SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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APPLICATIONS FOR LEAVE TO APPEAL FILED

Affordable Cottages Inc.
Howard J. Wolch
Gardiner, Roberts

v. (29192)

772592 Ontario Inc. (Ont.)
Joseph M. Gottli
Sullivan, Mahoney

FILING DATE 23.4.2002

Her Majesty the Queen in Right of the Province of British Columbia
Thomas H. MacLachlan, Q.C.
A.G. of British Columbia

v. (28616)

M.B. (B.C.)
Gail M. Dickson, Q.C.
Dickson, Murray

FILING DATE 29.4.2002

Commission des droits de la personne et des droits de la jeunesse agissant en faveur de Caroline Charette
Béatrice Vizkelety
Commission des droits de la personne et des droits de la jeunesse

c. (29187)

Le procureur général du Québec, en sa qualité de représentant du Ministère de la sécurité du revenu, et autre (Qué.)
Mario Normandin
Bernard, Roy et Associés

DATE DE PRODUCTION 29.4.2002

DEMANDES D'AUTORISATION D'APPEL DÉPOSÉES

Commission des droits de la personne et des droits de la jeunesse en faveur de Normand Morin, Jocelyne Fortin, Chantal Douesnard, Josée Thomassin, Claude Dufour, et autres
Pierre-Yves Bourdeau
Commission des droits de la personne et des droits de la jeunesse

c. (29188)

Le Procureur général du Québec, et autres (Qué.)
Mario Normandin
Bernard, Roy et Associés

DATE DE PRODUCTION 29.4.2002

Delrina Corporation carrying on business as Carolian Systems
T. Nigel M. Campbell
Blake, Cassels & Graydon

v. (29190)

Triolet Systems Inc. and Brian Duncombe (Ont.)
F. Paul Morrison
McCarthy Tétrault

FILING DATE 30.4.2002

The Honorable Robert H. Nelson, Founder President of Public Defenders for himself and as representative of all those also improperly denied benefits
Robert H. Nelson

v. (29193)

Her Majesty the Queen as represented by the Honorable Martin Cauchon, Minister of Canada, Customs and Revenue Agency (F.C.)
Robert Carvalho
A.G. of Canada

FILING DATE 2.5.2002

Edward Lloyd Jones
E. Michael McMahon
Michael McMahon Law Corporation

v. (29194)

Her Majesty the Queen (F.C.)
Eric A. Douglas
A.G. of British Columbia

FILING DATE 2.5.2002

The Honorable Robert H. Nelson, Founder President of Public Defenders for himself and as representative of all those also improperly denied benefits
Robert H. Nelson

v. (29195)

Her Majesty the Queen as represented by the Honorable Martin Cauchon, Minister of Canada, Customs and Revenue Agency (F.C.)
Robert Carvalho
A.G. of Canada

FILING DATE 2.5.2002

Domgroup Ltd.
Fred D. Cass
Aird & Berlis

v. (29196)

Crystalline Investments Limited and Burnac Leaseholds Limited (Ont.)
Peter-Paul E. DuVernet
Glaholt & Associates

FILING DATE 2.5.2002

Sa Majesté la Reine
Sébastien Bergeron-Guyard
P.G. du Québec

c. (29198)

Jacques Fontaine (Qué.)
Sébastien St-Laurent

DATE DE PRODUCTION 3.5.2002

La Capitale Assurances MFQ Inc.
Gérald R. Tremblay, c.r.
McCarthy Tétrault

c. (29199)

Mutuelle des fonctionnaires du Québec (MFQ-Vie) et Henri-Louis Dumas (Qué.)
Yves Lauzon
Lauzon Bélanger

DATE DE PRODUCTION 3.5.2002

B.H., by her next friend, A.H., et al.
David C. Day, Q.C.

Lewis, Day

v. (29174)

The Director of Child Welfare for the Province of Alberta (Alta.)
Beverley Bauer, Q.C.
A.G. of Alberta

- and between -

B.H., by her next friend, A.H.
David C. Day, Q.C.
Lewis, Day

v. (29174)

Her Majesty the Queen in Right of Alberta (as represented by the Director of Child Welfare), et al. (Alta.)
Beverley Bauer, Q.C.
A.G. of Alberta

FILING DATE 6.5.2002

Sa Majesté la Reine
Sébastien Bergeron-Guyard
P.G. du Québec

c. (29201)

Étienne Bédard (Qué.)
Stéphane Poulin
Bertrand, Guy & Associés

DATE DE PRODUCTION 6.5.2002

Mary Collins
Vince Calderhead
Nova Scotia Legal Aid

v. (29189)

Her Majesty the Queen in Right of Canada (F.C.)
John B. Laskin
Torys

FILING DATE 30.4.2002

Marie Lebbad
Marie Lebbad

c. (29171)

Sa Majesté la Reine (F.C.)
Nadia Hudon
P.G. du Canada

DATE DE PRODUCTION 16.4.2002

MAY 21, 2002 / LE 21 MAI 2002

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

Donald W. Keepness

v. (28939)

Her Majesty the Queen (Sask.)

NATURE OF THE CASE

Native law - Indians - Applicant charged with offences under *Wildlife Act*, S.S. 1979, c. W-13.1, after selling deer on reserve - Applicant acquitted at trial - Court of Queen's Bench overturning acquittal - Whether Court of Appeal erred in denying leave to appeal - Application of *Wildlife Act* to activities carried on by First Nations peoples on Indian reserves created pursuant to *Indian Act*. R.S.C. 1985, c. I-5.

PROCEDURAL HISTORY

December 17, 1999 Provincial Court of Saskatchewan (Judge Smith)	Applicant acquitted of 2 counts of trafficking in wildlife contrary to s. 41 of the *Wildlife Act*
February 23, 2001 Court of Queen's Bench (Gunn J.)	Appeal allowed; acquittals set aside; matter returned to a Provincial Court judge for a new trial
September 21, 2001 Court of Appeal for Saskatchewan (Gerwing, Sherstobitoff and Lane JJ.A.)	Leave to appeal denied
November 20, 2001 Supreme Court of Canada	Application for leave to appeal filed

Douglas Kapitany

v. (28977)

Thomson Canada Limited, Registered and carrying on business as Winnipeg Free Press (Man.)

NATURE OF THE CASE

Labour law - Master and servant - Dismissal - Notice - Courts - Evidence - Standard of review - Whether there is an obligation of procedural fairness on employers in the private sector - Whether the Court of Appeal erred in its assessment of the evidence - Whether the Court of Appeal applied the correct standard of review.

PROCEDURAL HISTORY

December 20, 2000 Court of Queen's Bench of Manitoba (Barkman J.)	Action allowed; Respondent ordered to pay $127,919.08 plus interest for wrongful dismissal
October 26, 2001 Court of Appeal of Manitoba (Huband, Lyon and Steel JJ.A.)	Appeal allowed; damages reduced to $52,400.00
December 27, 2001 Supreme Court of Canada	Application for leave to appeal filed

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TransCanada Pipelines Limited

v. (28970)

Her Majesty the Queen (F.C.A.)

NATURE OF THE CASE

Taxation - Assessment - Objecting to and appealing separately discrete issues - Whether a taxpayer is entitled to appeal certain discrete issues arising from various reassessments for the taxation years in question - Whether subsection 169(1) of the *Income Tax Act* expressly confers on a taxpayer that is entitled to submit a notice of objection in respect of a particular issue the right to appeal from the reassessment in respect of which it served that notice of objection - Whether a taxpayer has the right to appeal the remaining issues by the remaining notice of appeal under paragraph 169(1)(b) of the Act - Whether, in the alternative, a taxpayer has the right to appeal the remaining issues by the remaining notice of appeal under paragraph 169(1)(a) and subsection 165(7) of the Act - Whether this decision conflicts with *Chevron Canada Resources Ltd. v. R.* [1998] D.T.C. 6570 (F.C.A.) - Whether the lower court erred in misconstruing the *Income Tax Act* provisions.

PROCEDURAL HISTORY

August 29, 2000 Tax Court of Canada (Teskey J.T.C.C.)	Respondent's motion to quash Applicant's Notice of Appeal relating to 1989 and 1990 taxation years granted: Notice of Appeal quashed with costs
October 19, 2001 Federal Court of Appeal (Rothstein, Sexton and Evans JJ.A)	Appeal dismissed with costs
December 12, 2001 Supreme Court of Canada	Application for leave to appeal filed

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

Parminder Singh Saini

v. (28976)

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

NATURE OF THE CASE

Immigration law - Membership in inadmissible class as set out in the *Immigration Act*, R.S.C. 1985, c. I-2, s. 19(1)(c.1)(i) - Pardon - Foreign pardon - Whether a foreign pardon should be given effect within the context of Canadian immigration law - Whether the Federal Court of Appeal decision will result in confusion because it does not provide for the application of clear and objective standards for the determination of admissibility to Canada.

PROCEDURAL HISTORY

February 17, 2000 Federal Court of Canada, Trial Division (Dubé J.)	Application for judicial review granted; deportation order not to be executed
October 19, 2001 Federal Court of Appeal (Linden, Sharlow and Malone JJ.A.)	Appeal allowed; deportation order stands
December 18, 2001 Supreme Court of Canada	Application for leave to appeal filed

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Jane Baptist

v. (28962)

Her Majesty the Queen (F.C.A)

NATURE OF THE CASE

Taxation - Assessment - Appeal from an assessment of income tax for compensation received from "special duty pay" - Whether an employee who provides services to a third party outside of their regular employment and is paid by the third party should be regarded as doing so as part of their regular employment or regarded as providing services outside of their employment? - Whether the "four-in-one" test relied upon in this case, and since refined in the case of *671122 Canada Ltd. v. Sagaz Industries Canada* Inc., 2000 SCC 59, needs to be further examined in regards to how it applies to skilled and professional persons providing services to third parties outside the terms of their normal employment? - Whether there is a contract for services between an individual and a third party when a contract of services is arranged for an individual through processes administered by that individual's employer, but payment for services is made directly by a third party in circumstances where the employer has no liability for payment? - Whether courts can ignore the characterization of a provincial statute that characterizes services in one way, such as in the *Police Service Act* which characterizes the services provided as being private, and make a different finding?

PROCEDURAL HISTORY

April 11, 2000 Tax Court of Canada (Bonner J.)	Appeal from the 1993 taxation year assessment dismissed.
October 11, 2001 Federal Court of Appeal (Linden, Noël and Malone JJ.A.)	Appeal dismissed
December 10, 2001 Supreme Court of Canada	Application for leave to appeal filed

FWS Joint Sports Claimants Inc.

v. (28993)

Border Broadcasters Inc., Canadian Broadcasters Rights Agency Inc., Canadian Retransmission Collective, Canadian Retransmission Right Association, Copyright Collective of Canada, Major League Baseball Collective of Canada Inc., Society of Composers, Authors and Music Publishers of Canada (F.C.)

NATURE OF THE CASE

Property law - Copyright - Royalties - Allocation of royalties - Method of allocation - Administrative law - Judicial review - Standard of review - Whether the Board changed the legal standard under which it acts - If so, whether the Court of Appeal rewrote the Board's decision to make it appear that the legal standard had not been changed - If so, whether the Court of Appeal erred in so doing - Whether allocating a sum of money among several claimants is a "polycentric" matter justifying substantial deference to the Board's decision - Whether the Court of Appeal erred in referring to the hearing transcript to find that the Board "came to grips with" evidence not mentioned in its decision.

