect of the complainant's admitted failure to protest to her alleged harasser?

PROCEDURAL HISTORY

December 14, 1995 Human Rights Tribunal (Brossard J.)	Action allowed; Applicant ordered to pay the Respondent the sum of \$7,000 plus interest
June 26, 2000 Court of Appeal of Québec (Michaud, Beauregard [dissenting], Delisle J.J.A.)	Appeal dismissed with costs
September 14, 2000 Supreme Court of Canada	Application for leave to appeal filed

General Motors du Canada Limitée

c. (28101)

Serge Desrivières (Qué.)

NATURE DE LA CAUSE

Droit administratif -- Contrôle judiciaire -- Interprétation législative -- Prestations d'indemnités de remplacement du revenu -- Les prestations versées par la CSST après la date de consolidation de la lésion professionnelle ont-elles été reçues sans droit ? -- La CSST a-t-elle l'obligation ou le droit d'exiger de l'intimé le remboursement de ces sommes ? -- La Cour d'appel du Québec a-t-elle erré dans son intervention ? -- *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., c. A-3.001

HISTORIQUE PROCÉDURAL

Le 5 avril 1988 Bureau de révision paritaire de la CSST (St-Jean, Bessette et Dion, membres)	Demande de révision rejetée; intimé doit rembourser 474,94\$
Le 16 décembre 1991 Commission d'appel en matière de lésions professionnelles (Godin, Leydet et Lamarre, commissaires)	Appel rejeté

Le 12 janvier 1993
Cour supérieure du Québec
(Marcelin j.c.s.)

Requête en révision judiciaire rejeté

Le 6 juin 2000
Cour d'appel du Québec
(Chamberland, Robert et Thibault jj.c.a.)

Appel accueilli

Le 31 août 2000
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Clément Duguay

c. (28143)

Ordre des ingénieurs du Québec (Qué.)

NATURE DE LA CAUSE

Droit du travail -- Droit des professions -- Infraction quasi-pénale -- Interprétation législative -- S'il reçoit une formation adéquate au Cégep, un technologue professionnel peut-il concevoir des plans de fausses charpentes, tâche réservée à la pratique exclusive des ingénieurs? -- *Code des professions*, L.R.Q. c. C-26, al. 37r) -- *Loi sur les ingénieurs*, L.R.Q. c. I-9, al. 2g) et 5b).

HISTORIQUE PROCÉDURAL

Le 27 février 1998
Cour du Québec, Chambre criminelle et pénale
(Trudel, j.c.q.)

Verdict de culpabilité; demandeur condamné à 3 000\$

Le 14 décembre 1998
Cour supérieure du Québec
(Paul j.c.s)

Appel rejeté

Le 26 juin 2000
Cour d'appel du Québec
(Beauregard, Deschamps et Robert jj.c.a.)

Appel rejeté

Le 25 septembre 2000
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

Wray Budreo

v. (28230)

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

NATURE OF THE CASE

Canadian Charter - Criminal - Section 810.1 of the *Criminal Code* allows for a recognizance or peace bond on persons likely to commit enumerated offences against a child under 14 years of age - Provincial court judge issued an arrest warrant pursuant to s. 810.1(2) - Applicant arrested and released on bail pending hearing to determine if he should enter into a recognizance - Constitutional challenge to substantive and process-issuing provisions of s. 810.1 - Whether State can detain and imprison on the basis of what an individual might do - Constitutional limits of peace bond legislation - Whether s. 810.1 creates a status offence by punishing an accused in the absence of offending conduct contrary to principles of fundamental justice - Whether the arrest and bail provisions of the *Criminal Code* apply to peace bond proceedings - What limits apply to a “reading down” remedy.

PROCEDURAL HISTORY

January 4, 1996
Ontario Court (General Division)
(Then J.)

Section 810.1 of *Criminal Code* held constitutionally valid in part, s. 810.1(2) read down, words in s. 810.1(3) held inoperative

January 19, 2000
Court of Appeal for Ontario
(Finlayson, Laskin and Rosenberg JJ.A.)

Appeal dismissed

November 9, 2000
Supreme Court of Canada

Application for leave to appeal filed

Fashion John, Tushon John and Loshon John (through their Litigation Guardian Carthussha Skyers)

v. (28231)

The Minister of Citizenship and Immigration (Ont.)

NATURE OF THE CASE

Procedural Law - Civil Procedure - Provincial superior court refuses to hear motion for an interim order - Right of children to seek a remedy under the *Charter* and Court’s jurisdiction to provide remedy under *parens patriae* jurisdiction where the State has deported parent from Canada.

PROCEDURAL HISTORY

May 29, 1998
Ontario Court (General Division)
(Dambrot J.)

Refusal to hear application for interim order; Motion dismissed and application stayed

March 22, 2000

Appeal dismissed

Court of Appeal for Ontario
(Finlayson, Abella and O'Connor JJ.A.)

November 2, 2000
Supreme Court of Canada

Applications for time extension and for leave to appeal
filed

Czeslawa Barabasz

v. (28145)

The Municipality of Metropolitan Toronto (Ont.)

NATURE OF THE CASE

Procedural Law - Appeals - Extension of time to file appeal - Applicant sought to appeal an order striking out her statement of claim two and one half years after the order was granted - Whether the Court of Appeal for Ontario exercised its discretion upon appropriate grounds in dismissing the Applicant's motion to extend the time in which to file an appeal - Whether the Ontario Court (General Division) had jurisdiction over the subject matter of the Applicant's claim

PROCEDURAL HISTORY

December 17, 1997
Ontario Court (General Division)
(Hoilett J.)

