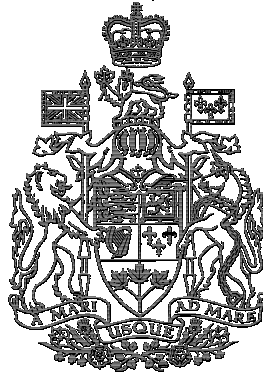


**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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December 8, 1995

1927 - 1965

le 8 décembre 1995

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Gary S. Snarch
Snarch & Allen

v. (25014)

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Larry R. Jackie
Ladner Downs

FILING DATE 24.11.1995

Les Entreprises Sioui & Frères Inc.
François Marchand
Jolin Fournier Morisset

c. (25015)

Municipalité de St-Gabriel-De-Valcartier (Qué.)
Pierre Laurin
Flynn Rivard

DATE DE PRODUCTION 24.11.1995

**Retail, Wholesale and Department Store Union
et al.**

Robb Tonn
Myers Weinberg Kussin Weinstein

v. (25016)

Westfair Foods Ltd. (Man.)
Grant Mitchell
Taylor, McCaffrey

FILING DATE 27.11.1995

Gilles Patenaude
Gilles Patenaude

c. (25019)

Procureur général du Québec (Qué.)
Jean Yves Bernard
Bernard Roy & Assoc.

DATE DE PRODUCTION 24.11.1995

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D'APPEL DÉPOSÉES**

Martha Kostuch
Clayton C. Ruby
Ruby & Edwardh

v. (25013)

The Attorney General of Alberta (Alta.)
T.A.H. Beattie
Dept. of Justice of Alberta

FILING DATE 24.11.1995

David Allen Gauthier
Martin Gauthier
Delorme Bessette

c. (25022)

**Corporation municipale de ville de Lac Brôme
et al. (Qué.)**
Thomas A. Lavin
Lavin & Farr

DATE DE PRODUCTION 30.11.1995

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

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

LE 30 NOVEMBRE 1995 _____ NOVEMBER 30, 1995 /

**CORAM: CHIEF JUSTICE LAMER AND GONTHIER AND IACOBUCCI JJ. /
LE JUGE EN CHEF LAMER ET LES JUGES GONTHIER ET IACOBUCCI**

Brian William Dempsey

v. (24888)

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

NATURE OF THE CASE

Criminal law - Pre-trial procedure - Direct indictment - *Criminal Code* ss. 574 and 577 - Whether the Crown can prefer a direct indictment against an accused whose committal for trial has been stayed - Jury instructions - Whether a trial judge must refer specifically to evidence relating to the defence theory of the case - Evidence - Whether the jury can have access to tapes when all of the contents of the tapes were not played in Court.

PROCEDURAL HISTORY

April 6, 1994
Nova Scotia Provincial Court (Matheson J.)

Preliminary inquiry; Applicant committed to stand trial

November 9, 1994
Supreme Court of Nova Scotia (MacDonald J.)

Application by way of *certiorari* to quash committal order of Applicant denied; committal confirmed

January 9, 1995
Court of Appeal for Nova Scotia (Clarke C.J.N.S.)

Order staying trial of Applicant pending disposition of appeal from denial of *certiorari*

February 14, 1995
Supreme Court of Nova Scotia (Edwards J.)

Conviction: conspiring to traffick in cocaine contrary to s. 465(1)(c) of the *Criminal Code*

June 2, 1995
Court of Appeal for Nova Scotia (Clarke C.J.N.S.,
Hart and Jones JJ.A.)

Appeal from conviction and sentence dismissed

September 29, 1995
Supreme Court of Canada

Application for leave to appeal filed

Robert R. Foster

c. (24858)

Le procureur général de la province de Québec (Qué.)

NATURE DE LA CAUSE

Droit constitutionnel - Partage des compétences - Est-ce qu'un conducteur engagé dans un mouvement de transport extraprovincial par camion, à l'emploi d'une entreprise de transport extraprovincial, peut être poursuivi en vertu du *Règlement sur les heures de conduite et de travail*, Décret 389-89, et du *Code de la Sécurité routière*, (L.R.Q. c. C-24.2), alors qu'il existe un *Règlement sur les heures de service des conducteurs de véhicules utilitaires*, DORS/89-316, adopté en vertu de la *Loi de 1987 sur les transports routiers*, (L.R.C., c. 29, 3e supplément), régissant les entreprises et conducteurs engagés dans le transport extraprovincial? - La Cour d'appel a-t-elle erré en ne reconnaissant pas l'application exclusive du *Règlement sur les heures de service des conducteurs de véhicules utilitaires*, DORS/89-316, adopté en vertu de la *Loi de 1987 sur les transports routiers*, aux conducteurs engagés dans un mouvement de transport extraprovincial par camions, à l'emploi d'entreprises de transport par camions extraprovincial? - La Cour d'appel a-t-elle erré en établissant qu'il n'existe aucune incompatibilité entre le *Règlement sur les heures de service des conducteurs de véhicules utilitaires*, DORS/89-316, et le *Règlement sur les heures de conduite et de travail*, Décret 389-89?

HISTORIQUE PROCÉDURAL

Le 21 juin 1991
Cour du Québec (Chambre pénale)
(Boyer J.C.Q.)

Demandeur acquitté de ne pas avoir inscrit dans le registre de ses heures de conduite et de ses heures de travail toutes les informations requises (*Code de la sécurité routière*, L.R.Q., ch. C-24.2)

Le 2 mars 1992
Cour supérieure du Québec (Ducros, J.C.S.)

Appel de l'intimé accueilli

Le 10 mai 1995
Cour d'appel du Québec (Brossard, Proulx et Otis,
JJ.C.A.)

Appel du demandeur rejeté

Le 7 septembre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Entreprise Maridey Inc.,

c. (24536)

Le Procureur général du Québec (Qué.)

NATURE DE LA CAUSE

Droit constitutionnel - Partage des compétences - Législation - Textes réglementaires - Interprétation - Délégation de pouvoir par renvoi - Une entreprise de transport extraprovinciale peut-elle être poursuivie en vertu de la *Loi sur le camionnage*, L.R.Q., ch. C-5.1, ou seulement en application de la *Loi de 1987 sur les transports routiers*, L.R.C., ch. 29, 3e supplément - La Cour d'appel a-t-elle erré en statuant que les articles 7 et 8 de la *Loi de 1987 sur les transports routiers*, constituent une réelle délégation d'autorité à la loi provinciale qui crée les infractions? - La Cour d'appel a-t-elle erré en décidant que les articles 17 et 18 du *Règlement sur le camionnage*, Décret 47-88, constituent des conditions d'exploitation du permis, sinon même des conditions de délivrance au sens des articles 7 et 8 de la *Loi de 1987 sur les transports routiers*?

HISTORIQUE PROCÉDURAL

Le 15 novembre 1990
Cour du Québec
(Villeneuve, J.C.Q.)

Demanderesse acquittée de ne pas avoir eu une copie lisible du permis de camionnage dans un de ses véhicules et de ne pas l'avoir affiché sur les deux côtés du véhicule (*Loi sur le camionnage*, 1987 L.Q., ch. 97)

Le 2 mars 1992
Cour supérieure du Québec (Ducros, J.C.S.)

Appel de l'intimé accueilli

Le 10 mai 1995
Cour d'appel du Québec
(Brossard, Proulx et Otis, J.J.C.A.)

Appel de la demanderesse rejeté

Le 11 septembre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**Fraternité des préposés à l'entretien des voies
(ci-après "F.P.E.V.")**

c. (24868)

**Compagnie des chemins de fer nationaux du Canada
(ci-après "C.N.")**

et

**Cape Breton and Central Nova Scotia Railway Limited,
Port Hawkesbury, N.S.
(ci-après "CB&CNS")**

et

Procureur général de la Nouvelle-Écosse

et

**Conseil canadien des relations du travail
Office fédéral visé par l'avis de requête introductive d'instance (Qué.)**

NATURE DE LA CAUSE

Droit constitutionnel - Chemins de fer - Partage des compétences - Droit du travail - Relations de travail - Chemin de fer situé entièrement dans la province - À quelles conditions un chemin de fer situé entièrement dans une province peut être considéré comme faisant partie intégrante d'un chemin de fer national, de compétence fédérale, et être assujéti au *Code canadien du travail*, L.R.C. (1985) ch. L-2? - Application de l'arrêt *Travailleurs unis du transport c. Central Western Railway*, [1990] 3 R.C.S. 1112.