PROCEDURAL HISTORY

February 25, 2000 Copyright Board Canada (Hétu, Burns and Fenus, Members)	Applicant's objection to the Board's royalty allocation methodology rejected
November 6, 2001 Federal Court of Appeal (Strayer, Sexton and Evans JJ.A.)	Application for judicial review dismissed
January 10, 2002 Supreme Court of Canada (Major J.)	Motion to extend time to file and serve leave application to January 18, 2002 granted
January 18, 2002 Supreme Court of Canada	Application for leave to appeal filed

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

Richard Armand Adam

v. (28922)

United States of America and the Minister of Justice (Crim.) (Ont.)

NATURE OF THE CASE

Criminal law - Extradition - Appeal of committal order and judicial review of Minister's decision - Whether the Court of Appeal erred by not recognizing that the Minister violated ss. 15 and 40(1) of the *Extradition Act* by not issuing an authority to proceed within an acceptable time frame - Whether the Court of Appeal erred by not releasing the Applicant due to breaches in both the *Extradition Treaty* and *Act* and oppressive conduct and circumstances from both the requesting state and requested state contrary to the Canadian Constitution and democratic society - Whether the Court of Appeal erred by not recognizing that the proposed extradition is illegal as it relies on a spent US indictment -

PROCEDURAL HISTORY

October 25, 1999 Ontario Court of Justice (Laforme, J.)	Application for habeas corpus denied
January 4, 2000 Ontario Court of Justice (Ewaschuck J.)	Application for habeas corpus denied
July 5, 2000 Ontario Superior Court of Justice (Lederman J.)	Order for committal of the Applicant into custody to await surrender for extradition, issued
December 1, 2000 Minister of Justice and Attorney General of Canada (McLellan, Minister of Justice)	Applicant ordered to surrender to the United States
February 2, 2001 Ontario Court of Justice (Grossi J.)	Application for an order of release pursuant to s. 69 of the *Extradition Act*, dismissed
October 30, 2001 Court of Appeal for Ontario (Feldman, Sharpe and Cronk JJ.A.)	Appeals dismissed; application for judicial review dismissed
December 28, 2001 Supreme Court of Canada	Application for leave to appeal filed

OSFC Holdings Ltd.

v. (28860)

Her Majesty the Queen (F.C.A.)

NATURE OF THE CASE

Taxation - Income tax - General anti-avoidance rule - Whether Applicant's acquisition of partnership interest was undertaken or arranged primarily for *bona fide* purposes other than to obtain tax benefit - Whether there was at that time an unambiguous scheme in the *Income Tax Act* that prohibited the transfer of property with accrued unrealized losses between arm's length parties - *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 245.

PROCEDURAL HISTORY

June 25, 1999 Tax Court of Canada (Bowie J.T.C.C.)	Applicant's appeals from 1993 and 1994 reassessments dismissed
September 11, 2001 Federal Court of Appeal (Stone, Létourneau and Rothstein JJ.A.)	Appeal dismissed
October 23, 2001 Supreme Court of Canada (Arbour J.)	Motion to extend time to file and serve the leave application granted
December 14, 2001 Supreme Court of Canada	Application for leave to appeal filed

Attorney General of British Columbia and the Ministry of Forests

v. (28974)

Thomas Paul, Forest Appeals Commission (B.C.)

AND BETWEEN:

Forest Appeals Commission

v.

Attorney General of British Columbia and the Ministry of Forests, Thomas Paul (B.C.)

NATURE OF THE CASE

Constitutional law - Native law - Administrative law - Procedural law - Division of powers - Courts - Aboriginal rights - Province providing for administrative process for dealing with forest disputes - Forest dispute involving aboriginal right to take timber with band's permission from traditional band territory - Whether province has the legislative capacity to confer on the Forest Appeals Commission any jurisdiction to decide questions of aboriginal rights or aboriginal title in the course of exercising its functions under the *Forest Practices Code* - Whether a provincially constituted administrative tribunal can determine questions of aboriginal rights and title in the course of exercising its statutory mandate.

PROCEDURAL HISTORY

October 9, 1996 Ministry of Forests, Port Albani Forest District (Pashnik, District Manager)	Determination that Respondent Paul violated s. 96(1) of the *Forest Practices Code* and s. 65(3) of the *Forest Act*
April 24, 1998 Forest Appeals Commission (Vigod, Chair)	Determination that Commission has jurisdiction to adjudicate upon questions involving aboriginal rights
September 23, 1999 Supreme Court of British Columbia (Pitfield J.)	Respondent Paul's application for an order prohibiting the Forest Appeals Commission from hearing an appeal dismissed
June 14, 2001 Court of Appeal for British Columbia (Lambert, Donald and Huddart [dissenting] JJ.A.)	Appeal allowed.
October 30, 2001 Court of Appeal for British Columbia (Lambert, Donald and Huddart [dissenting] JJ.A.)	Supplementary reasons with respect to remedy
December 17, 2001 Supreme Court of Canada	Application for leave to appeal filed by the Attorney General of British Columbia and the Ministry of Forests
December 27, 2001 Supreme Court of Canada	Application for leave to appeal filed by Forest Appeals Commission

MAY 23, 2002 / LE 23 MAI 2002

28273 **Her Majesty the Queen - v. - Thomas Allen and Edward Milewski** (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 - Assessment - Statutes - Interpretation - Whether the test of "reasonable expectation of profit" as it applies in the context of partnership is to be applied at the partner level or the partnership level - Whether financing charges incurred by a partner are to be considered in determining whether that individual partner has a source of income - Section 20(1)(c) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1.

PROCEDURAL HISTORY

August 12, 1999 Tax Court of Canada (Bowman J.T.C.C.)	Appeals allowed; Assessments referred back to the Minister of National Revenue for reconsideration and reassessment
September 26, 2000 Federal Court of Appeal (Létourneau, Rothstein, and McDonald JJ.A.)	Appeal dismissed
November 24, 2000 Supreme Court of Canada	Application for leave to appeal filed

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29000 **Brother Pascal Rowland, Brother Anthony Murphy, Brother Kieran Murphy and Brother J. Barry Lynch, St. Thomas More Collegiate Ltd. and John Burnell, Vancouver College Limited - v. - The Roman Catholic Archdiocese of Vancouver, represented by Most Rev. Adam Exner, on his own behalf and on behalf of all members of the Roman Catholic Archdiocese of Vancouver, The Christian Brothers of Ireland in Canada (in liquidation), The Attorney General of British Columbia, The Attorney General for Newfoundland, Vancouver College Foundation, Vancouver College Parents Association, Vancouver College Alumni Association, and Representative counsel for persons having claims as a result of physical, sexual, emotional assault or abuse or who otherwise have tort claims in the liquidation, appointed by the Ontario Court of Justice in the matter of the Winding-up of the Christian Brothers of Ireland in Canada** (B.C.) (Civil)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Property law - Trusts and trustees - Ontario court granting leave to Applicant schools to bring petitions in British Columbia to determine ownership of their shares and nature and scope of any trust under which they are held - British Columbia Court of Appeal affirming determinations made - Whether Court of Appeal erroneously concluded that finding that shareholders held shares as representatives of religious order meant that religious order was real trustee - Whether Court of Appeal erroneously concluded that private Act of Parliament incorporating entity could have effect of automatically replacing religious order as trustee.

PROCEDURAL HISTORY

August 11, 2000 Supreme Court of British Columbia (Levine J.)	Petition to determine ownership of shares granted
September 20, 2001 Court of Appeal for British Columbia (Hollinrake, Rowles and Braidwood [dissenting] JJ.A.)	Appeals dismissed: cross-appeals dismissed
November 19, 2001 Supreme Court of Canada	Application for leave to appeal filed

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29009 **Kevin H. Grotheim - v. - Her Majesty the Queen** (Sask.) (Criminal)

CORAM: L'Heureux-Dubé, Bastarache and Binnie 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 - Warrantless arrest - Dwelling house - Arbitrary detention - Duty to provide reasons - Powers of peace officers to make warrantless arrests in dwelling-houses - Whether the Applicant's rights under ss. 7, 8 and primarily 9 of the *Charter* were breached - Whether the lower courts failed to recognize and apply those rights - Whether the trial judge had a duty to provide reasons and analysis for his decision - Whether the failure to adequately do so constitutes reversible error.

PROCEDURAL HISTORY

April 27, 2000 Provincial Court of Saskatchewan (Finley P.C.J.)	Applicant convicted operating a motor vehicle while impaired under s. 253(*b*) of the *Criminal Code*
December 21, 2000 Court of Queen's Bench of Saskatchewan (Laing J.)	Appeal allowed; conviction quashed
November 13, 2001 Court of Appeal for Saskatchewan	Appeal allowed; conviction restored

(Cameron, Sherstobitoff and Jackson JJ.A.)

January 15, 2002
Supreme Court of Canada
Application for leave to appeal filed

January 23, 2002
Supreme Court of Canada
(Major J.)
Motion to extend time granted

28902 **Istvan Szebenyi Jr. and Gizella Szebenyi - v. - Her Majesty the Queen** (FC) (Civil)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - *Res judicata* - Whether the right of the Applicant Istvan Szebenyi Jr. to represent his mother was *res judicata*.

PROCEDURAL HISTORY

June 3, 1998
Federal Court (Trial Division)
(Gibson J.)
Applicant Istvan Szebenyi Jr.'s permission to represent Gizella Szebenyi in action against Citizenship and Immigration officials, denied

August 18, 2000
Federal Court (Trial Division)
(Lafrenière, Prothonotary)
Applicant Istvan Szebenyi Jr.'s motion for leave to represent Gizella Szebenyi, dismissed

September 19, 2000
Federal Court (Trial Division)
(Blais J.)
Applicant Istvan Szebenyi Jr.'s motion to appeal prothonotary Lafrenière's decision, dismissed

November 2, 2000
Federal Court (Trial Division)
(Blais J.)
Applicant Istvan Szebenyi Jr.'s motion to reconsider, dismissed

December 8, 2000
Federal Court (Trial Division)
(Blais J.)
Applicant Istvan Szebenyi Jr.'s motion to reconsider decision on reconsideration, dismissed

September 20, 2001
Federal Court of Appeal
(Linden, Sharlow and Malone JJ.A.)
Appeal dismissed

November 7, 2001
Supreme Court of Canada
Application for leave to appeal filed

28917 **Lindo Palmer - v. - Karen Wheaton** (Nfld.) (Civil)

CORAM: Gonthier, Major and LeBel JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - Limitation of actions - Acknowledgment - Commercial law - Insurance - Personal injury - Property damage suffered in motor vehicle accident paid - Action for damages for personal injury allegedly arising from the same motor vehicle accident brought outside limitation period - Whether cause of action for personal injury had been acknowledged by the Applicant - Whether the Court of Appeal erred in concluding that payments made by an insurer to investigate a claim can be used as indicia of an admission of liability in order to trigger the confirmation provisions of the *Limitations Act*, R.S.N. 1990, c. L-16.1 - Whether the Court of Appeal erred in failing to find that payments by an insurer are inadmissible for any purpose pursuant to s. 26 of the *Automobile Insurance Act*, R.S.N. 1990, c. A-22 - Whether the Court of Appeal erred in failing to provide reasons that demonstrate it considered s. 26 of the *Automobile Insurance Act* - Whether the law with respect to the confirmation of unliquidated claims requires clarification - Whether the law with respect to s. 26 of the *Automobile Insurance Act* requires clarification.