Respondent's motion for an order striking out the
Applicant's statement of claim granted

July 28, 2000
Court of Appeal for Ontario
(Catzman J.A.)

Applicant's motion for leave to extend time to serve and
file a Notice of Appeal dismissed

September 26, 2000
Court of Appeal for Ontario
(Charron, MacPherson and Sharpe JJ.A.)

Motion to set aside Catzman J.'s decision dismissed

November 7, 2000
Supreme Court of Canada

Application for leave to appeal filed

Maureen Woods

v. (28244)

Patrick Stephen Burden, Antoinette Pauline Fleming and James Alfred Lennox Brown (as Executors and Trustees of the Estate of Margaret Josephine Off), Pauline Olivia Burden and Nancy Foster

- and -

Canada Trust (Ont.)

NATURE OF THE CASE

Property law - Wills - Disposition of lapsed devise - Devise to testator's sister failing because she predeceased testator's widow - Whether devise included in residue pursuant to s. 27 of *Wills Act*, R.S.O. 1960, c. 433.

PROCEDURAL HISTORY

November 24, 1999
Superior Court of Justice
(Haley J.)

Court ordering that the disputed property passed to those entitled on the intestacy of the Testator and that the Estate of Doris Foster is entitled to a 2/3 share of the property

September 12, 2000
Court of Appeal for Ontario
(Catzman, Abella and Rosenberg JJ.A.)

Appeal allowed; judgment of Haley J. varied; court ordering that the property passed to the Estate of Margaret Josephine Off

November 10, 2000
Supreme Court of Canada

Application for leave to appeal filed

Petre Carabat by his Litigation Guardian Virginia Carabat and Virginia Carabat

v. (28260)

City of North York (Ont.)

NATURE OF THE CASE

Torts - Negligence - Damages - Claim for psychiatric and chronic pain injuries disallowed - Whether Court of Appeal erred in dismissing appeal

PROCEDURAL HISTORY

March 27, 1998
Ontario Court of Justice (General Division)
(Dyson J.)

Applicants awarded general damages for physical injury; Claim for psychological, psychiatric or chronic pain disallowed

September 22, 2000
Court of Appeal for Ontario
(Finlayson, Doherty, Borins JJ.A.)

Appeal dismissed.

November 21, 2000
Supreme Court of Canada

Application for leave to appeal filed

Bell ExpressVu Limited Partnership

v. (28227)

Richard Rex, Richard Rex, c.o.b. as 'Can-Am Satellites', Richard Rex c.o.b. as 'Can Am Satellites' and c.o.b. as 'CANAM Satellites' and c.o.b. as 'Can Am Satellite' and c.o.b. as 'Can Am Sat' and c.o.b. as 'Can-Am Satellites Digital Media Group' and, c.o.b. as 'Can-Am Digital Media Group' and c.o.b. as 'Digital Media Group, Anne Marie Halley a.k.a. Anne Marie Rex, Michael Rex a.k.a. Mike Rex, Rodney Kibler a.k.a. Rod Kibler, Lee-Anne Patterson, Jay Raymond, Jason Anthony, John Doe 1 to 20,, Jane Doe 1 to 20 and any other person or persons found on the premises or identified as working at the premises at 22409 McIntosh Avenue, Maple Ridge, British Columbia, who operate or work for businesses carrying on business under the name and style of, 'Can-Am Satellites', 'Can Am Satellites', 'CanAm Satellites', 'Can Am Satellite', 'Can Am Sat', 'Can-Am Satellites Digital Media Group', 'Can-Am Digital Media Group', 'Digital Media Group', or one or more of them and Michelle Lee (B.C.)

NATURE OF THE CASE

Statutes - Interpretation - Broadcasting - Direct to home (DTH) satellite broadcasting - Canadian customers being provided with a U.S. address, and with other services, so that the customer can subscribe to and pay for programming which originates from the U.S. DTH broadcasters - Radiocommunication Act providing that prohibiting decoding of encrypted subscription programming signal without authorization from the lawful distributor of the signal - Authorized Canadian DTH broadcasters seeking injunction.

PROCEDURAL HISTORY

December 10, 1999 Supreme Court of British Columbia (Brenner J.)	Application for injunction dismissed.
September 7, 2000 Court of Appeal of British Columbia (Southin, Finch, Huddart [dissenting] JJ.A.)	Appeal dismissed
November 6, 2000 Supreme Court of Canada	Application for leave to appeal filed

Jila Mott

v. (28241)

Joy Pryce, Allan Pryce and Edie Bindseil (Ont.)

NATURE OF THE CASE

Torts - Negligence causing loss of investment - Piercing the corporate veil - Applicant held to be in fiduciary relationship with investors suffering a loss of investment - She and her corporation held jointly liable for loss in negligence - Allocation of responsibility for tortious conduct.

PROCEDURAL HISTORY

January 7, 1999 Superior Court of Justice (Lederman J.)	Respondents awarded damages for loss of investment
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September 13, 2000 Court of Appeal for Ontario (Finlayson, Carthy and Simmons JJ.A.)	Appeal dismissed
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November 10, 2000 Supreme Court of Canada	Application for leave to appeal filed
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**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

MARCH 29, 2001 / LE 29 MARS 2001

28284 **DANA MICHAEL FASH - v. - HER MAJESTY THE QUEEN** (Alta.) (Criminal)

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

Canadian Charter - Criminal - Criminal Law - Evidence - Admissibility of DNA evidence linking applicant to sexual assaults - Cigarette butts seized during police interview - Boxer shorts seized during search of bedroom - Blood sample compelled under warrant based on information derived from boxer shorts - DNA analyses of cigarette butts, boxer shorts and blood entered as evidence incriminating applicant - Cigarette butts taken during staged interview - Expectation of privacy from state intrusion into lockable bedroom - Validity of warrant based on items seized during state intrusion into lockable bedroom - Whether evidence improperly obtained - DNA analyst testifies at preliminary inquiry but not available at trial - Admissibility of testimony given at preliminary inquiry and analyst's reports.