HISTORIQUE PROCÉDURAL

Le 5 août 1994
Conseil canadien des relations du travail
(Morneault, vice-président, Davis
et Shafer, membres)

Requête visant à déclarer l'existence d'une vente
d'entreprise entre le CN et CB&CNS rejetée faute de
compétence du Conseil

Le 16 mai 1995
Cour d'appel fédérale (Hugessen, Décary et
Chevalier [suppléant], J.J.C.A.)

Demande de contrôle judiciaire rejetée

Le 14 septembre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**CORAM: LA FOREST, CORY AND MAJOR JJ. /
LES JUGES LA FOREST, CORY ET MAJOR**

S.M.S.

v. (24821)

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

NATURE OF THE CASE

Criminal law - Evidence - Unsworn testimony of a young child - Whether the Court of Appeal exceeded its jurisdiction in confirming a conviction in the absence of any admissible evidence against the Applicant - Whether the Court of Appeal erred in law in failing to uphold the requirements of s.16 of the *Canada Evidence Act*, R.S.C. 1985, Chapter C-5.

PROCEDURAL HISTORY

December 10, 1993
Court of Queen's Bench (Trial Division)
(Turnbull, C.J.Q.B.)

Conviction: Sexual assault

January 14, 1994
Court of Queen's Bench (Trial Division)
(Turnbull, C.J.Q.B.)

Sentence: Term of imprisonment of four years

February 28, 1995
Court of Appeal of New Brunswick (Angers, Ayles
and Ryan [Dissenting on sentence] JJ.A.)

Appeal from conviction dismissed; appeal from
sentence allowed

July 25, 1995
Supreme Court of Canada

Application for leave to appeal filed

November 23, 1995
Supreme Court of Canada

Application for an extension of time to file
application for leave to appeal filed

Her Majesty The Queen

v. (24837)

Richard Spellacy (Crim.)(Nfld.)

NATURE OF THE CASE

Criminal law - Sentencing - Compensation orders - s. 725 *Criminal Code* - Whether a compensation order should be included in calculating the totality of sentence.

PROCEDURAL HISTORY

August 23, 1994
Supreme Court of Newfoundland
Trial Division (Halley J.)

Respondent sentenced for convictions on charges of theft, fraud, illegal possession relating to money payable to eight years in prison and payment of compensation in the amount of \$1,086,477

June 22, 1995
Supreme Court of Newfoundland Court of Appeal
(Gushue, O'Neill and Cameron JJ.A.)

Appeal allowed: term of imprisonment reduced to five years and compensation order reduced to \$200,000

August 21, 1995
Supreme Court of Canada

Application for leave to appeal filed

Stanley Gordon Johnson

v. (24862)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal Law - Statutory Instruments - *Excise Act* - Whether the failure to enact regulations as required by the Act renders a conviction under the Act a nullity - Whether the Applicant is being convicted of an offence known to law.

PROCEDURAL HISTORY

November 10, 1993
Nova Scotia Provincial Court
(Archibald J.)

Convictions: unlawful possession of tobacco, not put
up in packages and stamped in accordance with the
Excise Act s. 240(1)

May 11, 1995
Nova Scotia Court of Appeal
(Hallett, Freeman and Pugsley JJ.A.)

Appeal dismissed

September 11, 1995
Supreme Court of Canada

Application for leave to appeal filed

Upper Lakes Group Inc.

v. (24849)

**National Transportation Agency,
Canadian National Railway Company, and
ICI Canada Inc. (F.C.A.)(Qué.)**

NATURE OF THE CASE

Administrative law - Competition law - Judicial review - Carriage of goods - Statutes - Interpretation - Whether the National Transportation Agency and the majority of the Federal Court of Appeal erred in law in applying to s. 113(5) of the *National Transportation Act* the definition of market generally applied to par. 50(1) of the *Competition Act* - Whether the definition of market is a question of law - Whether the Agency applied the wrong tests in determining for the purposes of s. 113(5) of the *Act* that competition had not been substantially lessened and that its competitor had not been significantly harmed as it was still in business - Whether the Agency committed an error of law by not accepting evidence of harm resulting from loss of backhaul cargoes - What is the standard to be applied by the Federal Court of Appeal on an appeal to the Court under s. 65(1) of the *Act* given subsection 65(3) of the same *Act* and paragraph 52(c) of the *Federal Court Act*.

PROCEDURAL HISTORY

October 19, 1993
National Transportation Agency
(Beaudry, Vice-Chairman)

Applicant's complaint pursuant to ss. 112 and 113 of the *National Transportation Act*: Respondent CN's rate for carriage of salt found to be non-compensatory but not to have the effect of lessening competition or harming a competitor; rate not disallowed

May 4, 1995
Federal Court of Appeal (Isaac C.J. [dissenting],
Huggessen and Chevalier JJ.A.)

Appeal dismissed

September 1, 1995
Supreme Court of Canada

Application for leave to appeal filed

Husky Oil Operations Ltd.

v. (24855)

Saint John Shipbuilding Limited, Raychem Canada Limited and Raychem Corporation

AND BETWEEN:

Bow Valley Industries Ltd.

- and -

Saint John Shipbuilding Limited, Raychem Canada Limited and Raychem Corporation

AND BETWEEN:

Saint John Shipbuilding Limited

Applicant by Cross-Appeal

- and -

**Bow Valley Husky (Bermuda) Ltd., Husky Oil
Operations Ltd. and Bow Valley Industries Ltd.**

Respondents by Cross-Appeal

AND BETWEEN:

Raychem Canada Limited and Raychem Corporation

Applicants by Cross-Appeal

- and -

**Bow Valley Husky (Bermuda) Ltd., Husky Oil Operations Ltd.
Bow Valley Industries Ltd., and Saint John Shipbuilding Limited**

Respondents by Cross-Appeal

AND BETWEEN:

Bow Valley Husky (Bermuda) Ltd.

Applicant by Cross-Appeal

- and -

Saint John Shipbuilding Limited, Raychem Canada Limited, and Raychem Corporation (Nfld.)

Respondents by Cross-Appeal

NATURE OF THE CASE

Torts - Commercial law - Property law - Maritime law - Negligence - Contracts - Damages - Remedies - Contributory negligence - Breach of contract - Right of recovery for pure economic loss - *Rivtow Marine Ltd. v. Washington Iron Works Ltd. et al.*, [1974] S.C.R. 1189; *Canadian National Railway Co. v. Norsk Pacific Steamship Co. Ltd. et al.*, [1992] S.C.R. 1021; *Winnipeg Condominium Corp. No. 36 v. Bird Construction Co. et al.*, [1995] 1 S.C.R. 85 - Proximity of relationship - Existence of joint venture or co-adventure - Relational economic loss - Duty to warn - Learned intermediary rule - Liability for negligent manufacture or supply - Rights of a co-contractant to damages for loss of use of property owned by another - Principles governing contributory negligence under maritime law - Applicability of Canadian maritime law.

PROCEDURAL HISTORY

March 8, 1994
Supreme Court of Newfoundland, Trial Division
(Riche, J.)

May 10, 1995
Supreme Court of Newfoundland, Court of Appeal
(Gushue, O'Neill, Cameron JJ.A.)

September 6, 1995
Supreme Court of Canada

September 7, 1995
Supreme Court of Canada

October 6, 1995
Supreme Court of Canada

October 24, 1995
Supreme Court of Canada

November 2, 1995
Supreme Court of Canada
(Registrar)

Plaintiffs' claims dismissed

Judgment for Bow Valley Husky (Bermuda) Ltd. against the Respondents for 40% of that Appellant's damages; Appeals by other Appellants dismissed

Application for leave to appeal filed by Husky Oil Operations Ltd.

Application for leave to appeal filed by Bow Valley Industries Ltd.