PROCEDURAL HISTORY

December 20, 1999 Supreme Court of Newfoundland (Orsborn J.)	Applicant's cause of action not confirmed; action statute barred
September 14, 2001 Court of Appeal of Newfoundland (Mahoney, Marshall and Roberts JJ.A.)	Appeal allowed
November 13, 2001 Supreme Court of Canada	Application for leave to appeal filed

28956 **Phillip Ofume - v. - Nova Scotia Department of Education and The Nova Scotia Labour Standards Tribunal** (N.S.) (Civil)

CORAM: Gonthier, Major and LeBel JJ.

The ancillary motions are granted and the application for leave to appeal is dismissed without costs.

Les requêtes accessoires sont accordées et la demande d'autorisation d'appel est rejetée sans dépens.

NATURE OF THE CASE

Administrative law – Jurisdiction – Labour law – Contract employee alleging mistreatment, non-payment of overtime and lack of proper notice of termination – Whether the Nova Scotia Court of Appeal erred in finding that the Labour Standards Tribunal had not erred in law or jurisdiction in dismissing complaint.

PROCEDURAL HISTORY

December 1, 1999 Director of Labour Standards (Mitchell Director)	Applicant's complaint that Respondent Department of Education had violated ss. 30, 34, 37, 72, 79 and 80 of the *Labour Standards Code of Nova Scotia* dismissed
August 23, 2000 Labour Standards Tribunal (Ashley Chair, Blackburn and Richard Members)	Appeal dismissed
September 28, 2001 Nova Scotia Court of Appeal (Cromwell, Roscoe and Saunders JJ.A.)	Appeal dismissed.
December 10, 2001 Supreme Court of Canada	Application for leave to appeal filed

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29019 **Samuel Sheppard - v. - Her Majesty the Queen** (Ont.) (Criminal)

CORAM: Gonthier, Major and LeBel 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 - Statutes - Interpretation - Whether the consent of the provincial Attorney General is required to vest the court with jurisdiction to consider an application for a psychiatric assessment under s.752.1 of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether such consent can be delegated - Whether interlocutory appeals should be allowed in criminal matters where the sole issue relates to the jurisdiction of the court.

PROCEDURAL HISTORY

May 8, 2001 Ontario Superior Court of Justice (Whitten J.)	Applicant's application for prohibition to prohibit hearing of the Respondent's application to remand the Applicant for assessment under s. 752.1 of the *Criminal Code*, dismissed
November 2, 2001 Court of Appeal for Ontario (Doherty, Rosenberg and Borins JJ.A.)	Appeal dismissed; matter remitted to trial court for disposition.
January 2, 2002 Supreme Court of Canada	Application for leave to appeal filed

29014 **M.C.G. - v. - Her Majesty the Queen** (Man.) (Criminal)

CORAM: Gonthier, Major and LeBel JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Search and seizure - Whether the Court of Appeal erred in law by equating the test for the exclusion of evidence under s. 24(2) of the *Canadian Charter of Rights and Freedoms* as set out in *R.* v. *Stillman* [1997] 1 S.C.R. 607, with the common law test for voluntariness as most recently stated in *R.* v. *Oickle* [2000] 2 S.C.R. 3 - Whether statements given by the Applicant to the police were not conscripted - Whether the Court of Appeal erred in law in finding that the warrantless arrest of the Applicant in his dwelling house without his consent was a "technical" breach of the *Canadian Charter of Rights and Freedoms* that was not serious in nature.

PROCEDURAL HISTORY

February 7, 2001 Provincial Court of Manitoba (Miller P.C.J.)	Conviction: two counts of robbery and two counts of wearing a disguise during the course of a robbery
March 15, 2001 Provincial Court of Manitoba (Miller P.C.J.)	Sentence: 18 months secure custody
November 16, 2001 Court of Appeal of Manitoba (Huband, Twaddle and Kroft JJ.A.)	Appeals against conviction and sentence dismissed
January 15, 2002 Supreme Court of Canada	Application for leave to appeal filed

28929 **Group Qualité Lamèque Ltée / Lameque Quality Group Ltd. - v. - A/S Nyborg Plast** (N.B.) (Civil)

CORAM: Gonthier, Major and LeBel JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Contract - Jurisdiction - Forum - Ascertaining whether exclusive or concurrent jurisdiction is given in terms of document - Whether what constitutes an "exclusive jurisdiction" clause as opposed to a "concurrent jurisdiction" clause needs to be resolved - Whether there are conflicting Canadian appellate decisions on the issue.

PROCEDURAL HISTORY

March 27, 2001 Court of Queen's Bench of New Brunswick (McIntyre J.)	Motion to strike action for damages on the grounds that it was not commenced in the proper jurisdiction dismissed
May 9, 2001 Court of Appeal of New Brunswick (Robertson J.A.)	Application for leave to appeal to Court of Appeal of New Brunswick granted
September 27, 2001 Court of Appeal of New Brunswick (Turnbull, Drapeau and Deschênes JJ.A.)	Appeal allowed
November 23, 2001 Supreme Court of Canada	Application for leave to appeal filed

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29070 **Phil Lajeunesse, operating as "Prince Albert Northern Bus Repair" (Northern Bus Repair Centre Inc.) - v. - Wahpeton Dakota First Nation and Lorne Waditaka** (Sask.) (Civil)

CORAM: Gonthier, Major and LeBel JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Native law - Property law - Mechanics' liens - Applicant's seizure of school buses declared unlawful and contrary to s. 89 of *Indian Act*, R.S.C. 1985, c. I-6 - Whether Saskatchewan Court of Appeal misapplied Supreme Court of Canada's decision in *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29.

PROCEDURAL HISTORY

March 23, 2001 Court of Queen's Bench of Saskatchewan (Gerein C.J.Q.B)	Applicant's seizure of school buses declared unlawful and contrary to s. 89 of the *Indian Act;* Applicant ordered to return the buses to Respondent
February 21, 2002 Court of Appeal for Saskatchewan (Vancise, Lane and Jackson JJ.A.)	Appeal dismissed
March 28, 2002 Supreme Court of Canada	Application for leave to appeal filed

April 30, 2002
Supreme Court of Canada
(Lebel J.)

Stay of execution granted

27958 **Vancouver College Limited, St. Thomas More Collegiate Ltd., Representative Counsel for the Charitable Objects of the Christian Brothers of Ireland, John Burnell - v. - The Christian Brothers of Ireland in Canada (in liquidation), Representative Counsel for Persons Having Claims as a Result of Physical, Sexual or Emotional Assault or Abuse or Who Otherwise Have Tort Claims in the Liquidation and The Attorney General for Newfoundland and Labrador** (Ont.) (Civil)

CORAM: The Chief Justice, Iacobucci and Major JJ.

The application for reconsideration is dismissed.

La demande de réexamen est rejetée.

13.5.2002

Before / Devant: IACOBUCCI J.

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

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

Donovan Elliot Gates

v. (29191)

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

GRANTED / ACCORDÉE Time extended to 30 days from the date of this order.

14.5.2002

Before / Devant: IACOBUCCI J.

Motion to strike out

Requête en radiation

David Albert Siemens, et al.

v. (28416)

The Attorney General of Manitoba, et al. (Man.)

UPON APPLICATION by respondents for an order striking the factum of the interveners 292129 Alberta Ltd. et al. or in the alternative, for an order allowing the respondents permission to file a reply factum in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

1. The application by the respondents for an order striking the factum of the interveners 292129 Alberta Ltd. et al. is dismissed.

2. The respondents are granted permission to file a factum of up to 20 pages in reply to the factum of the interveners 292129 Alberta Ltd. et al.

3. There shall be no order as to costs.

14.5.2002

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the factum and book of authorities of the intervener the Attorney General of Saskatchewan

Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de jurisprudence et de doctrine de l'intervenant le procureur général de la Saskatchewan

The Law Society of Alberta

v. (28275)

Craig Charles Krieger, et al. (Alta.)

GRANTED / ACCORDÉE Time to serve and file the factum extended to May 7, 2002, *nunc pro tunc*. Time to serve and file the book of authorities extended to May 8, 2002, *nunc pro tunc*.

15.5.2002

Before / Devant: IACOBUCCI J.

Motions for leave to intervene

Requêtes en autorisation d'intervention

BY/PAR: Attorney General of Canada
Procureur général du Québec
British Columbia Civil Liberties Association

IN/DANS: Global BC (also known as BCTV News) a division of Global Communications Limited, et al.

v. (28823)

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

GRANTED / ACCORDÉES

UPON APPLICATION by the Attorney General of Canada, the Attorney General of Québec and the British Columbia Civil Liberties Association 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 Canada is granted and the applicant shall be entitled to serve and file a joint factum not to exceed 20 pages in length.

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

3. The motion for leave to intervene of the applicant British Columbia Civil Liberties Association 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 respondents any additional disbursements occasioned to the appellants and respondents by the interventions.

À LA SUITE DE DEMANDES du Procureur général du Canada, du Procureur général du Québec et de la British Columbia Civil Liberties Association visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné;

ET APRÈS AVOIR LU la documentation déposée;

L'ORDONNANCE SUIVANTE EST RENDUE;

1. La demande d'autorisation d'intervenir présentée par le Procureur général du Canada est accueillie; le requérant aura le droit de signifier et déposer un mémoire n'excédant pas 20 pages.

2. La demande d'autorisation d'intervenir présentée par le Procureur général du Québec est accueillie; le requérant aura le droit de signifier et déposer un mémoire n'excédant pas 20 pages.

3. La demande d'autorisation d'intervenir présentée par la British Columbia Civil Liberties Association est accueillie; le requérant aura le droit de signifier et déposer un mémoire n'excédant pas 20 pages.

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, les intervenants paieront aux appelants et aux intimés tous débours supplémentaires résultant de leur intervention.

15.5.2002

Before / Devant: IACOBUCCI J.

Motion to permit filing of an appellant reply factum

Requête en autorisation de dépôt par l'appelante d'un mémoire en réplique

James Chamberlain, et al.

v. (28654)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the appellants for leave to file a reply factum in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The appellants are granted leave to file a reply factum of up to 17 pages and the respondent is granted leave to file a supplementary factum of up to 17 pages.

16.5.2002

Before / Devant: BASTARACHE J.

Motion to strike out

Requête en radiation

Pearl Winnifred Bell, et al.

v. (29094)

Attorney General of Canada, et al. (N.S.)

GRANTED / ACCORDÉE

UPON APPLICATION by the respondent Attorney General of Nova Scotia representing Her Majesty The Queen in right of the Province of Nova Scotia for an order striking out the affidavit of W. Dale Dunlop filed in support of the application for leave to appeal and any reference to such affidavit in the applicants' memorandum of argument;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion is granted. The applicants will serve and file an amended application for leave to appeal by June 10, 2002 and the respondents will serve and file their responses by July 2, 2002.

16.5.2002

Before / Devant: THE REGISTRAR

Motion by the appellant to file a lengthy factum

Requête de l'appelant visant le dépôt d'un long mémoire

Eric Juri Miglin

v. (28670)

Linda Susan Miglin (Ont.)

GRANTED / ACCORDÉE The motion to file a factum of 44 pages is granted.

16.5.2002

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the factum of the intervener the Attorney General of Quebec

Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'intervenant le procureur général du Québec

Chee K. Ling

v. (28315)

Her Majesty the Queen (B.C.)

GRANTED / ACCORDÉE Délai prorogé au 22 mai 2002.

16.5.2002

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the factum of the intervener the Attorney General of Quebec

Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'intervenant le procureur général du Québec

Warren James Jarvis

v. (28378)

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

GRANTED / ACCORDÉE Délai prorogé au 22 mai 2002.