PROCEDURAL HISTORY

January 27, 1997

Court of Queen's Bench of Alberta
(Nash J.)

Convictions: two counts sexual assault, break and enter, using or threatening to use weapon in committing indictable offence, having face masked with intent to commit indictable offence, attempted robbery. Global sentence: 12 years, parole eligibility after one-half served, life-time weapons ban.

September 30, 1999

Court of Appeal of Alberta
(Hetherington, Berger, and Smith JJ.A)

Appeal from convictions dismissed

November 10, 2000

Supreme Court of Canada

Application for leave to appeal filed

December 19, 2000

Supreme Court of Canada
(LeBel J.)

Motion for extension of time granted

28147 **MICHEL BACON - c. - SA MAJESTÉ LA REINE** (Qué.) (Criminelle)

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

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

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

NATURE DE LA CAUSE

Droit criminel - Jury - Preuve - Défense - Directives au jury - La Cour d'appel a-t-elle commis une erreur de droit en décidant que les directives du juge au jury eu égard à la notion d'intention étaient correctes, et plus spécifiquement en ce que: Le juge du procès n'a pas accompagné ses directives à l'effet qu'il existe une présomption qu'une personne saine d'esprit veut les conséquences naturelles de ses gestes de directives à l'effet que l'intoxication ou d'autres éléments de preuve pouvaient réfuter cette présomption; le juge du procès a instruit le jury sur l'intoxication uniquement en faisant référence à plusieurs reprises à la capacité de former l'intention; Le juge du procès a refusé d'instruire le jury qu'il pouvait tenir compte de la nature des blessures dans l'évaluation de l'intention, alors qu'il s'agissait de la thèse de la défense; Le juge du procès n'a pas ouvert la défense de provocation alors qu'il y avait quelque preuve sur chacun des éléments nécessaires; et ce dernier n'a pas instruit le jury qu'il pouvait tenir compte dans l'évaluation de l'intention du fait que la victime s'était introduite illégalement chez le demandeur - La Cour d'appel a-t-elle commis une erreur de droit en jugeant que le jury avait en mains la directive appropriée pour étudier la défense de légitime défense, et plus spécifiquement en ce que: Le juge de première instance a instruit le jury que l'utilisation d'une force excessive privait le demandeur du bénéfice de la légitime défense et a instruit le jury que le paragraphe 34(2) du *Code criminel* ne s'appliquait pas si le demandeur n'avait pas l'intention de tuer la victime ou de lui causer des lésions corporelles graves.

HISTORIQUE PROCÉDURAL

Le 17 décembre 1994
Cour supérieure du Québec
(Guérin j.c.s.)

Verdict de culpabilité pour meurtre au deuxième degré
rendu

Le 8 janvier 1999
Cour d'appel du Québec
(Gendreau, Baudouin et Chamberland jj.c.a.)

Appel rejeté

Le 27 septembre 2000
Cour suprême du Canada

Demande d'autorisation d'appel déposée

28157

GEORGE E. HUOVINEN, JOHN STEFIUK, FREDERICK EDWARD CARTER, TODD RICHARD STRUKOFF, LAWRENCE J. SALMI, LAWRENCE RUSSEL SHEARER, EDGAR ALFRED BIRCH, CHRIS STAMATIOU, WILLIAM ANDERSON, AUGUSTUS THOMAS JACOBSON, LEONARD SAMUEL HARRY SONNENBERG, TROY LESLIE STRUKOFF, PASQUALE MARRA, JOHN REGIONALD MURRAY, MICHAEL J. NORUM, EDWIN NORUM, LAWRIE RONNESETH, IRENE DONNA CURTIS, FRANK CORAY, DONALD BICKNELL, DARRELL FORSEYTH, DONALD MICHAEL CARTER AND FRANCES CAROLINE CARTER, PHIL EIDSVIK, MIKE HAFFENDEN AND MERVIN TUDOR - v. - HER MAJESTY THE QUEEN (B.C.) (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

Constitutional law - Aboriginal Rights - Fisheries - Aboriginal communal fishing licences - Minister having closed river to salmon fishing - Minister granting Aboriginal Communal Fishing Licences permitting certain aboriginal bands to fish

for sale during closed period - Non-aboriginal fishers engaging in fishery in protest - Whether it is within the Minister's discretion to issue licences pursuant to the *ACFLR* permitting sale, where sale by members of the aboriginal group in question is not a s. 35(1) communal right but is an incident of the common law right of access to the public fishery which aboriginal persons share with all Canadians - Whether, if the issuing of *ACFLR* licences in such circumstances is *ultra vires* the *ACFLR* insofar as such licences purport to authorize sale, it is an abuse of process of the Court for the Crown to exempt from enforcement action all those who fish for sale pursuant to such licences while pursuing enforcement action against those similarly situated who do not hold such licences