Applications for leave to cross-appeal filed by Raychem Canada Limited and Raychem Corporation and by Saint John Shipbuilding Limited

Application for leave to cross-appeal filed by Bow Valley Husky (Bermuda) Ltd.

Motion to extend Bow Valley Industries Ltd.'s time to file its reply and response to Saint John Shipbuilding Limited's application for leave to cross-appeal to November 1, 1995 granted

**CORAM: L'HEUREUX-DUBÉ, SOPINKA AND McLACHLIN JJ. /
LES JUGES L'HEUREUX-DUBÉ, SOPINKA ET McLACHLIN**

D.D.S.

v. (24834)

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

NATURE OF THE CASE

Criminal law - *Charter* s. 7 - Full answer and defence - Privacy - Privilege - Production of adoption information - Taking of body samples from third party for analysis.

PROCEDURAL HISTORY

November 21, 1994
Supreme Court of British Columbia (Melvin J.)

Application to obtain adoption file and biological
samples from child put up for adoption dismissed

December 28, 1994
Supreme Court of British Columbia (Melvin J.)

Application dismissed

June 13, 1995
Supreme Court of British Columbia (Melvin J.)

Application for stay dismissed

September 11, 1995
Supreme Court of Canada

Application for leave to appeal filed

Peter H. Pocklington

v. (24856)

Gainers Inc. (Alta.)

NATURE OF THE CASE

Barristers and Solicitors - Law of Professions - Company Law - Whether sole owner and operator of company is "client" of company's solicitor - Proper test for determining what constitutes a disqualifying conflict of interest - Whether, in circumstances, law firm should be disqualified from representing company in action - *MacDonald Estate v. Martin (Martin v. Gray)*, [1990] 3 S.C.R. 1235.

PROCEDURAL HISTORY

July 21, 1994
Court of Queen's Bench of Alberta
(D.C. McDonald J.C.Q.B.A.)

Application dismissed

May 9, 1995
Court of Appeal of Alberta
(Coté, O'Leary and Russell JJ.A.)

Appeal dismissed, subject to one modification of the
order of McDonald J.C.Q.B.A.

September 7, 1995
Supreme Court of Canada

Application for leave to appeal filed

Linda June White

v. (24850)

The Equitable Life Insurance Company of Canada (Ont.)

NATURE OF THE CASE

Procedural law - Limitation of actions - Actions - Civil procedure - Insurance - Estoppel - Good faith - Relief from forfeiture - When does the limitation period arise pursuant to Section 203 of the *Insurance Act*, R.S.O. 1990, c. 1.8 - Whether the majority of Court of Appeal failed to make a finding that the Respondent, pursuant to the doctrine of good faith, could not unilaterally rescind an agreement entered into with the Applicant not to deny the Applicant's claim until full medical disclosure taken place - Whether the majority of the Court of Appeal failed to make a finding that the Respondent was estopped from denying the Applicant's claim and thus the commencement of the limitation period by entering into an agreement with the Applicant for the production of medical records - Whether the majority of the Court of Appeal failed to make a finding that the Applicant was entitled to relief from forfeiture pursuant to the *Insurance Act* arising from the unilateral termination of the agreement by the Respondent with respect to the denial of the Applicant's claim.

PROCEDURAL HISTORY

February 25, 1994
Ontario Court of Justice (General Division) (Steele J.)

Action dismissed

May 3, 1995
Court of Appeal for Ontario (Doherty, Weiler and
Abella JJ.A [dissenting])

Appeal dismissed

September 1, 1995
Supreme Court of Canada

Application for leave to appeal filed

**Doris Patterson, Administratrix of the Estate of David G. Patterson, deceased,
John Gilbert, Larry M. Lippert and Earl Lippert Trucking Ltd.**

v. (24864)

**Dean Owen Chrastina and Sonya Elaine Chrastina, minors under the age of eighteen years
by their litigation guardian Roy Joseph Chrastina,
Patricia Rita Chrastina, Roy Joseph Chrastina and Prosellex Corporation (Ont.)**

NATURE OF THE CASE

Procedural law - Civil procedure - Trial - Statutes - Interpretation - Whether trial judge has jurisdiction to dismiss jury in absence of motion by one of the parties.

PROCEDURAL HISTORY

November 15, 1989
Supreme Court of Ontario (Yates J.)

Jury dismissed

August 9, 1990
Supreme Court of Ontario (Yates J.)

Reasons for decision awarding damages to Respondents

May 18, 1995
Court of Appeal for Ontario
(McKinlay, Galligan and Austin JJ.A.)

Appeal by Respondents allowed; retrial ordered

September 11, 1995
Supreme Court of Canada

Application for leave to appeal
filed

Donald M. Manning Executor of the Will of the Late Jessie Manning

v. (24789)

The Corporation of Delta (B.C.)

NATURE OF THE CASE

Municipal law - Power of municipality to act by resolution as opposed to bylaw - Whether imposition of development cost charges in respect of parks, under s. 983(2) of the *Municipal Act* precludes taking land for parks or payment of cash in lieu of such taking under s. 992 - Whether the subdivision servicing agreement entered into between the parties is a bar to a subsequent levy under s. 992 - Whether there was a manifest unfairness on the part of the approving officer and the municipality particularly in view of refusal to hear Applicant - *Canadian Charter of Rights and Freedoms - Bill of Rights*.

PROCEDURAL HISTORY

December 7, 1992
Supreme Court of British Columbia (Owen-Flood J.)

Petition dismissed

April 6, 1995
Court of Appeal for British Columbia
(Macfarlane, Goldie and Rowles JJ.A.)

Appeal dismissed

June 19, 1995
Supreme Court of Canada

Application for leave to appeal filed

**CORAM: CHIEF JUSTICE LAMER AND L'HEUREUX-DUBÉ AND GONTHIER JJ. /
LE JUGE EN CHEF LAMER ET LES JUGES L'HEUREUX-DUBÉ ET GONTHIER**

La Ville de Verdun

c. (24860)

Gilles Doré (Qué.)

NATURE DE LA CAUSE

Code civil - Responsabilité civile - Droit municipal - Municipalités - Législation - Interprétation - L'art. 2930 du *Code civil du Québec*, L.Q. 1991, ch. 64, a-t-il pour effet de rendre caduques les dispositions de l'art. 585 de la *Loi sur les cités et villes*, L.R.Q. 1977, ch. C-19, obligeant à donner un avis préalable à l'exercice d'une action en réparation du préjudice corporel, ou d'intenter celle-ci dans un délai plus court que celui de trois ans prévu par le *Code*? - L'État et les autres personnes morales de droit public, dont les municipalités, sont-ils devenus assujettis aux règles du droit civil plutôt qu'aux règles du droit public suite à l'entrée en vigueur de l'art. 1376 du *Code*? - *Laurentide Motels Ltd. c. Ville de Beauport*, [1989] 1 R.C.S. 705 - Règles d'interprétation applicables au *Code* - Utilité des commentaires du Ministre de la justice et de la version anglaise pour interpréter l'art. 2930 du *Code*.

HISTORIQUE PROCÉDURAL

APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST ISSUE

DEMANDES SOUMISES À LA COUR DEPUIS
LA DERNIÈRE PARUTION

Le 2 novembre 1994
Cour supérieure du Québec (Deslongchamps j.c.s.)

Requête en irrecevabilité rejetée

Le 12 mai 1995
Cour d'appel du Québec (Vallerand, Baudouin et
Rousseau-Houle jj.c.a.)

Pourvoi rejeté

Le 7 septembre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**MOTION FOR RECONSIDERATION / REHEARING /
DEMANDE DE RÉEXAMEN / NOUVELLE AUDITION**

**CORAM: LA FOREST, SOPINKA AND MAJOR JJ. /
LES JUGES LA FOREST, SOPINKA ET MAJOR**

RONALD TAYLOR v. METROPOLITAN TORONTO HOUSING AUTHORITY (ONT.)(24185)

DECEMBER 7, 1995 / LE 7 DÉCEMBRE 1995

24845 **VILLE DE POINTE-CLAIRE c. SYNDICAT DES EMPLOYÉES ET EMPLOYÉS
PROFESSIONNELS-LES ET DE BUREAU, SECTION LOCALE 57 (S.E.P.B. - U.I.E.P.B. -
C.T.C. - F.T.Q.) (Qué.)**

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

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Droit du travail - Droit administratif - Accréditation - Employeur et employé - Le commissaire du travail et le Tribunal du travail ont-ils commis une erreur manifestement déraisonnable en déclarant que la demanderesse était le véritable employeur d'une employée dont les services avaient été loués d'une agence de location de personnel?