16.5.2002

Before / Devant: BASTARACHE J.

Motions for extensions of time and leave to intervene

Requêtes visant à obtenir des prorogations de délai et l'autorisation d'intervenir

BY/PAR: Nishnawbe Aski Nation
Patrick Dennis Stewart, F.L.B., R.A.F., R.R.J., M.L.J., M.W., Victor Brown, Benny Ryan Clappis, Danny Louie Daniels, Robert Daniels, Charlotte (Wilson) Guest, Daisy (Wilson) Hayman, Irene (Wilson) Starr, Pearl (Wilson) Stelmacher, Frances Tait, James Wilfrid White, Allan George Wilson, Donna Wilson, John Hugh Wilson, Terry Aleck, Gilbert Spinks, Ernie James and Ernie Michell

IN/DANS: K.L.B., et al.

v. (28612)

Her Majesty the Queen in Right of the Province of British Columbia (B.C.)

and

E.D.G.

v. (28613)

Svein Hammer, et al. (B.C.)

and

Her Majesty the Queen in Right of the Province of British Columbia

v. (28616)

M.B. (B.C.)

GRANTED / ACCORDÉES

UPON APPLICATION by the Nishnawbe Aski Nation and Patrick Dennis Stewart, F.L.B., R.A.F., R.R.J., M.L.J., M.W., Victor Brown, Benny Ryan Clappis, Danny Louie Daniels, Robert Daniels, Charlotte (Wilson) Guest, Daisy (Wilson) Hayman, Irene (Wilson) Starr, Pearl (Wilson) Stelmacher, Frances Tait, James Wilfrid White, Allan George Wilson, Donna Wilson, John Hugh Wilson, Terry Aleck, Gilbert Spinks, Ernie James and Ernie Michell for extensions of time and for leave to intervene in the above appeals;

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 Nishnawbe Aski Nation is granted and the applicant shall be entitled to serve and file one joint factum not to exceed 20 pages in length and one joint book of authorities.

2. The motion for an extension of time and for leave to intervene of the applicants Patrick Dennis Stewart, F.L.B., R.A.F., R.R.J., M.L.J., M.W., Victor Brown, Benny Ryan Clappis, Danny Louie Daniels, Robert Daniels, Charlotte (Wilson) Guest, Daisy (Wilson) Hayman, Irene (Wilson) Starr, Pearl (Wilson) Stelmacher, Frances Tait, James Wilfrid White, Allan George Wilson, Donna Wilson, John Hugh Wilson, Terry Aleck, Gilbert Spinks, Ernie James and Ernie Michell is granted and the applicants shall be entitled to serve and file one joint factum not to exceed 20 pages in length and one joint book of authorities.

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 respondents any additional disbursements occasioned to the appellants and respondents by the interventions.

17.5.2002

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the factum and book of authorities of the intervener the Attorney General of British Columbia

Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de jurisprudence et de doctrine de l'intervenant le procureur général de la Colombie-Britannique

The Law Society of Alberta

v. (28275)

Craig Charles Krieger, et al. (Alta.)

GRANTED / ACCORDÉE Time extended to May 8, 2002.

17.5.2002

Before / Devant: THE REGISTRAR

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

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

Her Majesty the Queen

v. (29053)

Yu Wu (Crim.) (Ont.)

GRANTED / ACCORDÉE Time extended to May 31, 2002.

21.5.2002

Before / Devant: MAJOR J.

Motion to expedite the decision on the application for leave to appeal and motion for a stay of execution

Requête visant à obtenir rapidement une décision sur la demande d'autorisation d'appel et requête en vue de surseoir à l'exécution

B.H., by her next friend, A.H., et al.

v. (29174)

The Director of Child Welfare for the Province of Alberta (Alta.)

and between

B.H., by her next friend, A.H.

v.

Her Majesty the Queen in Right of Alberta (as represented by the Director of Child Welfare), et al.

UPON APPLICATION by the applicants B.H. et al. for an order expediting the application for leave to appeal, and the appeal, if leave is granted and for a stay of execution;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal will be expedited.

2. The application for a stay of execution is referred to the panel seized of the application for leave to appeal.

3. The responses to the application for leave to appeal shall be served and filed no later than May 30, 2002.

4. The applicants' reply shall be served and filed no later than June 3, 2002.

15.5.2002

Lang Michener

v. (28544)

United Grain Growers Limited (F.C.)

(appeal)

22.5.2002

Attorney General of Canada

v. (29048)

Law Society of British Columbia, et al. (B.C.)

(appeal)

17.5.2002

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

The Law Society of Alberta

v. (28275)

Craig Charles Krieger et al (Alta.) (Civil) (By Leave)

Lindsay MacDonald, Q.C. for the appellant.

Christopher D. Evans, Q.C. for the respondent Craig Charles Krieger.

Richard F. Taylor, Q.C. for the respondents The Minister of Justice, et al.

Alain Gingras pour l'intervenant Procureur général du Québec.

James A. Gumpert, Q.C. and Marc C. Chisholm, Q.C. for the intervener Attorney General of Nova Scotia.

Shaw Greenberg for the intervener Attorney General of Manitoba.

Graeme G. Mitchell, Q.C. for the intervener Attorney General for Saskatchewan.

Alan D. Gold for the intervener Federation of Law Societies of Canada.

Donald W. MacLeod, Q.C. for the intervener The Criminal Trial Lawyers' Association.

Robert J. Frater for the intervener Attorney General of Canada.

Kenneth L. Campbell for the intervener Attorney General for Ontario.

George H. Copley, Q.C. and Joyce DeWitt-Van Oosten for the intervener Attorney General of British Columbia.

Kathleen Healey for the intervener Attorney General of Newfoundland & Labrador.

Paul J. J. Cavalluzzo and Rosella Cornaviera for the intervener Ontario Crown Attorney's Association.

ALLOWED, REASONS TO FOLLOW / ACCUEILLI, MOTIFS À SUIVRE

THE CHIEF JUSTICE (orally): The appeal is allowed and the judgment of the trial judge is restored. Reasons to follow.

[TRANSLATION] LE JUGE EN CHEF (oralement):

Le pourvoi est accueilli et la décision du juge de première instance est rétablie. Motifs à suivre.

Nature de la cause:

Lois - Interprétation - Droit constitutionnel - Compétence - Compétence du barreau pour sanctionner un membre pour sa conduite lors de l'exercice de son pouvoir discrétionnaire en matière de poursuites dans une instance criminelle - Qui devrait surveiller la conduite des procureurs lors de l'exercice de leur pouvoir discrétionnaire en matière de poursuites afin de veiller à ce qu'ils se comportent d'une façon éthique? - L'examen de l'exercice du pouvoir discrétionnaire d'un procureur par son employeur, le procureur général, empêche-t-il l'examen de la conduite par la Law Society? - La règle 28(d) du *Code of Professional Conduct* est-elle *ultra vires* en raison du par. 91(27) de la *Loi constitutionnelle de 1867*?

Nature of the case:

Statutes - Interpretation - Constitutional law - Jurisdiction - Jurisdiction of law society to discipline a member for conduct during exercise of prosecutorial discretion in criminal proceeding - Who should oversee the conduct of prosecutors exercising prosecutorial discretion to ensure that the conduct is ethical - Does the review of a prosecutor's exercise of discretion by his employer, the Attorney General, preclude scrutiny of the conduct by the Law Society - Whether Rule 28(d) of the *Code of Professional Conduct* is *ultra vires* by reason of s. 91(27) of the *Constitution Act, 1867*.

21.5.2002

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

The Commissioner of Patents

v. (28155)

The President and Fellows of Harvard College (FC) (Civil) (By Leave)

Graham Garton, Q.C. and Frederick B. Woyiwada for the appellant.

A. David Morrow, Steven B. Garland and Colin B. Ingram for the respondent.

William J. Sammon for the interveners Canadian Council of Churches, et al.

Michelle Swenarchuk, Theresa McClenaghan and Paul Muldoon for the interveners Canadian Environmental Law Association, et al.

Jerry V. DeMarco for the intervener Sierra Club of Canada.

No one appearing for the interveners Animal Alliance of Canada, et al.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Property Law - Patents - Patentability of complex life forms - Whether the Federal Court of Appeal erred in law in concluding that each animal claimed in the patent application is a "manufacture" or "composition of matter", and is therefore an "invention", within the meaning of the *Patent Act* - Whether the Court below erred in concluding that Parliament must have intended that higher life forms should be patentable subject matter - Whether the Court below erred in concluding that the policy decision as to whether higher life forms should be included in patentable subject matter need not be left to Parliament.

Nature de la cause:

Droit des biens - Brevets - Brevetabilité des formes de vie complexes - La Cour d'appel fédérale a-t-elle commis une erreur de droit en concluant que chaque animal inclus dans la demande de brevet est une « fabrication » ou une « composition de matières », et est par conséquent une « invention » au sens de la *Loi sur les brevets*? - La Cour d'instance inférieure a-t-elle commis une erreur en concluant que le législateur devait avoir l'intention d'inclure les formes de vie supérieures parmi les objets brevetables? - La Cour d'instance inférieure a-t-elle commis une erreur en concluant qu'il n'est pas nécessaire de laisser au législateur le soin de prendre la décision de politique générale de savoir si les formes de vie supérieures devaient être incluses parmi les objets brevetables?

21.5.2002

CORAM: Iacobucci, Bastarache, Binnie, Arbour and LeBel JJ.

Michael Derrick Robicheau

v. (28545)

Her Majesty the Queen (N.S.) (Criminal) (As of Right)

Roger A. Burrill for the appellant.

Kenneth W.F. Fiske, Q.C. and Peter P. Rosinski for the respondent.

ALLOWED / ACCUEILLI

IACOBUCCI J. (orally):

Mr. Burrill, it will not be necessary to hear from you as the Court is ready to pronounce judgment.

We are all of the view that, for substantially the reasons of Roscoe J.A., dissenting in the Nova Scotia Court of Appeal, the appeal should be allowed, the judgment of the Court of Appeal should be set aside, and the judgment of the trial judge should be restored.

[TRADUCTION] LE JUGE IACOBUCCI (oralement):

Il ne sera pas nécessaire de vous entendre, M^e^ Burrill, car la Cour est prête à rendre jugement.

Nous sommes tous d'avis, essentiellement pour les motifs exposés par le juge Roscoe, dissident en Cour d'appel de la Nouvelle-Écosse, qu'il y a lieu d'accueillir le pourvoi, d'annuler l'arrêt de la Cour d'appel et de rétablir le jugement du juge du procès.

Nature of the case:

Criminal law - Evidence - Assault during attempted robbery - Trial judge finding a reasonable doubt as to whether there was a sexual element to assault - Trial judge giving oral reasons - Whether the majority of the Nova Scotia Court of Appeal erred in setting aside the verdict of acquittal of sexual assault and ordering a new trial on the grounds that the trial judge's decision was unclear as to findings on conflicting evidence.

Nature de la cause:

Droit criminel - Preuve - Voies de fait au cours d'une tentative de vol qualifié - Le juge de première instance a conclu qu'il existait un doute raisonnable quant à savoir si les voies de fait comportaient un élément sexuel - Le juge de première instance a prononcé ses motifs oralement - La majorité de la Cour d'appel de la Nouvelle-Écosse a-t-elle commis une erreur en annulant le verdict d'acquittement à l'accusation d'agression sexuelle et en ordonnant la tenue d'un nouveau procès au motif que la décision du juge de première instance n'était pas claire en ce qui concerne les conclusions sur la preuve contradictoire?