PROCEDURAL HISTORY

August 6, 1998 Provincial Court of British Columbia (Thomas J.)	Stay of proceedings ordered prior to plea on charges of fishing during closed period
September 23, 1999 Supreme Court of British Columbia (Curtis J.)	Appeal allowed
July 6, 2000 Court of Appeal of British Columbia (Prowse, Finch and Huddart JJ.A.)	Appeal dismissed
September 28, 2000 Supreme Court of Canada	Application for leave to appeal filed

28195 **ABDUL MOZID CHOWDHURY - c. - SA MAJESTÉ LA REINE** (Qué.) (Criminelle)

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

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

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

NATURE DE LA CAUSE

Droit criminel - Preuve - Ouï-dire - Admissibilité de la preuve par ouï-dire en vertu de l'approche fondée sur les principes - Critères de nécessité et de fiabilité - Une déclaration extrajudiciaire par un tiers peut-elle être admise en preuve, au procès, malgré la disponibilité du déclarant au moment de l'enquête préliminaire - Les décisions des tribunaux de juridiction inférieure violent-elles le droit stricte au contre-interrogatoire, le droit à une défense pleine et entière et la présomption d'innocence - Les décisions des tribunaux de juridiction inférieure ont-elles écarté le forum contradictoire de notre droit criminel en y substituant un forum de droit inquisitoire qui consiste à condamner sur présentation d'une preuve documentaire?

HISTORIQUE PROCÉDURAL

Le 26 juin 1997 Cour du Québec (Chambre criminelle et pénale) (Melançon j.c.q.)	Demandeur déclaré coupable d'une infraction à l'article 94.1a) de la <i>Loi sur l'immigration</i> , L.R.C. 1985, ch. I-2
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Le 15 mars 2000
Cour d'appel du Québec
(Chamberland, Robert et Thibault jj.c.a.)

Appel rejeté

Le 12 octobre 2000
Cour suprême du Canada

Demande d'autorisation d'appel et requête en
prorogation de délai déposées

28072 **PIERRE MAILLOUX - c. - REVENU CANADA** (CF) (Civile)

CORAM: Le Juge en chef et les juges Iacobucci 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 fiscal - Cotisation - La Cour d'appel fédérale a-t-elle erré dans son interprétation de l'article 37 de la *Loi de l'Impôt sur le Revenu du Canada*, en concluant que le prototype expérimental, ou usine pilote, du demandeur était un bâtiment, par conséquent exclus par le sous-paragraphe 37 (7) (f) (i), et qu'il ne pouvait bénéficier des mesures fiscales incitatives relatives à la recherche scientifique et au développement expérimental, comprenant aussi la dépense de nature capitale.

HISTORIQUE PROCÉDURAL

Le 6 octobre 1998
Cour canadienne de l'impôt
(Archambault j.c.c.i.)

Appels de demandeur admis; cotisations déferées au
ministre pour nouvel examen et nouvelles cotisations

Le 17 mai 2000
Cour d'appel fédérale
(Décary, Létourneau et Noël jj.c.a.)

Appel rejeté

Le 16 août 2000
Cour suprême du Canada

Demande d'autorisation d'appel déposée

28161 **CITY OF CALGARY - v. - MARGARET NICE** (Alta.) (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

Torts - Negligence - Burden of proof - Passenger falling when a city bus stopped suddenly - Sustaining serious damages - Where a passenger is injured in the course of public transport, is there a burden on the public carrier to show by affirmative evidence that the accident occurred without negligence? - Did the Court of Appeal err in holding that *Day v. Toronto*

Transportation Commission, [1940] S.C.R. 433 is good law on the issue of burden of proof notwithstanding the decision in *Snell v. Farrell*, [1990] 2 S.C.R. 311?

PROCEDURAL HISTORY

October 22, 1997 Court of Queen's Bench of Alberta (Kenny J.)	Action against the Applicant for injuries that resulted from a sudden stop while riding a city bus dismissed.
August 2, 2000 Court of Appeal of Alberta (Hetherington, Conrad and Sulatycky JJ.A.)	Appeal allowed
September 29, 2000 Supreme Court of Canada	Application for leave to appeal filed

28172 **FLETCHER CHALLENGE CANADA LIMITED - v. - HER MAJESTY THE QUEEN** (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

Taxation - Income tax - Assessment - Timber resource properties - Replacement licences received by Applicant on renewal of original timber licences constituting "timber resource properties" under para. 13(21)(d.1) of the *Income Tax Act*, R.S.C. 1952, c. 148 (am. S.C. 1970-71-72, c. 63) - Undepreciated capital cost of replacement licences being cost to Applicant of original licences - Whether trial judge erred in determining tax consequences on exchange of replacement licences.

PROCEDURAL HISTORY

September 29, 1997 Tax Court of Canada (Sobier J.T.C.C.)	Appeal from the assessment for the 1988 taxation year allowed; matter referred back to the Minister of National Revenue for reconsideration and reassessment
July 5, 2000 Federal Court of Appeal (Desjardins, Létourneau and McDonald JJ.A.)	Appeal dismissed with costs
September 29, 2000 Supreme Court of Canada	Application for leave to appeal filed

28069 **ITT INDUSTRIES OF CANADA LTD. - v. - HER MAJESTY THE QUEEN** (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

Taxation - Income tax - Assessment - Statutes - Interpretation - Timber resource properties - Whether tree farm licence sold by Applicant in 1980 was a "timber resource property" - Whether Federal Court of Appeal was correct in its interpretation of para. 13(21)(d.1) of the *Income Tax Act*, R.S.C. 1952, c. 148 (am. S.C. 1970-71-72, c. 63), as amended by S.C. 1974-75-76, c. 26, s. 6(7).