HISTORIQUE PROCÉDURAL

Le 5 novembre 1993
Cour supérieure du Québec (Côté j.c.s.)

Requête en évocation de la décision du Tribunal du
travail rejetée

Le 14 juin 1995
Cour d'appel du Québec (Tyndale, Rousseau-Houle et
Deschamps [dissidente] jj.c.a.)

Pourvoi rejeté

Le 30 août 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

24870 **JOGA SINGH MANJ v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal Law - Procedural law - Appeal - Judgments and orders - Whether an appeal judge should order a new trial or enter an acquittal where the trial judge errs with respect to reasonable doubt.

PROCEDURAL HISTORY

January 11, 1993 Provincial Court of British Columbia (Green P.C.J.)	Conviction: sexual assault
November 5, 1993 Supreme Court of British Columbia (Maczko J.)	Summary conviction appeal allowed. new trial ordered
May 15, 1995 Court of Appeal for British Columbia (MacFarlane, Ryan and Donald (dissenting) JJ.A.)	Appeal dismissed
September 15, 1995 Supreme Court of Canada	Application for leave to appeal filed

24785 **RODNEY TYLER FIELDHOUSE v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: The Chief Justice and Gonthier and Iacobucci JJ.

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

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

NATURE OF THE CASE

Criminal law - Evidence - Trial - Cross-Examination - Whether Court of Appeal erred in allowing cross-examination on Applicant's diary during defence case rather than during Crown case - Whether Court of Appeal erred in allowing cross-examination on letters without first proving the truth of their contents.

PROCEDURAL HISTORY

May 17, 1991 Ontario Court of Justice (General Division) (Hurley J.)	Conviction: first degree murder
September 6, 1994 Court of Appeal for Ontario (Osborne, Brooke and Catzman JJ.A.)	Appeal dismissed
July 21, 1995 Supreme Court of Canada	Application for leave to appeal and motion for extension of time filed

24786 **MICHAEL A. DAGG v. THE MINISTER OF FINANCE** (F.C.A.)

CORAM: La Forest, Cory and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Statutes - Interpretation - Crown - Applicant filing with the Department of Finance a request pursuant to s. 6 of the *Access to Information Act*, R.S.C. 1985, c. A-1, for copies of its departmental sign-in logs signed by employees entering and

leaving the work-place after regular working hours - Respondent disclosing the relevant sheets from the sign-in logs but deleting therefrom the names of the employees, their identification numbers and signatures -Whether the Federal Court of Appeal erred in finding that the names which the Respondent refused to disclose were personal information within the meaning of s. 3(i) of the *Privacy Act*, R.S.C. 1985, c. P-21 - Whether the Federal Court of Appeal erred in finding that the information contained on the sign-in sheets did not relate to the position or functions of the employees as provided by s. 3(j) of the *Privacy Act* - Whether the Federal Court of Appeal erred in finding that the Respondent did not exercise his discretion improperly when he declined a public interest waiver pursuant to s. 8(2)(m) of the *Privacy Act*.

PROCEDURAL HISTORY

November 8, 1993
Federal Court, Trial Division (Cullen J.)

Application for review pursuant to s. 41 of the
Access to Information Act allowed and Respondent's
decision overturned

April 21, 1995
Federal Court, Appeal Division
(Isaac C.J., Stone and McDonald JJ.A.)

Appeal allowed

June 20, 1995
Supreme Court of Canada

Application for leave to appeal filed

24777 **GARY DUSSIAUME v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: La Forest, Cory and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Offences - Evidence - Sexual exploitation - Credibility - Similar fact evidence - Whether the Court of Appeal erred in law in holding that s. 153 of the *Criminal Code* did not require the use of a position of trust or authority as an element in the exploitation of the complainant - Whether the Court of Appeal erred in law in holding that the offence defined by s. 153 of the *Criminal Code* did not require reliance on a power imbalance to criminalize an otherwise consensual touching - Whether the Court of Appeal erred in law in holding that the error of the trial Judge in admitting rebuttal evidence on collateral issues directed solely to the credibility of the Applicant did not occasion any substantial wrong or miscarriage of justice.

PROCEDURAL HISTORY

June 17, 1993
Ontario Court (General Division) (Gordon J.)

Conviction: Applicant convicted pursuant to s. 153(1) of the *Criminal Code*

March 31, 1995
Court of Appeal for Ontario
(Doherty, Weiler and Laskin JJ.A.)

Appeal dismissed

June 9, 1995
Supreme Court of Canada

Application for leave to appeal filed

24751 **APOTEX INC. v. MERCK & CO., INC. AND MERCK FROSST CANADA INC. -AND
BETWEEN- MERCK & CO., INC. AND MERCK FROSST CANADA INC. v. APOTEX INC.**
(F.C.A.)(Ont.)

CORAM: L'Heureux-Dubé, Sopinka and McLachlin JJ.

The applications for leave to appeal are dismissed with costs.

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

NATURE OF THE CASE

Property law - Food and drugs - Patents - Statutes - Interpretation - Patent infringement - S. 56 of the *Patent Act*, R.S.C. 1985, c. P-4 - Does material that is protected from infringement by virtue of s. 56 of the *Patent Act* in the hands of one person when a patent issues become infringing material when acquired by a purchaser from that person? - Does material that is made and sold under licence become infringing material when resold after the termination or extinguishment of the licence? - Is a claim for a non-inventive composition a valid patent claim where there is an existing claim for the inventive component therein in the same or an earlier patent? - Is a claim for the use of a composition or compound to treat a disease a valid claim in law?

PROCEDURAL HISTORY

December 14, 1994
Federal Court of Appeal, Trial Division
(MacKay J.)

Infringement by Respondent of Applicant's
exclusive patent rights and Respondent not saved by
s. 56 of the *Patent Act*

April 19, 1995
Federal Court of Appeal
(Stone, MacGuigan and Robertson JJ.A.)

Appeal allowed: Counter-claim dismissed

June 19, 1995
Supreme Court of Canada

Application for leave to appeal filed

24750 **THE PACIFIC FISHERMEN'S ALLIANCE, ET AL v. HER MAJESTY THE QUEEN, ET AL**
(Crim.)(B.C.)

CORAM: L'Heureux-Dubé, Sopinka and McLachlin JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Procedural law - Jurisdiction - Courts - Trial - Intervention by interested parties -Fishing organizations wishing to intervene in support of Crown in prosecutions under the *Fisheries Act*, R.S.C. 1985 c. F-14, and the *British Columbia Fisheries (General) Regulations* -Whether a Provincial Court judge, sitting as a trial judge on a prosecution under the *Fisheries Act* and *Regulations*, has jurisdiction to receive evidence and submissions from intervenors on constitutional issues which are integral to the determination of the case.

PROCEDURAL HISTORY

February 21, 1991
Provincial Court of British Columbia
(O'Donnell P.C.J.)

Order granting intervenor status to the Applicants

May 29, 1991
Supreme Court of British Columbia
(Rowles J. (as she then was)(in chambers))

Order in the nature of *certiorari* quashing order of Provincial Court judge

March 30, 1985
Court of Appeal for British Columbia (Lambert J.A.,
Wood J.A. [dissenting] and Prowse J.A.)

Appeal dismissed

May 26, 1995
Supreme Court of Canada

Application for leave to appeal filed

24809 **UMESH PATHAK (a.k.a. MESH PATHAK) v. THE CANADIAN HUMAN RIGHTS COUNCIL,**
ET AL (F.C.A.)(B.C.)