MAY 23, 2002 / LE 23 MAI 2002

27860 **Brian J. Stewart - v. - Her Majesty the Queen** (F.C.) (Civil) **2002 SCC 46 / 2002 CSC 46**

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

The appeal is allowed with costs throughout. The judgment of the Federal Court of Appeal is set aside. The assessments for the taxation years in issue are referred back to the Minister for reassessment.

L'appel est accueilli avec dépens devant toutes les cours. L'arrêt de la Cour d'appel fédérale est infirmé. Les cotisations pour les années d'imposition en cause sont renvoyées au ministre pour qu'il établisse de nouvelles cotisations.

27724 **Her Majesty the Queen - v. - Jack Walls and Robert Buvyer** (F.C.) (Civil) **2002 SCC 47 / 2002 CSC 47**

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

The appeal is dismissed with costs.

L'appel est rejeté avec dépens.

28093 **Family Insurance Corporation v. Lombard Canada Ltd. - and- Canadian Universities Reciprocal Insurance Exchange** (B.C.) **2002 SCC48 / 2002 CSC 48**

CORAM: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and Arbour JJ.

The appeal is allowed and the trial judge's decision is restored, with costs to the appellant throughout.

L'appel est accueilli et la décision de première instance est rétablie, l'appelante ayant droit aux dépens devant toutes les cours.

28062 **Her Majesty the Queen in right of Canada, as represented by the Minister of National Revenue -v.- First Vancouver Finance -and- Great West Transport Ltd.** (Sask.) (Civil) **2002 SCC 49 / 2002 CSC 49**

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

The appeal is dismissed with costs.

L'appel est rejeté avec dépens.

28068 **Clayton Fensom - and - Trailways Transportation Group, Inc. - v. - Deryk J. Kendall, Grant A. Richards, Darren T. Hagen, Randy K. Katzman, D. Roger Arnold, Greg M. Kuse, Robert H.**

Goodman, Jay D. Watson and F. Neil Turcott, operating a partnership under the name of Cuelenaere, Kendall, Katzman & Richards, and Ronald Miller (Sask.)
2002 SCC 50 / 2002 CSC 50

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

The appeal is allowed and the judgment of the Saskatchewan Court of Appeal is set aside. The stated question is answered by finding that s. 88(1) of the Saskatchewan *Highway Traffic Act* applies to the plaintiff's case against the appellants Fensom and Trailways Transportation Group Inc. The appellants will have their costs in this Court and in the courts below.

L'appel est accueilli et l'arrêt de la Cour d'appel de la Saskatchewan est annulé. La Cour répond à la question énoncée en concluant que le par. 88(1) de la *Highway Traffic Act* de la Saskatchewan s'applique à l'action que la demanderesse a intentée contre les appelants Fensom et Trailways Transportation Group Inc. Les appelants ont droit aux dépens tant devant notre Cour que devant les cours d'instance inférieure.

Brian J. Stewart - v. - Her Majesty the Queen (F.C.) (Civil) (27860)
Indexed as: Stewart *v.* Canada / Répertorié : Stewart *c.* Canada
Neutral citation: 2002 SCC 46. /
Référence neutre : 2002 CSC 46.
Judgment rendered May 23, 2002 / Jugement rendu le 23 mai 2002

Present: McLachlin C.J. and L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

Income tax – Source of income – Test to determine whether taxpayer has business or property source of income – Whether "reasonable expectation of profit" test appropriate test – Income Tax Act, S.C. 1970-71-72, c. 63, s. 9.

The appellant, an experienced real estate investor, acquired four condominium units from which he earned rental income. The properties were part of a syndicated real estate development, and were sold on the basis that the purchaser would be provided with a turnkey operation, that management would be provided, and that a rental pooling agreement would be entered into. All units were highly leveraged with the appellant paying only $1,000 cash for each unit. The appellant was provided with projections of rental income and expenses in respect of each of the properties. The projections contemplated negative cash flow and income tax deductions for a ten-year period. However, the actual rental experience ended up being worse than what had been set out in the projections. For the taxation years 1990 to 1992, the appellant claimed losses, mainly as a result of significant interest expenses on money borrowed to acquire the units. These losses were disallowed by the Minister of National Revenue on the basis that the taxpayer had no reasonable expectation of profit and therefore no source of income for the purposes of s. 9 of the *Income Tax Act*, and that the interest expenses were not deductible pursuant to s. 20(1)(*c*)(i) of the Act. Both the Tax Court of Canada and the Federal Court of Appeal upheld the decision.

Held: The appeal should be allowed.

The "reasonable expectation of profit" test should not be accepted as the test to determine whether a taxpayer's activities constitute a source of income for the purposes of s. 9 of the *Income Tax Act*. In recent years, this test has become a broad-based tool used by both the Minister and courts independently of provisions of the Act to second-guess *bona fide* commercial decisions of the taxpayer and therefore runs afoul of the principle that courts should avoid judicial rule-making in tax law. The test is problematic owing to its vagueness and uncertainty of application; this results in unfair and arbitrary treatment of taxpayers.

The following two-stage approach should be employed to determine whether a taxpayer's activities constitute a source of business or property income: (i) Is the taxpayer's activity undertaken in pursuit of profit, or is it a personal endeavour? (ii) If it is not a personal endeavour, is the source of the income a business or property? The first stage of the test is only relevant when there is some personal or hobby element to the activity. Where the nature of an activity is clearly commercial, the taxpayer's pursuit of profit is established. There is no need to take the inquiry any further by analysing the taxpayer's business decisions. However, where the nature of a taxpayer's venture contains elements which suggest that it could be considered a hobby or other personal pursuit, the venture will be considered a source of income only if it is undertaken in a sufficiently commercial manner. In order for an activity to be classified as commercial in nature, the taxpayer must have the subjective intention to profit and there must be evidence of businesslike behaviour which supports that intention. Reasonable expectation of profit is no more than a single factor, among others, to be considered at this stage.

The deductibility of expenses, which presupposes the existence of a source of income, should not be confused with the preliminary source inquiry. Once it has been determined that an activity has a sufficient degree of commerciality to be considered a source of income, the deductibility inquiry is undertaken according to whether the expense in question falls within the words of the relevant deduction provision(s) of the Act. To deny the deduction of losses on the simple ground that the losses signify that no business (or property) source exists is contrary to the words and scheme of the Act. Whether or not a business exists is a separate question from the deductibility of expenses. To disallow deductions based on a reasonable expectation of profit analysis would amount to a case law stop-loss rule which would be contrary to established principles of interpretation which are applicable to the Act. As well, unlike many statutory stop-loss rules,

once deductions are disallowed under the "reasonable expectation of profit" test, the taxpayer cannot carry forward such losses to apply to future income in the event the activity becomes profitable.

In sum, whether a taxpayer has a source of income from a particular activity is determined by considering whether the taxpayer intends to carry on the activity for profit, and whether there is evidence to support that intention. In this case, the taxpayer purchased four rental properties which he rented to arm's length parties in order to obtain rental income. A property rental activity which, as here, lacks any element of personal use or benefit to the taxpayer is clearly a commercial activity. As a result, the appellant satisfies the test for source of income and is entitled to deduct his rental losses. Section 20(1)(*c*)(i) of the *Income Tax Act*, which permits the deduction of interest on borrowed money for the purpose of earning income from a business or property, is not a tax avoidance mechanism and, in light of the specific anti-avoidance provisions in the Act, courts should not be quick to embellish provisions of the Act in response to tax avoidance concerns. In addition, since a tax motivation does not affect the validity of transactions for tax purposes, the appellant's hope of realizing an eventual capital gain and expectation of deducting interest expenses do not detract from the commercial nature of his rental operation or its characterization as a source of income.

APPEAL from a judgment of the Federal Court of Appeal (2000), 254 N.R. 326, 2000 D.T.C. 6163, [2000] 2 C.T.C. 244, [2000] F.C.J. No. 238 (QL), affirming a decision of the Tax Court of Canada, 98 D.T.C. 1600, [1998] 3 C.T.C. 2662, [1998] T.C.J. No. 310 (QL). Appeal allowed.

Richard B. Thomas and *Lisa Wong*, for the appellant.

Richard Gobeil and *Donald G. Gibson*, for the respondent.

Solicitors for the appellant: McMillan Binch, Toronto.

Solicitor for the respondent: The Deputy Attorney General of Canada, Ottawa.

Présents : Le juge en chef McLachlin et les juges L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour et LeBel.

Impôt sur le revenu – Source de revenu – Critère applicable pour déterminer si le contribuable a une source de revenu constituée d'une entreprise ou d'un bien – Le « critère de l'expectative raisonnable de profit » est-il le critère applicable? – Loi de l'impôt sur le revenu, S.C. 1970-71-72, ch. 63, art. 9.

L'appelant, qui avait de l'expérience en placement immobilier, a acquis quatre unités condominiales dont il a tiré des revenus de location. Ces propriétés faisaient partie d'un projet immobilier en consortium et étaient vendues sur la base suivante : les acheteurs obtiendraient des unités clés en main, la gestion serait assurée et un accord de mise en commun des locations serait conclu. Toutes les unités ont été acquises à fort degré d'endettement, l'appelant ne versant pour chacune qu'un acompte de 1 000 $. On a fourni à l'appelant des projections de revenus et de dépenses de location pour chacune des propriétés. Selon ces projections, il y aurait des mouvements de trésorerie négatifs et des déductions d'impôt sur le revenu pour une période de 10 ans. Toutefois, les résultats de la location des quatre unités se sont révélés pires que ceux que ce qui avait été mentionné dans les projections. Pour les années d'imposition 1990 à 1992, l'appelant a demandé la déduction de pertes découlant principalement des frais d'intérêts élevés qui avaient été payés sur les sommes empruntées pour acheter les unités. Le ministre du Revenu national a refusé la déduction de ces pertes pour le motif que le contribuable n'avait aucune expectative raisonnable de profit et donc aucune source de revenu aux fins de l'art. 9 de la *Loi de l'impôt sur le revenu*, et que les frais d'intérêts en cause n'étaient pas déductibles en vertu du sous-al. 20(1)*c*)(i) de la Loi. La Cour canadienne de l'impôt et la Cour d'appel fédérale ont toutes les deux confirmé cette décision.

Arrêt : Le pourvoi est accueilli.

Le critère de l'« expectative raisonnable de profit » ne devrait pas être accepté comme le critère applicable pour déterminer si les activités d'un contribuable constituent une source de revenu aux fins de l'art. 9 de la *Loi de l'impôt sur le revenu*. Au cours des dernières années, ce critère est devenu un outil d'application générale dont le ministre et les tribunaux se servent indépendamment des dispositions de la Loi pour évaluer après coup des décisions commerciales prises de bonne foi par le contribuable, ce qui constitue une dérogation au principe selon lequel les tribunaux devraient éviter d'établir des règles en matière de droit fiscal. Ce critère pose un problème en raison de son imprécision et de l'incertitude qui règne au sujet de son application; il en résulte un traitement inéquitable et arbitraire des contribuables.