PROCEDURAL HISTORY

February 1, 1999 Federal Court of Canada, Trial Division (Simpson J.)	Applicant's action dismissed with costs
July 20, 2000 Federal Court of Appeal (Létourneau, Evans and Sharlow JJ.A.)	Appeal dismissed with costs
September 28, 2000 Supreme Court of Canada	Application for leave to appeal filed

28016 **FRANCO CIGANA - v. - RÉGENT MILLETTE, MIREILLE SAULNIER AND ERIC SAULNIER MILLETTE** (Que.) (Civil)

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

The applications for leave to appeal are dismissed with costs.

Les demandes d'autorisation d'appel sont rejetées avec dépens.

NATURE DE LA CAUSE

Procédure civile - Droit commercial - Cautionnement - L'ordonnance de cautionnement fixée à 25 000 \$ par le juge Robert est-elle justifiée? - Le juge Fish était-il fondé en droit en rejetant la requête du demandeur pour obtenir un sursis d'exécution alors que la demande d'autorisation d'appel contre l'ordonnance du juge Robert était pendante devant la Cour suprême du Canada, et en rejetant par le fait même l'appel du demandeur en raison du défaut d'avoir fourni le cautionnement exigé? - Article 497 du *Code de procédure civile du Québec*

HISTORIQUE PROCÉDURAL

Le 20 mai 1998 Cour supérieure du Québec (Bélanger j.c.s.)	Requêtes des intimés accueillie; demandeur condamné à payer 979 937,29\$ plus intérêts aux intimés pour l'ensemble des seize réclamations (dossiers A à P)
Le 16 septembre 1998 Cour d'appel du Québec (Mailhot j.c.a.)	Requête de l'intimé (R. Millette) pour cautionnement accueillie en partie; demandeur condamné à verser cautionnement de 7 000\$ (dossiers A, F, G, J, K, L, M, N)
Le 16 septembre 1998	Cour d'appel du Québec

(Mailhot j.c.a.)	Requête de l'intimé (R. Millette) pour cautionnement accueillie en partie; 2682-2678 Québec Inc. condamnée à verser cautionnement de 10 000\$ (dossiers B et E)
Le 15 décembre 1998 Cour d'appel du Québec (Brossard, Chamberland et Forget jj.c.a.)	Requête de l'intimé (R. Millette) en rejet de l'appel du demandeur rejetée
Le 20 juin 2000 Cour d'appel du Québec (Michel j.c.a.)	Requête de l'intimé pour cautionnement accueillie; demandeur condamné à verser cautionnement de 25 000 \$ (dossiers O et P)
Le 2 août 2000 Cour d'appel du Québec (Fish j.c.a.)	Requête du demandeur en reprise d'instance en cautionnement (Millette) rejetée (dossier D)
Le 2 août 2000 Cour d'appel du Québec (Fish j.c.a.)	Appel et sursis du demandeur (Cigana) rejetés avec dépens (dossiers O et P)
Le 18 juillet octobre 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée (première demande, relative au jugement du 20 juin 2000, dossiers O et P)
Le 2 octobre 2000 Cour suprême du Canada	Demande d'autorisation d'appel déposée (deuxième demande, relative au jugement du 2 août 2000 - dossiers O et P)

28186 **JAVIER CASTINEIRA - v. - HER MAJESTY THE QUEEN** (Que.) (Criminal)

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

The application for leave to appeal is dismissed without costs.

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

NATURE OF THE CASE

Criminal law - Sentencing - Summary conviction - Period of imprisonment in default of payment of fine - Standard of appellate review in sentencing - Whether the Quebec Court of Appeal erred in refusing to grant the Applicant permission for leave to appeal his sentence as the period of imprisonment in default of payment of a fine or a victim surcharge, for summary conviction offences even those involving a minimum fine, is governed by subsections 734(4) and (5) and not 787(2) of the *Criminal Code* - Whether the Court of Appeal erred in refusing to grant the Applicant permission for leave to appeal the sentence as the learned sentencing judge did not respect the provisions of section 726.2 of the *Criminal Code*.

PROCEDURAL HISTORY

November 25, 1999
Municipal Court of Montreal-North

(Lamontagne J.M.C.)

Applicant fined \$900.00 in response to his plea of guilty of violating s.253(b) of the *Criminal Code*; Applicant ordered to pay victim surcharge of \$140.00

May 18, 2000
Superior Court of Quebec
(Marcelin J.)

Appeal from sentence allowed in part; victim surcharge reduced to \$135.00

August 16, 2000
Court of Appeal of Québec
(Baudouin, Deschamps and Robert JJ.A.)

Application for leave to appeal sentence dismissed

October 6, 2000
Supreme Court of Canada

Application for leave to appeal filed

27970 **LES ENTREPRISES AB RIMOUSKI INC. ET ALDÈGE BANVILLE - c. - SA MAJESTÉ LA REINE** (CF) (Civile)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit commercial – Contrats – Défaut d'exécution de travaux de démolition prévus au contrat – *Code civil du Bas-Canada*, art. 1065 et 2260 – Créance sur Sa Majesté – *Loi sur la responsabilité civile de l'État et le contentieux administratif*, L.R.C., c. C-50, art. 66 à 69 – Action en recouvrement du solde dû au contrat – Prescription de l'action en recouvrement – *Loi sur la Cour fédérale*, L.R.C., c. F-7 art. 39 – La Cour d'appel fédérale a-t-elle omis de considérer la preuve des demandeurs?