CORAM: L'Heureux-Dubé, Sopinka and McLachlin 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 - Procedural law - Evidence - Statutes - Interpretation - Disclosure of documents used by the investigator in his report to the Canadian Human Rights Commission - Rule 1612 of the *Federal Court Rules*,

C.R.C. 1978, c. 663, as am. - Section 44 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 - Whether the Federal Court of Appeal erred in finding that the material relied upon by the Canadian Human Rights Commission ("CHRC") investigator in preparing a report pursuant to s. 44 of the Act is not required by law to be disclosed to the Applicant - Does fairness and natural justice require disclosure of the documents used by the investigator? - Do the documents in the possession of the investigator form part of the Commission's record? And, consequently, are they relevant documents pursuant to Rule 1612 of the *Federal Court Rules*?

PROCEDURAL HISTORY

May 17, 1993
Federal Court (Trial Division) (Muldoon J.)

Order that "all documents relied on by the Human Rights' Officer" be produced

April 11, 1995
Federal Court of Appeal
(Pratte, MacGuigan and Décary, JJ.A.)

Appeal allowed

July 7, 1995
Supreme Court of Canada

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

24787 **STEPHEN BISCETTE v. HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM: L'Heureux-Dubé, Sopinka and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Evidence - Admissibility - Unadopted prior inconsistent statement of a witness -Crown witness giving evidence at trial inconsistent with evidence given at preliminary hearing -Whether the Court of Appeal erred in applying the law pertaining to admissibility of prior inconsistent statements made by Crown witness and admitting such statements for the truth of their contents?

PROCEDURAL HISTORY

January 27, 1994
Court of Queen's Bench of Alberta
(Virtue J.)

Convictions: Robbery, unlawful masking of his face with intent to commit an indictable offence, unlawful possession of a truck knowing it was stolen, unlawful possession \$6,500.00 cash knowing it was stolen and two other counts of unlawful possession

June 8, 1995
Court of Appeal of Alberta
(Harradence (dissenting), Coté and O'Leary JJ.A.)

Appeal dismissed

June 21, 1995
Supreme Court of Canada

Notice of appeal as of right filed

July 27, 1995
Supreme Court of Canada

Application for leave to appeal filed

24816 **HER MAJESTY THE QUEEN v. HARDIP SINGH RARRU** (Crim.)(B.C.)

CORAM: L'Heureux-Dubé, Sopinka and McLachlin JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Defence - Interpretation - Defence of honest but mistaken belief in consent - Air of reality test - Whether the British Columbia Court of Appeal erred in law in requiring the trial judge to invite the jury to consider a speculative scenario, not supported by the evidence, as a basis for a defence of honest but mistaken belief in consent - Whether the Court of Appeal erred in law in requiring the trial judge to leave the defence of honest but mistaken belief in consent with the jury when the Respondent failed to allege that the defence ought to apply - Whether the Court of Appeal erred in law by treating the Respondent's self-induced intoxication as part of the basis for a defence of honest but mistaken belief in consent - Application of *The Queen v. Park*, file 23876, rendered on June 22, 1995.

PROCEDURAL HISTORY

June 8, 1993
Supreme Court of British Columbia
(Brenner J.)

Conviction: Sexual assault

June 2, 1995
Court of Appeal of British Columbia
(Goldie, Rowles and Hutcheon, JJ.A.)

Appeal allowed and new trial ordered

July 18, 1995
Supreme Court of Canada

Application for leave to appeal filed

24819 **PENELOPE KARVELLAS SULLIVAN v. TERRY ROBERT FLETCHER** (Alta.)

CORAM: L'Heureux-Dubé, Sopinka and McLachlin JJ.

The application for leave to appeal is dismissed and the stay of execution is refused.

La demande d'autorisation d'appel est rejetée et le sursis d'exécution est refusé.

NATURE OF THE CASE

Family law - Division of property - Divorce - Applicant convicted of having illicit sexual intercourse with his stepdaughter - Whether criminal conduct is a relevant factor under s.8(a) and (m) of the *Matrimonial Property Act*, R.S.A. 1980, c. M-9, in the division of the matrimonial property.

PROCEDURAL HISTORY

January 12, 1995
Court of Queen's Bench of Alberta
(Andrekson J.)

Action involving competing claims under the *Matrimonial Property Act*: Applicant entitled to 65% of the distributable property and the Respondent 35%

June 1, 1995
Court of Appeal of Alberta
(Kerans, Belzil and Foisy JJ.A.)

Appeal dismissed

July 25, 1995
Supreme Court of Canada

Application for leave to appeal filed

Before / Devant: CHIEF JUSTICE LAMER

**Motion to extend the time to file the appellant's
and respondents' factums**

Mark Donald Benner

v. (23811)

The Secretary of State of Canada et al. (B.C.)

**Requête en prorogation du délai de dépôt des
mémoires de l'appellant et des intimés**

With the consent of the parties.

GRANTED / ACCORDÉE

1. This Court orders *nunc pro tunc* that the time within which the Appellant shall serve his factum in this appeal be extended to ten days after the date this Court sets the constitutional questions pursuant to Rule 32.
2. This Court orders that the time within which the Respondents shall serve their factum in this appeal be extended to February 2, 1996.

20.11.1995

Before / Devant: CHIEF JUSTICE LAMER

Motion to extend the time to state a constitutional question

Mark Donald Benner

v. (23811)

The Secretary of State of Canada et al. (B.C.)

Requête en prorogation de délai pour énoncer une question constitutionnelle

With the consent of the parties.

GRANTED / ACCORDÉE

1. Do ss. 3(1)(e), 5(2)(b), and 22 of the *Citizenship Act*, R.S.C. 1985, c. C-29, and s. 20 of the *Citizenship Regulations*, C.R.C., c. 400, violate, in whole or in part, s. 15(1) of the *Canadian Charter of Rights and Freedoms*, insofar as they impose more onerous requirements on those claiming Canadian citizenship based on maternal lineage than on those claiming Canadian citizenship based on paternal lineage?

2. If the answer to (1) is "yes", do ss. 3(1)(e), 5(2)(b), and 22 of the *Citizenship Act*, R.S.C. 1985, c. C-29, and s. 20 of the *Citizenship Regulations*, C.R.C., c. 400, constitute a reasonable limit prescribed by law pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms*?

3. Do ss. 3(1)(e), 5(2)(b), and 22 of the *Citizenship Act*, R.S.C. 1985, c. C-29, and s. 20 of the *Citizenship Regulations*, C.R.C., c. 400, infringe, in whole or in part, the right contained in s. 1(b) of the *Canadian Bill of Rights*, R.S.C. 1985, App. III, insofar as they impose more onerous requirements on those claiming Canadian citizenship based on maternal lineage than on those claiming Canadian citizenship based on paternal lineage?

1. Les alinéas 3(1)e) et 5(2)b) et l'art. 22 de la *Loi sur la citoyenneté*, L.R.C. (1985), ch. C-29, et l'art. 20 du *Règlement sur la citoyenneté*, C.R.C., ch. 400, en tout ou en partie, violent-ils le par. 15(1) de la *Charte canadienne des droits et libertés*, dans la mesure ou ils imposent des exigences plus sévères aux personnes qui demandent la citoyenneté canadienne en se fondant sur la filiation maternelle qu'à celles qui le font en se fondant sur la filiation paternelle?

2. Si la réponse à la première question est affirmative, les al. 3(1)e) et 5(2) et l'art. 22 de la *Loi sur la citoyenneté*, L.R.C. (1985), ch. C-29, et l'art. 20 du *Règlement sur la citoyenneté*, C.R.C., ch. 400, constituent-ils une limite raisonnable prescrite par une règle de droit au sens de l'article premier de la *Charte canadienne des droits et libertés*?

3. Les alinéas 3(1)e) et 5(2)b) et l'art. 22 de la *Loi sur la citoyenneté*, L.R.C. (1985), ch. C-29, et l'art. 20 du *Règlement sur la citoyenneté*, C.R.C., ch. 400, en tout ou en partie, violent-ils le droit inclus à l'al. 1b) de la *Déclaration canadienne des droits*, L.R.C. (1985), app. III, dans la mesure ou ils imposent des exigences plus sévères aux personnes qui demandent la citoyenneté canadienne en se fondant sur la filiation maternelle qu'à celles qui le font en se fondant sur la filiation paternelle?