Il y a lieu de recourir à la méthode à deux volets suivante pour déterminer si les activités d'un contribuable sont une source de revenu constituée d'une entreprise ou d'un bien : (i) L'activité du contribuable est-elle exercée en vue de réaliser un profit, ou s'agit-il d'une démarche personnelle? (ii) S'il ne s'agit pas d'une démarche personnelle, la source du revenu est-elle une entreprise ou un bien? Le premier volet du critère ne s'applique que si l'activité en cause comporte un aspect personnel ou récréatif. Lorsqu'une activité est clairement de nature commerciale, la recherche d'un profit par le contribuable est établie. Il n'est pas nécessaire de pousser l'examen plus loin en analysant les décisions commerciales du contribuable. Cependant, lorsque la nature de l'entreprise du contribuable comporte des aspects indiquant qu'elle pourrait être considérée comme un passe-temps ou une autre activité personnelle, cette entreprise ne sera considérée comme une source de revenu que si elle est exploitée d'une manière suffisamment commerciale. Pour qu'une activité soit qualifiée de commerciale par nature, le contribuable doit avoir l'intention subjective de réaliser un profit et il doit exister une preuve de comportement d'homme d'affaires sérieux étayant cette intention. L'expectative raisonnable de profit n'est rien de plus qu'un facteur parmi d'autres qui doit être pris en considération à ce stade.

La déductibilité des dépenses, qui présuppose l'existence d'une source de revenu, ne doit pas être confondue avec l'examen préliminaire portant sur l'existence de cette source. Une fois qu'on a déterminé qu'une activité est suffisamment commerciale pour être considérée comme une source de revenu, on procède à l'examen de la déductibilité pour déterminer si la dépense en cause tombe sous le coup de la disposition ou des dispositions en matière de déduction pertinentes de la Loi. Refuser la déduction de pertes pour le seul motif que les pertes indiquent l'inexistence d'une entreprise (ou d'un bien) comme source de revenu va à l'encontre du texte et de l'économie de la Loi. La question de savoir s'il existe une entreprise est distincte de celle de la déductibilité des dépenses. Refuser des déductions en fonction d'une analyse de l'expectative raisonnable de profit équivaudrait à une règle jurisprudentielle sur la minimisation des pertes, qui serait contraire aux principes d'interprétation établis qui s'appliquent à la Loi. De même, à la différence de nombreuses règles législatives sur la minimisation des pertes, dès que des déductions sont refusées à la suite de l'application du critère de l'expectative raisonnable de profit, le contribuable ne peut reporter ces pertes sur un revenu futur si jamais l'activité devient rentable.

Somme toute, la question de savoir si l'activité exercée par un contribuable constitue une source de revenu est tranchée en se demandant si le contribuable a l'intention d'exercer cette activité en vue de réaliser un profit et s'il existe des éléments de preuve étayant cette intention. En l'espèce, le contribuable a acheté quatre biens locatifs qu'il a loués à des parties sans lien de dépendance afin d'en tirer un revenu de location. Une activité de location de bien qui, comme en l'espèce, ne comporte aucun élément d'usage ou d'avantage personnel pour le contribuable est nettement une activité commerciale. Par conséquent, l'appelant satisfait au critère d'appréciation de l'existence d'une source de revenu et il peut déduire ses pertes locatives. Le sous-alinéa 20(1)*c*)(i) de la *Loi de l'impôt sur le revenu*, qui permet la déduction des intérêts payés sur de l'argent emprunté en vue de tirer un revenu d'une entreprise ou d'un bien, n'est pas un mécanisme d'évitement fiscal et, compte tenu de l'existence de dispositions anti-évitement particulières dans la Loi, les tribunaux ne devraient pas s'empresser de renforcer les dispositions de la Loi lorsque des inquiétudes sont exprimées concernant l'évitement de l'impôt. De plus, étant donné qu'une motivation d'ordre fiscal n'enlève rien à la validité d'opérations effectuées à des fins fiscales, l'espoir de l'appelant de réaliser éventuellement un gain en capital et la perspective de déduire des frais d'intérêts n'affecte pas la nature commerciale de son entreprise de location ni sa qualification de source de revenu.

POURVOI contre un arrêt de la Cour d'appel fédérale (2000), 254 N.R. 326, 2000 D.T.C. 6163, [2000] 2 C.T.C. 244, [2000] A.C.F. n° 238 (QL), confirmant une décision de la Cour canadienne de l'impôt, 98 D.T.C. 1600, [1998] 3 C.T.C. 2662, [1998] A.C.I. n° 310 (QL). Pourvoi accueilli.

Richard B. Thomas et *Lisa Wong*, pour l'appelant.

Richard Gobeil et *Donald G. Gibson*, pour l'intimée.

Procureurs de l'appelant : McMillan Binch, Toronto.

Procureur de l'intimée : Le sous-procureur général du Canada, Ottawa.

Her Majesty the Queen - v. - Jack Walls and Robert Buvyer (F.C.) (Civil) (27724)
Indexed as: Walls *v.* Canada / Répertorié : Walls *c.* Canada
Neutral citation: 2002 SCC 47. / Référence neutre : 2002 CSC 47.
Judgment rendered May 23, 2002 / Jugement rendu le 23 mai 2002

Present: McLachlin C.J. and L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

Income tax – Source of income – Test to determine whether taxpayer has business or property source of income – Whether "reasonable expectation of profit test" appropriate test – Income Tax Act, S.C. 1970-71-72, c. 63, s. 9.

The respondents were limited partners in a partnership. A mini-warehouse was purchased from Fraser Storage Park Ltd. ("FSPL") on behalf of the partnership for $2,200,000 payable in the form of $1 in cash and the balance in the form of an agreement for sale with interest payable at 24 percent per annum. The partnership also entered into agreements by virtue of which the partnership obligated itself to pay, on an annual basis, interest, service fees, and management fees, as well as 50 percent of the net operating profit of the operation to FSPL. The partnership generated losses on the mini-warehouse of which the respondents deducted their proportionate share for income tax purposes in 1984 and 1985. On reassessment, the Minister of National Revenue reduced the losses by reducing the purchase price of the mini-warehouse to reflect a fair market value of $1,180,000 and also reduced the allowable interest expense by disallowing interest on debt in excess of the fair market value and by lowering the interest rate to 16 percent. The respondents filed notices of objection, but the Minister confirmed the reassessment. The Federal Court, Trial Division dismissed the respondents' appeals based solely on its finding that the partnership did not carry on business with a reasonable expectation of profit and, therefore, that the losses from the storage park operation were not losses from a business and thus could not be deducted by the respondents. The Federal Court of Appeal set aside the judgment, holding that the trial judge erred in applying the reasonable expectation of profit doctrine, and remitted the matter to the trial judge for a determination of the outstanding issues of whether there had been an arm's length transaction and its fair market value. The only issue in this appeal is whether the storage park operation constituted a source of income for the purposes of s. 9 of the *Income Tax Act*.

Held: The appeal should be dismissed.

When the two-stage approach and the principles set out in the companion case *Stewart v. Canada*, 2002 SCC 46, are applied, it is clear that the respondents' storage park operation constituted a source of income for the purposes of s. 9 of the *Income Tax Act*. It is self-evident that such an activity is commercial in nature, and there was no evidence of any element of personal use or benefit in the operation. Where, as here, the activities have no personal aspect, reasonable expectation of profit does not arise for consideration. Although the respondents were clearly motivated by tax considerations when they purchased their interests in the partnership, this does not detract from the commercial nature of the storage park operation or its characterization as a source of income. A tax motivation does not affect the validity of transactions for tax purposes. In addition, given the specific anti-avoidance provisions in the Act, courts should not be quick to embellish its provisions in response to tax avoidance concerns.

APPEAL from a judgment of the Federal Court of Appeal (1999), 250 N.R. 324, 2000 D.T.C. 6025, [2000] 1 C.T.C. 324, [1999] F.C.J. No. 1823 (QL), reversing a decision of the Trial Division (1996), 107 F.T.R. 108, 96 D.T.C. 6142, [1996] 2 C.T.C. 14, [1996] F.C.J. No. 145 (QL). Appeal dismissed.

Brent Paris and *Richard Gobeil*, for the appellant.

Craig C. Sturrock and *Thomas M. Boddez*, for the respondents.

Solicitor for the appellant: The Deputy Attorney General of Canada, Vancouver.

Solicitors for the respondents: Thorsteinssons, Vancouver.

Présents : Le juge en chef McLachlin et les juges L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour et LeBel.

Impôt sur le revenu – Source de revenu – Critère applicable pour déterminer si le contribuable a une source de revenu constituée d'une entreprise ou d'un bien – Le « critère de l'expectative raisonnable de profit » est-il le critère applicable? – Loi de l'impôt sur le revenu, S.C. 1970-71-72, ch. 63, art. 9.

Les intimés étaient les commanditaires d'une société. Un mini-entrepôt a été acheté à Fraser Storage Park Ltd. (« FSPL ») au nom de la société, au prix de 2 200 000 $, payable de la façon suivante : 1 $ comptant et le solde par contrat de vente portant intérêt à 24 pour 100 par année. La société a également conclu des contrats en vertu desquels elle s'engageait à verser annuellement à FSPL des intérêts, des honoraires pour la prestation de services, des honoraires de gestion ainsi que la moitié du bénéfice d'exploitation net de l'entreprise. La société a subi des pertes au titre du mini-entrepôt, dont les intimés ont déduit leur part proportionnelle aux fins de l'impôt sur le revenu en 1984 et 1985. Dans de nouvelles cotisations, le ministre du Revenu national a réduit les pertes en diminuant le prix d'achat du mini-entrepôt de manière à refléter une juste valeur marchande de 1 180 000 $ et il a aussi réduit les frais d'intérêts déductibles en refusant la déduction de l'intérêt sur la portion de la dette excédant la juste valeur marchande et en abaissant le taux d'intérêt à 16 pour 100. Les intimés ont déposé des avis d'opposition, mais le ministre a confirmé les nouvelles cotisations. La Section de première instance de la Cour fédérale a rejeté les appels des intimés en concluant uniquement que la société n'était pas exploitée avec une expectative raisonnable de profit et que, par conséquent, les pertes découlant de l'exploitation du parc d'entreposage n'étaient pas des pertes découlant d'une entreprise et ne pouvaient donc pas être déduites par les intimés. La Cour d'appel fédérale a annulé ce jugement après avoir statué que le juge de première instance avait commis une erreur en appliquant la règle de l'expectative raisonnable de profit, et elle a renvoyé l'affaire au juge de première instance pour qu'il tranche les questions litigieuses suivantes : y avait-il une opération sans lien de dépendance et quelle en était la juste valeur marchande? La seule question litigieuse en l'espèce est de savoir si l'exploitation du parc d'entreposage constituait une source de revenu aux fins de l'art. 9 de la *Loi de l'impôt sur le revenu*.

Arrêt : Le pourvoi est rejeté.

Il ressort clairement de l'application de la méthode à deux volets et des principes énoncés dans l'arrêt connexe *Stewart c. Canada*, 2002 CSC 46, que l'exploitation du parc d'entreposage par les intimés constituait une source de revenu aux fins de l'art. 9 de la *Loi de l'impôt sur le revenu*. Il va de soi qu'une telle activité est de nature commerciale, et il n'y avait aucune preuve de l'existence d'un élément d'usage ou d'avantage personnel dans cette exploitation. Dans les cas où, comme en l'espèce, les activités ne comportent aucun aspect personnel, la question de l'expectative raisonnable de profit ne se pose pas. Même si les intimés étaient clairement motivés par des considérations fiscales lorsqu'ils ont acquis leur participation dans la société, cela n'enlève rien à la nature commerciale de l'exploitation du parc d'entreposage ni à sa qualification de source de revenu. Une motivation d'ordre fiscal n'enlève rien à la validité d'opérations effectuées à des fins fiscales. En outre, compte tenu de l'existence de dispositions anti-évitement particulières dans la Loi, les tribunaux ne devraient pas s'empresser de renforcer les dispositions de la Loi lorsque des inquiétudes sont exprimées concernant l'évitement de l'impôt.