HISTORIQUE PROCÉDURAL

Le 11 octobre 1996
Cour fédérale, Section de première instance
(Denault, j.c.f.c.)

Action des demandeurs pour bris de contrat rejetée

Le 18 avril 2000
Cour d'appel fédérale
(Noël, Létourneau et Décary, jj.c.a.)

Appel rejeté

Le 14 juin 2000
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27954 **BENOÎT GUINDON - c. - LORTIE ET MARTIN LIMITÉE** (Qué.) (Civile)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit commercial - Faillite - Pouvoirs du syndic en faillite - Effet du défaut d'enregistrement d'ordonnance de cession - Les tribunaux inférieurs ont-ils erré dans leur interprétation de la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, c. B-3, en concluant qu'elle accordait le pouvoir à un syndic de vendre ou autrement aliéner un immeuble situé dans la province de Québec et dans lequel un failli détient des droits indivis sans que le syndic n'enregistre une ordonnance de cession au bureau de la publicité des droits, sans que le transfert du droit de propriété du failli soit publicisé, et sans autorisation judiciaire ? - *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, c. B-3, art. 74(1), 74(2), 75, 86(1)

Droit des biens - Hypothèques - Capacité de consentir à cautionnement hypothécaire sans autorisation d'un indivisaire - Application de *Cossette c. Germain*, [1982] 1 S.C.R. 751 - Le vice de titre apparent au bureau de la publicité des droits et entachant l'acte de cautionnement hypothécaire rend-il ce dernier nul d'une nullité absolue ?

HISTORIQUE PROCÉDURAL

Le 2 avril 1996
Cour supérieure du Québec
(M^e Gill (greffier spécial))

Requête en délaissement et prise en paiement d'un
immeuble accueillie

Le 7 novembre 1996
Cour supérieure du Québec
(Durand j.c.s.)

Requête en rétraction de jugement rejetée

Le 6 avril 2000
Cour d'appel du Québec
(Proulx, Chamberland et Nuss jj.c.a.)

Pourvoi rejeté

Le 5 juin 2000
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27735 **IVAN VANEK, GEORGINA VANEK AND EVA VANEK, A MINOR BY HER LITIGATION
GUARDIAN, GEORGINA VANEK - v. - THE GREAT ATLANTIC & PACIFIC COMPANY
OF CANADA LIMITED, BEATRICE FOODS INC., FAIRLEE FRUIT JUICE LTD.** (Ont.)
(Civil)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The motion for reconsideration is dismissed.

La demande de réexamen est rejetée.

14.3.2001 Revised 22.3.2001

Before / Devant: BASTARACHE J.

Motion to adduce new evidence and motion to strike out

Requête visant à produire de nouveaux éléments de preuve et requête en radiation

Frédéric St-Jean

c. (27515)

Denis Mercier (Qué.)

GRANTED IN PART / ACCORDÉE EN PARTIE

La dernière phrase du paragraphe 112 du mémoire de l'intimé, le paragraphe 126 du mémoire de l'intimé et la page 1 du dossier de l'intimé sont radiés.

Le paragraphe 176 du mémoire de l'appelant, ainsi que l'onglet 28 de son livre d'autorités sont radiés.

Les parties auront jusqu'au 30 mars 2001, pour produire les mémoires et le livre d'autorités de l'appelant amendés.

20.3.2001

Before / Devant: BINNIE J.

Motions for extension of time and leave to intervene

Requêtes visant à obtenir une prorogation de délai et l'autorisation d'intervenir

BY/PAR: Aboriginal Legal Services of Toronto Inc.
African Canadian Legal Clinic and the Minority Advocacy and Rights Council

IN/DANS: Clément Mukoko Mbaka Mankwe

c. (27791)

Sa Majesté la Reine (Qué.)

GRANTED / ACCORDÉE

UPON APPLICATION by the Aboriginal Legal Services of Toronto Inc. and the African Canadian Legal Clinic and the Minority Advocacy and Rights Council, for extensions of time and for leave to intervene in the above appeal;

AND HAVING READ the material filed ;

IT IS HEREBY ORDERED THAT:

1. The motion for an extension of time and for leave to intervene of the applicant Aboriginal Legal Services of Toronto Inc., is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.
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2. The motion for an extension of time and for leave to intervene of the applicants African Canadian Legal Clinic and the Minority Advocacy and Rights Council is granted and the applicants shall be entitled to serve and file a joint 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 interveners shall not be entitled to adduce further evidence or otherwise to supplement the record of the parties.

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

À LA SUITE D'UNE DEMANDE de l'Aboriginal Legal Services of Toronto et de l'African Canadian Legal Clinic et Minority Advocacy and Rights Council visant à obtenir une prorogation de délai et l'autorisation d'intervenir dans l'appel susmentionné;

ET APRÈS AVOIR LU la documentation déposée;

L'ORDONNANCE SUIVANTE EST RENDUE;

1. La demande de prorogation de délai et d'autorisation d'intervenir présentée par l'Aboriginal Legal Services of Toronto est accueillie; la requérante aura le droit de signifier et déposer un mémoire de 20 pages tout au plus.
2. La demande de prorogation de délai et d'autorisation d'intervenir présentée par l'African Canadian Legal Clinic et Minority Advocacy and Rights Council est accueillie; les requérants auront le droit de signifier et déposer un mémoire conjoint de 20 pages tout au plus.

La demande visant à présenter une plaidoirie sera examinée après la réception et l'examen de l'argumentation écrite des parties et des intervenants.