30.11.1995

Before / Devant: THE REGISTRAR

**Motion for acceptance of memorandum of
argument on leave to appeal of over 20 pages**

Steve Jaslowski

v. (24968)

Her Majesty The Queen in right of the province of
Manitoba et al. (Man.)**GRANTED / ACCORDÉE****Requête en acceptation d'un mémoire de
demande d'autorisation de plus de 20 pages**

With the consent of the parties.

4.12.1995

CORAM: Les juges La Forest, Sopinka, Gonthier, Cory et McLachlin.

Requête en annulation

Edwin Pearson

c. (24929 / 930 / 931)

Procureur général du Canada (Crim.)(Qué.)

Motion to quash

Bernard Laprade, pour la requête.

Gérald Danis, pour Edwin Pearson.

ACCORDÉE / GRANTED

4.12.1995

CORAM: Les juges La Forest, Sopinka, Gonthier, Cory et McLachlin.

Requête en annulation

Sa Majesté La Reine

c. (24838)

Gaétan Proulx (Crim.)(Qué.)

ACCORDÉE / GRANTED**Motion to quash**

Léo-René Maranda, pour la requête.

Pierre Sauvé, pour Sa Majesté la Reine.

4.12.1995

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Motion to adduce new evidence

Requête visant à produire de nouveaux éléments de preuve

R.J.G.

Noel S. Sandomirsky, for the motion.

v. (24622)

J.R.G. (Sask.)

Neil Turcotte and Deryk Kendall, for the respondent.

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

4.12.1995

Before / Devant: MAJOR J.

Motion for leave to intervene

BY/PAR: Assembly of Manitoba Chiefs,
Federation of Saskatchewan Indian
Nations et al.

IN/DANS: Howard Pamajewon et al.

v. (24596)

Her Majesty The Queen (Ont.)

Requête en autorisation d'intervention

With the consent of the parties.

GRANTED / ACCORDÉE

5.12.1995

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai de dépôt de la
réponse de l'intimé**

British Columbia Rugby Union

v. (24743)

Mark Hamstra et al. (B.C.)

GRANTED / ACCORDÉE Time extended to December 8, 1995.

5.12.1995

Before / Devant: THE REGISTRAR

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

Kathleen H. et al.

v. (24823)

Dr. Robert Robertson Ross et al. (Ont.)

**Requête en prorogation du délai de dépôt de la
réponse de l'intimé**

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to December 20, 1995.

5.12.1995

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to file a reply
and a response to cross-appeal**

Saint John Shipbuilding Ltd.

v. (24855)

Raycham Canada Ltd. et al. (Nfld.)

GRANTED / ACCORDÉE Time extended to December 4, 1995.

**Requête en prorogation du délai imparti pour
déposer une réplique et une réponse à l'appel
incident**

With the consent of the parties.

5.12.1995

Before / Devant: THE REGISTRAR

**Motion permitting the filing of the application for
leave to appeal in its present form**

Odelia Irene Quewezance

v. (25021)

Her Majesty The Queen (Sask.)

GRANTED / ACCORDÉE

**Requête autorisant le dépôt de la demande
d'autorisation d'appel dans sa forme actuelle**

With the consent of the parties.

**NOTICES OF APPEAL FILED SINCE
LAST ISSUE**

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

01.12.1995

Michael Feeney

v. (24752)

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

04.12.1995

Northeast Marine Services Ltd.

v. (24629)

Atlantic Pilotage Authority (F.C.A.)(N.S.)

04.12.1995

Dell Holdings Ltd.

v. (24695)

Toronto Area Transit Operating Authority (Ont.)

05.12.1995

Comeau's Sea Foods Ltd., a body corporate

v. (24682)

**Her Majesty The Queen in right of Canada
(F.C.A.)(Ont.)**

**NOTICES OF INTERVENTION FILED
SINCE LAST ISSUE**

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

BY/PAR: Canadian Mental Health Association

IN/DANS: **Battlefords and District Co-Operative Ltd.**

v. (24342)

Betty-Lu Clara Gibbs et al. (Sask.)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

27/11/95 to/au 29/11/95

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Dorothy Marie Van Der Peet

v. (23803)

Her Majesty The Queen (B.C.)

and between

NTC Smokehouse Ltd.

v. (23800)

Her Majesty The Queen (B.C.)

and between

Donald Gladstone et al.

v. (23801)

Her Majesty The Queen (B.C.)

Louise Mandell and Leslie J. Pinder, for the appellant D.M. Van Der Peet.

S. David Frankel, Q.C. and Cheryl J. Tobias, for the respondent.

David M. Rosenberg and Hugh Braker, for the appellant NTC Smokehouse.

Marvin R.V. Storrow, Q.C. and Maria A. Morellato, for the appellants Donald and William Gladstone.

Arthur C. Pape and Clayton C. Ruby, for the interveners H. Pamajewon et al.

Harry A. Slade, Arthur C. Pape and Robert C. Freedman, for the intervener First Nation Summit.

Stuart Rush, Q.C. and Michael Jackson, for the interveners Delgamuukw et al.

Paul J. Pearlman, for the intervener the A.G. of B.C.

René Morin, pour l'intervenant le procureur général du Québec.

Robert J. Normey, for the intervener the A.G. of Alberta.

J. Keith Lowes, for the intervener Fisheries Council of B.C.

Patrick G. Foy, for the intervener the Canadian National Railway.

Christopher Harvey, Q.C. and Robert Lonergan, for the intervener B.C. Fisheries Survival Coalition.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Indians - Constitutional - Fisheries - Whether native Indians have a right to sell fish which were legally caught under licence from their traditional, customary fishery - Whether sections 4(5) and 27(5) of the *British Columbia Fishery (General) Regulations*, SOR/84-248, as they read in September of 1986, of no force and effect with respect to the Appellant in the circumstances of these proceedings, in virtue of section 52 of the *Constitution Act, 1982*, by reason of the aboriginal rights within the meaning of section 35 of the *Constitution Act, 1982* invoked by the Appellant?

Nature de la cause:

Indiens - Constitutionnel - Pêcheries - Les autochtones ont-ils le droit de vendre du poisson qu'ils ont pris légalement aux termes d'un permis dans leur lieu de pêche coutumier et traditionnel? - Les paragraphes 4(5) et 27(5) du *Règlement de pêche général de la Colombie-Britannique*, DORS/84-248, tels qu'ils étaient libellés en septembre 1986, sont-ils inopérants à l'égard de l'appelante dans les circonstances de l'espèce aux termes de l'art. 52 de la *Loi constitutionnelle de 1982*, en raison des droits ancestraux invoqués par l'appelante, au sens où l'entend l'art. 35 de la *Loi constitutionnelle de 1982*?

29.11.1995

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci
and Major JJ.

Allan Jacob Lewis et al.

v. (23802)

Her Majesty The Queen (B.C.)

Harry A. Slade, John R. Rich and Robert C. Freedman, for the appellants.

Arthur C. Pape, Louise Mandell and Leslie J. Pinder, for the intervener the Alliance of Tribal Council.

S. David Frankel, Q.C. and Cheryl J. Tobias, for the respondent.

Paul J. Pearlman, for the intervener the A.G. of B.C.

Everett L. Bunnell, Q.C. and Aldo P. Argento, for the intervener the A.G. of Alberta.

Christopher Harvey, Q.C. and Robert M. Lonergan, for the intervener B.C. Fisheries Survival Coalition.

Patrick G. Foy, for the intervener the Canadian National Railway.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Indians - Constitutional - Fisheries - Whether the Court of Appeal erred in holding that the presumption *ad medium filum aquae* does not apply to the Squamish River where it runs adjacent to the boundaries of Cheakamus Indian Reserve No. 11 - Whether the Court of Appeal erred in holding that a fishery in the Squamish River adjacent to Cheakamus I.R. No. 11 was not reserved to the Squamish Indians and transferred to the federal Crown as part of Cheakamus I.R. No. 11 - Whether the Court of Appeal erred in holding that the Squamish Indian Band By-law No. 10 has no effect with respect to the regulation of fishing on the Squamish River adjacent to Cheakamus I.R. No. 11.