POURVOI contre un arrêt de la Cour d'appel fédérale (1999), 250 N.R. 324, 2000 D.T.C. 6025, [2000] 1 C.T.C. 324, [1999] A.C.F. nº 1823 (QL), infirmant une décision de la Section de première instance (1996), 107 F.T.R. 108, 96 D.T.C. 6142, [1996] 2 C.T.C. 14, [1996] A.C.F. nº 145 (QL). Pourvoi rejeté.

Brent Paris et *Richard Gobeil*, pour l'appelante.

Craig C. Sturrock et *Thomas M. Boddez*, pour les intimés.

Procureur de l'appelante : Le sous-procureur général du Canada, Vancouver.

Procureurs des intimés : Thorsteinssons, Vancouver.

Family Insurance Corporation v. Lombard Canada Ltd. - and- Canadian Universities Reciprocal Insurance Exchange (B.C.) (28093)
Indexed as: Family Insurance Corp. *v.* Lombard Canada Ltd.
Répertorié : Family Insurance Corp. *c.* Lombard du Canada ltée
Neutral citation: 2002 SCC 48. / Référence neutre : 2002 CSC 48.
Judgment rendered May 23, 2002 / Jugement rendu le 23 mai 2002

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and Arbour JJ.

Insurance – Overlapping policies – Excess coverage – Two policies of insurance covering same risk – Both insurers relying on "other insurance" clauses to avoid primary liability – Whether clauses should be treated as mutually repugnant – Whether insurers should be required to bear loss equally.

A claim against the insured, Y, was settled with the quantum of damages payable by her two insurers set at $500,000. Y was insured by F under a homeowner/residential insurance policy with a maximum benefit of $1 million, and by L under a commercial general liability policy for up to $5 million. Both policies contained "other insurance" clauses that declared the policies to be "excess insurance" to any other insurance coverage. Each insurer relied on its "other insurance" clause to shield itself from primary liability. In a contest between the two insurers concerning the extent to which each of them was liable to pay the insured's claim, the trial judge held that the two clauses were mutually repugnant, and that liability should be apportioned between the insurers equally. The Court of Appeal, however, took into consideration the surrounding circumstances, and concluded that the underwriting considerations being different, the F policy provided the primary coverage to the insured, while the L policy provided excess coverage. F appealed.

Held: The appeal should be allowed and the decision of the trial judge restored.

The insurer may seek to limit its liability in the provisions of the policy, and thus the policy itself is the proper instrument to determine the liability of each insurer. Where the contest is only between the insurers, there is no basis for referring to surrounding circumstances or looking outside the policy, there being no privity of contract between the insurers. The policies here are clear and unambiguous, and the insurers' intentions are unequivocal. The appellant, F, intended to provide primary coverage unless other valid insurance was available, in which case, it intended to provide only excess coverage. The respondent, L, intended to provide primary coverage unless other valid insurance was available, in which case, it intended to provide only excess coverage regardless of the type of coverage provided by the other insurer. In the face of these irreconcilable intentions, the court must determine the most equitable means of resolving the dispute, respecting the intentions of the parties and the right of the insured to recover fully. The Minnesota approach which includes the closeness to the risk approach and which entails a broad analysis of the policies and the surrounding circumstances to determine the overall policy insuring intent of the insurers, is rejected, as it does not accord with the principles of equitable contribution, nor does it respect the intentions of both insurers. The better approach is one that recognizes that the parties involved have not contracted with each other, so that their subjective intentions are irrelevant. Although the intentions of the insurers govern the interpretation exercise, the focus of the examination is to determine whether the insurers intended to limit their obligation to contribute, by what method, and in what circumstances *vis-à-vis* the insured. In the absence of such limiting intentions or where those intentions conflict, principles of equitable contribution demand that parties under a coordinate obligation to make good the loss must share that burden equally. This approach serves to respect the intentions of both the insurers while simultaneously respecting the insured's contractual right to full indemnity. The "independent liability" approach to apportionment to the respective policy limits represents the fairest method of apportionment and accords with the principles on which the doctrine of equitable contribution is based.

On its face, the L policy provides the same primary coverage as that of F. To endorse the intentions of one insurer over another where both parties have sought to limit their liability to contribute and where the offending clauses, on their face, are irreconcilable, does violence to the intentions of the insurers and does not respect the obligation of both insurers to contribute. Were the court to give effect to each insurer's intention, F would provide only excess coverage and L would provide only excess to that, leaving the insured without primary coverage at all, an absurd result. Where the competing policies cannot be read in harmony, the conflicting clauses should be treated as mutually repugnant and

inoperative, as this accords with the expectations of both the insured and the insurers. Thus both policies provide the insured with primary coverage, so that each insurer is independently liable to the insured for the full loss. Where liability is shared among insurers covering the same risk, the loss is borne equally by each insurer until the lower policy limit is exhausted, with the policy with the higher limit contributing any remaining amounts.

APPEAL from a judgment of the British Columbia Court of Appeal (2000), 187 D.L.R. (4th) 605, 139 B.C.A.C. 181, 75 B.C.L.R. (3d) 263, 18 C.C.L.I. (3d) 165, [2000] 6 W.W.R. 111, [2000] I.L.R. I-3861, [2000] B.C.J. No. 1076 (QL), 2000 BCCA 330, setting aside a decision of the British Columbia Supreme Court (1999), 10 C.C.L.I. (3d) 58, [1999] I.L.R. I-3692, [1999] B.C.J. No. 515 (QL). Appeal allowed.

Neo J. Tuytel and *Jonathan L.S. Hodes*, for the appellant.

James H. MacMaster and *Donald B. Lebans*, for the respondent.

Patrick J. Monaghan, for the intervener.

Solicitors for the appellant: Clark, Wilson, Vancouver.

Solicitors for the respondent: Branch MacMaster, Vancouver.

Solicitors for the intervener: Black, Sutherland, Crabbe, Toronto.

Présents : Le juge en chef McLachlin et les juges Gonthier, Iacobucci, Major, Bastarache, Binnie et Arbour

Assurance – Chevauchement de polices – Garantie complémentaire – Risque couvert par deux polices – Clauses de « pluralité d'assurances» invoquées par les deux assureurs pour se dégager de toute responsabilité de premier rang – Ces clauses doivent-elles être considérées incompatibles? – Les assureurs doivent-ils partager le montant du sinistre à parts égales?

Une demande présentée contre l'assurée, Y, été réglée à l'amiable, le montant des dommages-intérêts étant fixé à 5000 000 $. Y était assurée par F aux termes d'une police d'assurance propriétaires occupants prévoyant un plafond de un million de dollars, et par L aux termes d'une police d'assurance commerciale multirisque prévoyant un plafond de cinq millions de dollars. Les deux polices comprenaient des clauses de « pluralité d'assurances » stipulant que les polices constituent une « garantie complémentaire » à toute autre garantie d'assurance. Chaque assureur a invoqué sa propre clause de « pluralité d'assurances » pour se dégager de toute responsabilité de premier rang Dans un différend opposant les deux assureurs et portant sur l'étendue de leur responsabilité respective quant au paiement de la demande de règlement de l'assuré, le juge de première instance a statué que les deux clauses étaient incompatibles et que la responsabilité devait être partagée à parts égales entre les deux assureurs. La Cour d'appel a toutefois tenu compte du contexte et elle a conclu que les considérations liées à la tarification étant différentes, la police de F fournissait une garantie de premier rang à l'assuré, tandis que la police de L lui fournissait une garantie complémentaire. F a interjeté appel.

Arrêt : Le pourvoi est accueilli et la décision du juge de première instance est rétablie.

L'assureur peut chercher à limiter sa responsabilité dans les dispositions de la police; par conséquent, le document qui doit servir à déterminer la responsabilité de chaque assureur est la police elle-même. Lorsque le différend oppose uniquement les assureurs, il n'existe aucun fondement pour examiner le contexte ou aller au-delà de la police, compte tenu de l'absence de lien contractuel entre les assureurs. En l'espèce, les polices étaient claires et non équivoques. L'appelante F avait l'intention de fournir une garantie de premier rang, sauf s'il existait quelque autre assurance valide, auquel cas l'assureur n'entendait fournir qu'une garantie complémentaire. L'intimée, L, avait l'intention de fournir une garantie de premier rang, à moins qu'il existe quelque autre assurance valide, auquel cas elle entendait limiter sa responsabilité à une garantie complémentaire, sans égard au type de garantie offerte par l'autre assureur. Devant ces intentions inconciliables,

le tribunal doit déterminer la façon la plus équitable de résoudre le différend, celle qui respecte les intentions des parties tout autant que le droit de l'assuré à une indemnisation complète. La méthode du Minnesota, qui inclut le critère du degré de proximité avec le risque et qui comporte une analyse approfondie des polices et du contexte en vue de déterminer l'intention globale exprimée dans la police, est rejetée, parce qu'elle est incompatible avec les principes de la contribution équitable et ne respecte pas les intentions des deux assureurs. La meilleure méthode consiste à reconnaître que les parties en cause n'ont pas conclu de contrat entre elles, de sorte que leurs intentions subjectives ne sont pas pertinentes. Même si les intentions des assureurs régissent la démarche d'interprétation, l'examen doit se concentrer sur la question de savoir si les assureurs voulaient limiter leur obligation de contribution, par quelle méthode, et dans quelles circonstances par rapport à l'assuré. En l'absence de telles intentions limitatives ou lorsqu'elles s'avèrent inconciliables, les principes de la contribution équitable exigent que les parties tenues au même titre d'indemniser une personne de sa perte partagent également ce fardeau. Cette méthode permet de respecter à la fois les intentions des deux assureurs et le droit contractuel de l'assuré à une indemnisation intégrale. L'approche de la « responsabilité indépendante » quant au partage de la responsabilité à concurrence des limites des polices respectives représente la méthode de partage la plus équitable et concorde avec les principes qui sous-tendent la doctrine de la contribution équitable.

À première vue, la police de L fournit la même garantie de premier rang que celle de F. Privilégier les intentions d'un assureur plutôt que celles de l'autre dans un cas où les deux parties ont cherché à limiter leur obligation de contribution et où les clauses litigieuses sont, à première vue, inconciliables, c'est faire violence aux intentions des assureurs et ne pas respecter l'obligation de contribution des deux assureurs. Si la Cour donnait effet à l'intention de chaque assureur, F ne fournirait qu'une garantie complémentaire et L ne fournirait qu'une garantie complémentaire à celle-ci, ce qui laisserait l'assuré sans aucune garantie de premier rang , ce qui serait absurde. Lorsque les polices concurrentes ne peuvent s'accorder, la démarche qui correspond aux attentes à la fois de l'assuré et des assureurs consiste à conclure que les clauses qui entrent en conflit sont incompatibles et inopérantes. Ainsi, les deux polices fournissent une garantie de premier rang à l'assuré de sorte que chaque assureur est tenu, indépendamment, d'indemniser intégralement l'assuré de sa perte. Lorsque la responsabilité est partagée entre les assureurs qui couvrent le même risque, la perte est assumée à parts égales par chaque assureur à concurrence de la limite de la police la moins élevée, à charge pour l'assureur dont la police prévoit une limite plus élevée de payer tout excédent.