Les intervenants n'auront pas le droit de produire d'autres éléments de preuve ni d'ajouter quoi que ce soit au dossier des parties.

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

20.3.2001

Before / Devant: BINNIE J.

Motions for leave to intervene

Requêtes en autorisation d'intervention

BY/PAR: Attorney General for Ontario
Ontario Securities Commission

IN/DANS: John Edwards, et al.

v. (28108)

The Law Society of Upper Canada
(Ont.)

GRANTED / ACCORDÉE

UPON APPLICATION by the Attorney General of Ontario and the Ontario Securities Commission 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 Attorney General of Ontario is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

The motion for leave to intervene of the applicant Ontario Securities Commission 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 interveners shall not be entitled to adduce further evidence or otherwise to supplement the record of the parties.

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

21.3.2001

Before / Devant: BINNIE J.

Miscellaneous motion

Autre requête

Sing Chi Stephen Chiau

v. (28418)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the respondent for an order permitting the respondent to file a Secret Record, sealing the respondent's Secret Record; and that the Secret Record not be disclosed to any person except members of the Court and Court staff;

AND HAVING READ the material filed ;

IT IS HEREBY ORDERED THAT:

- a) the respondent is granted leave to file the Secret Record of the respondent containing the secret evidence filed in the Federal Court - Trial Division and the Federal Court of Appeal pursuant to subsection 82.1 (10) of the *Immigration Act*, which gave rise to this leave to appeal application; and
- b) the Secret Record of the respondent be sealed without disclosing it to the applicant on the ground that the information contained therein should not be disclosed to the applicant or his counsel because the disclosure of the information contained therein would be injurious to the national security and to the safety of persons; and
- c) access to the Secret Record be limited to the judges of this Court and members of the Court staff.

22.3.2001

Before / Devant: BINNIE J.

Motions for leave to intervene

Requêtes en autorisation d'intervention

BY/PAR: Attorney General of British Columbia

Gitanmaax Band, Glen Vowell Band
and Kispiox Band

IN/DANS: Ralph Dick, et al.

v. (27641)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the Attorney General of British Columbia and the Gitanmaax Band, the Glen Vowell Band and the Kispiox Band for extensions of time and for leave to intervene in the above appeal;

AND HAVING READ the material filed ;

IT IS HEREBY ORDERED THAT:

1. The motion for leave to intervene of the applicant Attorney General of British Columbia is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

2. The motion for an extension of time and for leave to intervene of the applicants Gitanmaax Band, the Glen Vowell Band and the Kispiox Band is granted and the applicants shall be entitled to serve and file a joint 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 interveners are to be limited to the legal issues raised by the parties or that otherwise arise out of the specific subject matter of this appeal.

The request by some of the parties to file a reply factum to the factum of the Attorney General of British Columbia is dismissed without prejudice to the renewal of such application after the said intervener's factum has been filed.

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

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

23.3.2001

Before: / Devant: THE CHIEF JUSTICE

Motion for an order to expedite the hearing of the appeal

Requête visant à accélérer l'audition de l'appel

Atomic Energy of Canada Limited

v. (28020)

Sierra Club of Canada, et al. (F.C.)

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

UPON APPLICATION by the respondent Sierra Club of Canada for an order to expedite the hearing of this appeal;

HAVING CONSIDERED the materials on the motion to expedite the hearing of this matter, and having reviewed the Court's jurisprudence on the issue, I am not satisfied that the applicant has established the right to an expedited hearing;

IT IS ORDERED THAT:

The motion is accordingly dismissed with costs.

23.3.2001

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

Ivon Shearing

v. (27782)

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

GRANTED / ACCORDÉE Time to serve and file the appellant's factum extended to January 15, 2001.
Time to serve and file the appellant's book of authorities extended to January 16, 2001.

23.3.2001

Before / Devant: THE REGISTRAR

Motions to extend the time in which to serve and file the factum and book of authorities of the interveners Attorney General for Alberta, Attorney General of British Columbia, Attorney General for Ontario and Attorney General of Manitoba

Requêtes en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de jurisprudence et de doctrine des intervenants le Procureur général de l'Alberta, le Procureur général de la Colombie-Britannique, le Procureur général de l'Ontario et le Procureur général du Manitoba

Her Majesty the Queen in Right of the Province of New Brunswick as represented by The Minister of Finance, et al.

v. (27722)

Ian P. Mackin, et al. (N.B.)

GRANTED / ACCORDÉE Time extended to April 20, 2001.

23.3.2001

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'appelante

Her Majesty the Queen

v. (27843)

Ajmer Braich, et al. (Crim.)(B.C.)

GRANTED / ACCORDÉE Time to serve and file the appellant's factum extended to January 15, 2001.
Time to serve and file the appellant's book of authorities extended to January 16, 2001.

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

21.3.2001

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

**The General Manager, Liquor Control and Licensing
Branch**

v. (27371)

Ocean Port Hotel Limited (B.C.)(Civil)(By Leave)

George H. Copley, Q.C. and Neena Sharma for the appellant.

Donald J. Rennie and Anne M. Turley for the intervener Attorney General of Canada.

Dennis W. Brown, Q.C. and Lucy McSweeney for the intervener Attorney General for Ontario.

Shawn Greenberg and Rodney G. Garson for the intervener Attorney General of Manitoba.

Timothy Hurlburt and Sean McDonough for the intervener Attorney General for Alberta.

Howard Rubin and Peter L. Rubin for the respondent.