Nature de la cause:

Indiens - Constitutionnel - Pêcheries - La Cour d'appel a-t-elle commis une erreur en concluant que la présomption *ad medium filum aquae* ne s'applique pas à la rivière Squamish où elle jouxte les limites de la réserve indienne Cheakamus n° 11? - La Cour d'appel a-t-elle commis une erreur en concluant qu'aucun droit de pêche dans la rivière Squamish où elle jouxte les limites de la réserve indienne Cheakamus n° 11 n'était réservé aux Indiens squamish ni transféré à la Couronne fédérale comme partie intégrante de la réserve indienne Cheakamus n° 11? - La Cour d'appel a-t-elle commis une erreur en concluant que le règlement n° 10 de la bande indienne des Squamish est inopérant en ce qui concerne la réglementation de la pêche sur la rivière Squamish où elle jouxte les limites de la réserve indienne Cheakamus n° 11?

30.11.1995

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Jerry Benjamin Nikal

v. (23804)

Her Majesty The Queen (B.C.)

Peter R. Grant, David Paterson and Peter W. Hutchins, for the appellant.

Arthur C. Pape, for the intervener Alliance of Tribal Council.

Michael Jackson, for the interveners Delgamuukw et al.

S. David Frankel, Q.C. and Cheryl J. Tobias, for the respondent.

Paul J. Pearlman, for the intervener the A.G. of B.C.

Robert J. Normey, for the intervener the A.G. of Alberta.

J. Keith Lowes, for the intervener Fisheries Council of B.C.

Patrick G. Foy, for the intervener the Canadian National Railway.

Christopher Harvey, Q.C. and Robert M. Lonergan, for the intervener B.C. Fisheries Survival Coalition.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Indians - Constitutional - Fisheries - Whether section 4(1) of the *B.C. Fishery (General) Regulations*, SOR/84-248, as it read in July of 1986, and licences issued thereunder, of no force and effect with respect to the Appellant in the circumstances of these proceedings, by virtue of section 52 of the *Constitution Act, 1982*, by reasons of the aboriginal rights within the meaning of section 35 of the *Constitution Act, 1982*, invoked by the Appellant?

Nature de la cause:

Indiens - Constitutionnel - Pêcheries - Le paragraphe 4(1) du *Règlement de pêche général de la Colombie-Britannique*, DORS/84-248, tel qu'il était libellé en juillet 1986, et les permis délivrés conformément à ce règlement, sont-ils inopérants à l'égard de l'appelant dans les circonstances de l'espèce aux termes de l'art. 52 de la *Loi constitutionnelle de 1982*, en raison des droits ancestraux, invoqués par l'appelant, au sens où l'entend l'art. 35 de la *Loi constitutionnelle de 1982*?

5.12.1995

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

George Weldon Adams

v. (23615)

Her Majesty The Queen (Qué.)

James O'Reilly, Peter W. Hutchins, Chantal Chatelain, Diane H. Soroka and Martha Montour, for the appellant / pour l'appelant.

René Morin and Pierre Lachance, for the respondent / pour l'intimée.

Jean-Marc Aubry, c.r. et Richard Boivin, pour l'intervenant le Procureur général du Canada / for the intervener the A.G. of Canada.

RESERVED / EN DÉLIBÉRÉ

Nature de la cause:

Droit constitutionnel - Droit criminel - Indiens - Pêches - Eaux et cours d'eau - Traités indiens - Les Mohawks ont-ils un droit ancestral de pêcher dans le fleuve St-Laurent? - La *Proclamation royale* de 1763 a-t-elle confirmé le titre aborigène ou le droit ancestral, ou les deux, de chasser et pêcher sur les terres et dans les eaux de l'ancienne colonie de Québec, plus particulièrement les terres et les eaux adjacentes aux réserves Akwasasne au Québec et en Ontario? - Quels sont les critères appropriés pour établir un titre aborigène ou un droit ancestral existant de pêcher et ces critères sont-ils différents pour le territoire auquel a déjà prétendu la Couronne française? - L'extinction du titre aborigène est-elle analogue à une expropriation de droits privés de propriété et, plus particulièrement, le titre aborigène ou le droit ancestral peut-il être éteint par la hausse du niveau des eaux du fleuve St-Laurent conformément aux autorisations de construire le canal de Beauharnois? - Dans le cas de traités ou de cessions concernant des terres, est-ce que seuls les droits des Autochtones spécifiquement réservés ne sont pas éteints? - La cession du titre autochtone sur les terres d'une réserve éteint-elle le droit ancestral de pêcher dans les eaux adjacentes à la réserve?

Nature of the case:

Constitutional law - Criminal law - Indians - Fisheries - Waters and watercourses - Indian treaties - Whether the Mohawks have an aboriginal right to fish in the St. Lawrence River - Whether the *Royal Proclamation* of 1763 confirmed either or both the aboriginal title or the aboriginal right to hunt and fish in the lands and waters in the Old Colony of Québec, particularly in lands and waters adjacent to the Akwasasne Reserves in Québec and Ontario - What are the appropriate tests to establish existing aboriginal title or an aboriginal right to fish and whether such tests are different for territory once claimed by the French Crown - Whether extinguishment of aboriginal title is analogous to expropriation of private property rights and particularly whether aboriginal title or right can be extinguished by the raising of water levels in the St. Lawrence River pursuant to authorizations to construct the Beauharnois canal - Whether in the case of treaties or surrenders respecting lands, only rights of Aboriginal peoples specifically reserved therein are not extinguished - Whether any surrender of aboriginal title to lands in a reserve extinguishes the aboriginal right to fish in waters adjacent to a reserve.

6.12.1995

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

R.J.G.

Noel S. Sandomirsky, for the appellant.

v. (24622)

Neil Turcotte and Deryk Kendall, for the respondent.

J.R.G. (Sask.)

Carole Curtis and Donna Wilson, for the intervener
the Women's Legal Education and Action Fund.

Daniel L. Goldberg and Jocelyn Kapusta, for the
intervener the Children's Lawyer of Ontario.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Family law - Custody - Mobility rights of custodial parent.

Nature de la cause:

Droit de la famille - Garde - Droits à la mobilité du parent ayant la garde.

6.12.1995

CORAM: Le juge en chef Lamer et les juges La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci et Major.

D.S.

c. (23765)

V.W. (Qué.)

Ghislain Richer, Julie Lessard et Marc Baillargeon,
pour l'appelant.

Roseline Alric, pour l'intimée.

Guy Lecompte, pour le mis en cause Rodrigue Blais.

EN DÉLIBÉRÉ / RESERVED

Nature de la cause:

Droit de la famille - Garde - Accès - Droit international - Législation - Interprétation - Déplacement d'un enfant par le parent gardien dans un pays étranger - Droit du parent gardien de fixer le lieu de sa résidence habituelle et celui de son enfant en quelque endroit qu'il désire, même si ce déplacement amène des inconvénients au parent titulaire de droits de visite supervisés - La Cour d'appel a-t-elle erré en appliquant la *Loi sur les aspects civils de l'enlèvement international et interprovincial d'enfants*, L.R.Q. 1977, ch. A-23.01, notamment en regard des art. 3 et 4?

Nature of the case:

Family law - Custody - Access - International law - Legislation - Interpretation - Child moved by custodial parent to foreign country - Custodial parent's right to determine place of usual residence and that of child wherever he or she wishes, even though move causes hardship to parent with supervised visiting rights - Whether Court of Appeal erred in applying *Act respecting Civil Aspects of International and Interprovincial Child Abduction*, R.S.Q. 1977, c. A-23-01, particularly in view of ss. 3 and 4?

7.12.1995

CORAM:

Le juge en chef Lamer et les juges La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci et Major.

G.L.B.

François Luc Coallier et Guy Ruel, pour l'appelante.

c. (23744)

Jean Baillargeon et Mireille Gourdeau, pour l'intimé.

M.P. (Qué.)

EN DÉLIBÉRÉ / RESERVED

Nature de la cause:

Charte canadienne des droits et libertés - Droit de la famille - Divorce - Garde - Accès - Intérêt de l'enfant - En matière de garde d'enfant, le tribunal a-t-il le pouvoir de restreindre le droit du parent gardien de fixer son domicile à l'endroit de son choix et de nier la liberté d'établissement garantie par la *Charte* et par le *Pacte international relatif aux droits civils et politiques*? - En cas de déménagement de l'enfant avec le parent gardien, qui, de ce dernier ou de l'autre parent, doit faire la preuve des effets du déménagement sur l'intérêt de l'enfant? - La Cour d'appel a-t-elle erré en substituant son appréciation des faits à celle du juge de première instance? - Art. 17(5) et 17(9) de la *Loi sur le divorce*, L.R.C. (1985), ch. 3 (2e suppl.).

Nature of the case:

Canadian Charter of Rights and Freedoms - Family law - Divorce - Custody - Access - Child's interests - Whether in child custody matter Court has power to limit right of custodial parent to fix domicile where he or she wishes and to deny freedom of residence guaranteed by Charter and by *International Covenant on Civil and Political Rights* - Where child moves with custodial parent, who should present evidence of effects of move on child's interests, custodial parent or other parent - Whether Court of Appeal erred in substituting its view of facts for that of trial judge - Section 17(5) and (9) of *Divorce Act*, R.S.C. 1985 (2d Supp.), c. 3.

7.12.1995

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Randy Andre McMaster et al.

v. (24395)

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

Terence C. Semenuk, for the appellant Randy Andre McMaster.

James F. Gladstone, for the appellant Harley Howard McMaster.

Ken Tjosvold, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Defence - Evidence - Intoxication - Whether the trial judge erred in law in misdirecting himself with respect to the defence of drunkenness - Whether the trial judge misdirected himself on the nature of the intoxication "defence" by considering evidence of intoxication only in relation to capacity to form the specific intent for a murder conviction, as distinct from the actual intent - Whether the trial judge misapprehended and failed to consider considerable portions of the evidence, both as to the *actus reus* and the *mens rea*, thereby entering a conviction that cannot be supported by the record - Whether the trial judge erred in considering the effect of the evidence of intoxication on intent separately from his consideration of the overall issue of criminal intent, contrary to the principles enunciated by this Court in *Morin*.

Nature de la cause:

Droit criminel - Défense - Preuve - Intoxication - Le juge du procès s'est-il mal dirigé dans son appréciation des éléments de la défense d'intoxication? - Le juge du procès s'est-il mal dirigé quant à la nature de la défense d'intoxication en limitant son examen de la preuve de l'intoxication à la capacité de former l'intention spécifique nécessaire pour une déclaration de culpabilité de meurtre, par opposition à l'intention véritable? - Le juge du procès a-t-il mal compris et omis d'examiner des parties considérables de la preuve, à la fois relativement à l'*actus reus* et à la *mens rea*, inscrivant ainsi une déclaration de culpabilité qui ne peut être appuyée par le dossier? - Le juge du procès a-t-il commis une erreur en examinant l'effet de la preuve d'intoxication sur l'intention séparément de la question générale de l'intention criminelle, contrairement aux principes formulés par cette Cour dans l'arrêt *Morin*?

8.12.1995

CORAM: Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Her Majesty The Queen

v. (24302)

Donald Robinson (Crim.)(B.C.)

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Defence - Second degree murder - Intent - Intoxication - Whether the majority in the Court of Appeal erred in law in concluding that the trial judge's instructions to the jury, when read as a whole, constitute misdirection and reversible error on the issues of intoxication, the common sense inference that a person intends the natural and probable consequences of his acts, and the burden on the Crown to prove the intent required for murder beyond a reasonable doubt - Whether the Court of Appeal erred in law in following *Regina v. Canute* (1993), 80 C.C.C. (3d) 403 and in deciding that it is reversible error for a trial judge to instruct a jury on the defence of drunkenness in accordance with the "two-step" process enunciated in *Regina v. MacKinlay* (1986), 28 C.C.C. (3d) 306 - Whether the Court of Appeal erred in failing to apply the provisions of s. 686(1)(b)(iii).

William F. Ehrcke, for the appellant.

G.D. McKinnon, Q.C., for the respondent.

Nature de la cause:

Droit criminel - *Charte canadienne des droits et libertés* - Droit procédural - Défense - Meurtre au deuxième degré - Intention - Intoxication - La cour d'appel, à la majorité, a-t-elle commis une erreur lorsqu'elle a conclu que les directives du juge du procès au jury, lues dans leur ensemble, constituent des directives erronées et une erreur donnant lieu à révision relativement aux questions de l'intoxication, la déduction découlant du bon sens qu'une personne envisage les conséquences naturelles et probables de ses actes et le fardeau qui incombe au ministère public de démontrer hors de tout doute raisonnable l'intention exigée en matière de meurtre? - La cour d'appel a-t-elle commis une erreur lorsqu'elle a suivi l'arrêt *Regina v. Canute* (1993), 80 C.C.C. (3d) 403, et lorsqu'elle a décidé qu'il y a erreur donnant lieu à révision lorsqu'un juge donne des directives à un jury conformément au processus «à deux volets» exposé dans l'arrêt *Regina v. MacKinlay* (1986), 28 C.C.C. (3d) 306 - La Cour d'appel a-t-elle commis une erreur lorsqu'elle a omis d'appliquer les dispositions du sous-al. 686(1)(b)(iii)?

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning December 11, 1995.
ORDRE DU JOUR pour la semaine commençant le 11 décembre 1995.

Date of Hearing/
Date d'audition

Case Number and Name/
Numéro et nom de la cause

The Court is not sitting this week

La Cour ne siège pas cette semaine

NOTE:

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

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

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

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

Motion day : February 5, 1996
Service : January 15, 1996
Filing : January 22, 1996
Respondent : January 29, 1996

Motion day : March 4, 1996
Service : February 12, 1996
Filing : February 19, 1996
Respondent : February 26, 1996

Motion day : April 1, 1996
Service : March 11, 1996
Filing : March 18, 1996
Respondent : March 25, 1996

DÉVANT 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 : 6 février 1996
Signification : 15 janvier 1996
Dépôt : 22 janvier 1996
Intimé : 29 janvier 1996

Audience du : 4 mars 1996
Signification : 12 février 1996
Dépôt : 19 février 1996
Intimé : 26 février 1996

Audience du : 1^{er} avril 1996
Signification : 11 mars 1996
Dépôt : 18 mars 1996
Intimé : 25 mars 1996

DEADLINES: APPEALS

The winter session of the Supreme Court of Canada will commence January 22, 1996.

Pursuant to the *Supreme Court Act* and *Rules*, the following requirements for filing must be complied with before an appeal will be inscribed and set down for hearing:

Case on appeal must be filed within three months of the filing of the notice of appeal.

Appellant's factum must be filed within four months of the filing of the notice of appeal. For appeals in which the notice of appeal was filed before July 26, 1995, the factum must be filed within five months.

Respondent's factum must be filed within eight weeks of the date of service of the appellant's factum.

Intervener's factum must be filed within four weeks of the date of service of the respondent's factum. For appeals in which the notice of appeal was filed before July 26, 1995, the factum must be filed within two weeks.

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

DÉLAIS: APPELS

La session d'hiver de la Cour suprême du Canada commencera le 22 janvier 1996.

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

Le dossier d'appel doit être déposé dans les trois mois du dépôt de l'avis d'appel.

Le mémoire de l'appelant doit être déposé dans les quatre mois du dépôt de l'avis d'appel. Pour les appels dont l'avis d'appel a été déposé avant le 26 juillet 1995, le mémoire doit être déposé dans les cinq mois.

Le mémoire de l'intimé doit être déposé dans les huit semaines suivant la signification de celui de l'appelant.

Le mémoire de l'intervenant doit être déposé dans les quatre semaines suivant la signification de celui de l'intimé. Pour les appels dont l'avis d'appel a été déposé avant le 26 juillet 1995, le mémoire doit être déposé dans les deux semaines.

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