ALLOWED, REASONS TO FOLLOW / ACCUEILLI, MOTIFS À SUIVRE

THE CHIEF JUSTICE (orally):

The Court is prepared to give judgment in this matter. The appeal is allowed, the judgment of the British Columbia Court of Appeal is set aside and the matter is remitted to the British Columbia Court of Appeal to decide the issues which it did not deal with. Reasons will follow.

Nature of the case:

Administrative law - Administrative tribunals - Liquor Appeal Board - Institutional independence - Liquor Appeal Board suspending hotel's licence for two days - Whether the Court of Appeal does not have authority to over-rule legislative intent without a constitutional challenge - Whether, even if the Court of Appeal has authority to assess the appointment of Board members, the principles of judicial independence do not apply to the Board - Whether the Court of Appeal had jurisdiction to set aside the decision of the Senior Inspector.

[TRANSDUCTION] LE JUGE EN CHEF (oralement):

La Cour est prête à rendre jugement dans la présente affaire. Le pourvoi est accueilli, l'arrêt de la Cour d'appel de la Colombie-Britannique est annulé et l'affaire est renvoyée à cette dernière pour qu'elle statue sur les questions qu'elle n'a pas examinées. Motifs à suivre.

Nature de la cause:

Droit administratif - Tribunaux administratifs - *Liquor Appeal Board* - Indépendance institutionnelle - La *Liquor Appeal Board* a suspendu le permis de l'hôtel pendant deux jours - La Cour d'appel a-t-elle compétence pour outrepasser l'intention du législateur en l'absence d'une contestation constitutionnelle? - Même si la Cour d'appel est habilitée à se pencher sur la nomination des commissaires, les principes de l'indépendance judiciaire s'appliquent-ils à l'égard de la commission? - La Cour d'appel a-t-elle compétence pour annuler la décision de l'inspecteur principal?

DEADLINES: MOTIONS**DÉLAIS: REQUÊTES****BEFORE THE COURT:**

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

Motion day : **April 17, 2001**
Service : March 27, 2001
Filing : March 30, 2001
Respondent : April 9, 2001

Motion day : **May 14, 2001**
Service : April 23, 2001
Filing : April 27, 2001
Respondent : May 4, 2001

Motion day : **June 11, 2001**
Service : May 18, 2001
Filing : May 25, 2001
Respondent : June 1, 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 : **17 avril 2001**
Signification : 27 mars 2001
Dépôt : 30 mars 2001
Intimé : 9 avril 2001

Audience du : **14 mai 2001**
Signification : 23 avril 2001
Dépôt : 27 avril 2001
Intimé : 4 mai 2001

Audience du : **11 juin 2001**
Signification : 18 mai 2001
Dépôt : 25 mai 2001
Intimé : 1 juin 2001

DEADLINES: APPEALS

DÉLAIS: APPELS

The Spring Session of the Supreme Court of Canada will commence April 17, 2001.

La session du printemps de la Cour suprême du Canada commencera le 17 avril 2001.

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.

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

Judgments reported in [2000] 2 S.C.R. Part 5

Free World Trust v. Électro Santé Inc., [2000] 2 S.C.R. 1024, 2000 SCC 66

Martel Building Ltd. v. Canada, [2000] 2 S.C.R. 860, 2000 SCC 60

Pacific National Investments Ltd. v. Victoria (City), [2000] 2 S.C.R. 919, 2000 SCC 64

R. v. Araujo, [2000] 2 S.C.R. 992, 2000 SCC 65

R. v. Khan, [2000] 2 S.C.R. 915, 2000 SCC 63

R. v. N.M.P., [2000] 2 S.C.R. 857, 2000 SCC 59

R. v. Simard, [2000] 2 S.C.R. 911, 2000 SCC 61

Syndicat de l'enseignement du Grand-Portage v. Morency, [2000] 2 S.C.R. 913, 2000 SCC 62

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

Jugements publiés dans [2000] 2 R.C.S. Partie 5

Free World Trust c. Électro Santé Inc., [2000] 2 R.C.S. 1024, 2000 CSC 66

Martel Building Ltd. c. Canada, [2000] 2 R.C.S. 860, 2000 CSC 60

Pacific National Investments Ltd. c. Victoria (Ville), [2000] 2 R.C.S. 919, 2000 CSC 64

R. c. Araujo, [2000] 2 R.C.S. 992, 2000 CSC 65

R. c. Khan, [2000] 2 R.C.S. 915, 2000 CSC 63

R. c. N.M.P., [2000] 2 R.C.S. 857, 2000 CSC 59

R. c. Simard, [2000] 2 R.C.S. 911, 2000 CSC 61

Syndicat de l'enseignement du Grand-Portage c. Morency, [2000] 2 R.C.S. 913, 2000 CSC 62

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

2000

OCTOBER - OCTOBRE						
S D	M L	T M	W M	T J	F V	S S
1	M 2	3	4	5	6	7
8	H 9	10	11	12	13	14
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NOVEMBER - NOVEMBRE						
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DECEMBER - DECEMBRE						
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31						

- 2001 -

JANUARY - JANVIER						
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FEBRUARY - FÉVRIER						
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MARCH - MARS						
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APRIL - AVRIL						
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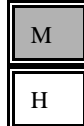
MAY - MAI						
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13	M 14	15	16	17	18	19
20	H 21	22	23	24	25	26
27	28	29	30	31		

JUNE - JUIN						
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24	25	26	27	28	29	30

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:



18 sitting weeks / semaines séances de la cour
78 sitting days / journées séances de la cour

9 motion and conference days / journées requêtes, conférences
3 holidays during sitting days / jours fériés durant les sessions