POURVOI contre un arrêt de la Cour d'appel de la Colombie-Britannique (2000), 187 D.L.R. (4th) 605, 139 B.C.A.C. 181, 75 B.C.L.R. (3d) 263, 18 C.C.L.I. (3d) 165, [2000] 6 W.W.R. 111, [2000] I.L.R. I-3861, [2000] B.C.J. No. 1076 (QL), 2000 BCCA 330, qui a infirmé un jugement de la Cour suprême de la Colombie-Britannique (1999), 10 C.C.L.I. (3d) 58, [1999] I.L.R. I-3692, [1999] B.C.J. No. 515 (QL). Pourvoi accueilli.

Neo J. Tuytel et *Jonathan L.S. Hodes*, pour l'appelante.

James H. MacMaster et *Donald B. Lebans*, pour l'intimée.

Patrick J. Monaghan, pour l'intervenante.

Procureurs de l'appelante : Clark, Wilson, Vancouver.

Procureurs de l'intimée : Branch MacMaster, Vancouver.

Procureurs de l'intervenante : Black, Sutherland, Crabbe, Toronto.

Her Majesty the Queen in right of Canada, as represented by the Minister of National Revenue -v.- First Vancouver Finance -and- Great West Transport Ltd. (Sask.) (Civil) (28062)
Indexed as: First Vancouver Finance *v.* M.N.R. / Répertorié : First Vancouver Finance *c.* M.R.N.
Neutral citation: 2002 SCC 49. / Référence neutre : 2002 CSC 49.
Judgment rendered May 23, 2002 / Jugement rendu le 23 mai 2002

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and LeBel JJ.

Income tax – Administration and enforcement – Collection – Source deductions – Trust for moneys deducted – Employer failing to remit payroll deductions – Accounts receivable sold to third party – Whether property acquired by tax debtor after statutory deemed trust arises subject to trust – If so, whether sale of trust property to third party releases property from trust – Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 227(4), 227(4.1).

The respondent, First Vancouver Finance, entered into a factoring agreement with Great West Transport whereby it would purchase Great West's accounts receivable at a discount. After purchase, the Great West invoices were forwarded to Great West's debtors, along with notification that the account had been sold and that subsequent payments should be made directly to First Vancouver. Among the accounts purchased were several owing by Canada Safeway. As of the date of the factoring agreement, Great West owed money to the Minister of National Revenue because of unremitted payroll deductions. First Vancouver had made arrangements with the Minister to forward part of the purchase price of the accounts to be applied to Great West's arrears. The Minister served Canada Safeway with Enhanced Requirement to Pay Notices ("RTPs") as authorized by the *Income Tax Act* ("*ITA*"). In response, Canada Safeway made payments to the Minister relating to accounts which Great West had assigned to First Vancouver. First Vancouver brought an application to recover the amounts paid by Canada Safeway to the Minister pursuant to the RTPs. The Court of Queen's Bench granted the application in part, holding that First Vancouver was entitled to the moneys owing on accounts factored before the RTPs were issued. The Court of Appeal upheld that decision.

Held: The appeal should be dismissed.

The *ITA* requires employers to deduct and withhold amounts from their employees' wages ("source deductions") and remit these amounts to the Receiver General by a specified due date. Under s. 227(4), when source deductions are made, they are deemed to be held separate and apart from the property of the employer in trust for Her Majesty. If the source deductions are not remitted to the Receiver General by the due date, the deemed trust in s. 227(4.1) becomes operative and attaches to property of the employer to the extent of the amount of the unremitted source deductions. The trust is deemed to have existed from the moment the source deductions were made. The s. 227(4.1) deemed trust is similar in principle to a floating charge over all the tax debtor's assets in favour of Her Majesty. As long as the tax debtor continues to be in default, the trust continues to float over the tax debtor's property. At any given point in time, whatever property then belonging to the tax debtor is subject to the deemed trust. As property comes into possession of the tax debtor, it is caught by the trust and becomes subject to Her Majesty's interest. Similarly, property which the tax debtor disposes of is thereby released from the deemed trust. The mutuality of treatment between incoming and outgoing property relating to the deemed trust is supported by both the plain language of the provisions as well as their purpose and intent. Her Majesty's interest in the tax debtor's property is protected because, while property which is sold to third party purchasers is released from the trust, at the same time, the proceeds of disposition of the alienated property are captured by the trust. Commercial certainty is promoted owing to the fact that third party purchasers are free to transact with tax debtors or suspected tax debtors without fearing that Her Majesty may subsequently assert an interest in the property so acquired.

Since the deemed trust created by ss. 227(4) and 227(4.1) encompasses property which comes into the hands of the tax debtor after the trust arises, when Great West came into possession of the Canada Safeway invoices, the deemed trust, which had already arisen as a consequence of Great West's default in remittances, successfully attached to those invoices. However, the deemed trust does not operate over assets which a tax debtor has sold in the ordinary course to third party purchasers. Once the Canada Safeway invoices had been factored to First Vancouver, the Minister was prevented from asserting its interest in these invoices.

APPEAL from a judgment of the Saskatchewan Court of Appeal (2000), 199 Sask. R. 9, [2000] 8 W.W.R. 386, [2000] 3 C.T.C. 93, [2001] G.S.T.C. 55, [2000] S.J. No. 330 (QL), 2000 SKCA 58, affirming a decision of the Court of Queen's Bench (1999), 190 Sask. R. 286, [2000] 1 W.W.R. 713, [2000] 1 C.T.C. 99, [2001] G.S.T.C. 54, [1999] S.J. No. 738 (QL), 1999 SKQB 166. Appeal dismissed.

Edward R. Sojonky, Q.C., and *Mark Kindrachuk*, for the appellant.

Joel A. Hesje and *David M. A. Stack*, for the respondent, First Vancouver Finance.

Solicitor for the appellant: The Attorney General of Canada, Saskatoon.

Solicitors for the respondent, First Vancouver Finance: McKercher McKercher & Whitmore, Saskatoon.

Présents : Le juge en chef McLachlin et les juges Gonthier, Iacobucci, Major, Bastarache, Binnie et LeBel.

Impôt sur le revenu — Administration et exécution — Perception — Retenues à la source — Détention en fiducie des retenues — Défaut de l'employeur de verser les retenues à la source — Comptes débiteurs vendus à un tiers — Les biens acquis par le débiteur après la matérialisation de la fiducie réputée y sont-ils assujettis? — Dans l'affirmative, la vente à un tiers de biens détenus en fiducie a-t-elle pour effet de soustraire ces biens à l'application de la fiducie? — Loi de l'impôt sur les revenu, L.R.C. 1985, ch. 1 (5^{e} suppl.), art. 227(4), 227(4.1).

L'intimée, First Vancouver Finance, a conclu, avec Great West Transport, une entente d'affacturage en vertu de laquelle elle devait acheter des comptes débiteurs de Great West selon leur valeur actualisée. Après l'achat, les factures de Great West ont été acheminées aux débiteurs de Great West de pair avec un avis les informant que le compte avait été vendu et que les paiements à venir devaient être versés directement à First Vancouver. Plusieurs des créances vendues étaient payables par Canada Safeway Limited. À la date de l'entente d'affacturage, Great West avait une dette envers le ministre du revenu national en raison du non-versement de retenues à la source. First Vancouver avait convenu avec le ministre de lui faire parvenir une fraction du prix d'acquisition des comptes pour le paiement des sommes en souffrance que lui devait Great West. Le ministre a signifié à Canada Safeway des demandes péremptoires de paiement renforcées comme l'y autorisait la *Loi de l'impôt sur le revenu* (la « LIR »). À la suite de ces demandes, Canada Safeway a versé des sommes au ministre relativement aux comptes que Great West avait cédés à First Vancouver. First Vancouver a présenté une demande de restitution des sommes que Canada Safeway avait versées au ministre conformément aux demandes de paiement. La Cour du Banc de la Reine a accueilli cette demande en partie, statuant que First Vancouver pouvait récupérer le montant des créances affacturées avant les demandes péremptoires de paiement. La Cour d'appel a confirmé cette décision.

Arrêt : Le pourvoi est rejeté.

La LIR exige que l'employeur déduise ou retienne un montant sur le salaire de l'employé (« retenue à la source ») et le verse au receveur général au plus tard à la date fixée par règlement. Suivant le par. 227(4), l'employeur qui fait une retenue à la source est réputé en détenir le montant en fiducie au profit de Sa Majesté, séparément de ses propres biens. Lorsque le montant d'une retenue à la source n'est pas versé au receveur général dans le délai prescrit, la fiducie réputée prévue au par. 227(4.1) prend effet et s'applique aux biens de l'employeur jusqu'à concurrence du montant impayé des retenues à la source. La fiducie est réputée exister depuis le moment où le montant a été déduit à la source. La fiducie réputée prévue au par. 227(4.1) s'apparente sur le plan des principes à une charge flottante grevant la totalité des biens du débiteur fiscal au profit de Sa Majesté. Tant que le débiteur fiscal ne remédie pas à son défaut, la fiducie continue de s'appliquer à ses biens au gré de leur acquisition. Tout bien appartenant au débiteur fiscal à un moment quelconque est réputé détenu en fiducie à ce moment. Tout bien qui se retrouve en la possession du débiteur fiscal est détenu en fiducie et assujetti au droit de Sa Majesté. De la même façon, le bien dont le débiteur fiscal se départit cesse de faire l'objet de la fiducie réputée. Cette réciprocité de traitement des biens acquis et aliénés en ce qui concerne la fiducie réputée trouve appui tant dans le libellé clair des dispositions que dans leur objet et dans l'intention du législateur. Le droit de Sa Majesté

sur les biens du débiteur fiscal est protégé, car au moment où le bien vendu à un tiers cesse d'être détenu en fiducie, le produit découlant de la vente de ce bien devient assujetti à la fiducie réputée. Le fait qu'un tiers puisse acheter un bien à un débiteur fiscal ou à une personne soupçonnée d'être un débiteur fiscal sans craindre que Sa Majesté ne fasse ultérieurement valoir un droit sur ce bien favorise la stabilité commerciale.

Étant donné que la fiducie réputée créée par les par. 227(4) et 227(4.1) englobe les biens qui se retrouvent en la possession du débiteur fiscal à compter de sa matérialisation, les factures de Canada Safeway qui se sont retrouvées en la possession de Great West sont effectivement devenues assujetties à la fiducie réputée, qui s'était déjà matérialisée en raison des non-versements par Great West. Toutefois, la fiducie réputée ne s'applique pas aux biens que le débiteur fiscal a vendus à un tiers dans le cadre normal de ses activités. À partir du moment où les comptes de Canada Safeway ont été affacturés à First Vancouver, le ministre ne pouvait plus faire valoir son droit sur eux.

POURVOI contre un arrêt de la Cour d'appel de la Saskatchewan (2000), 199 Sask. R. 9, [2000] 8 W.W.R. 386, [2000] 3 C.T.C. 93, [2001] G.S.T.C. 55, [2000] S.J. No. 330 (QL), 2000 SKCA 58, qui a confirmé une décision de la Cour du Banc de la Reine (1999), 190 Sask. R. 286, [2000] 1 W.W.R. 713, [2000] 1 C.T.C. 99, [2001] G.S.T.C. 54, [1999] S.J. No. 738 (QL), 1999 SKQB 166. Pourvoi rejeté.

Edward R. Sojonky, c.r., et *Mark Kindrachuk*, pour l'appelante.

Joel A. Hesje et *David M. A. Stack*, pour l'intimée First Vancouver Finance.

Procureur de l'appelante : Le procureur général du Canada, Saskatoon.

Procureurs de l'intimée First Vancouver Finance : McKercher McKercher & Whitmore, Saskatoon.

Clayton Fensom - and - Trailways Transportation Group, Inc. - v. - Deryk J. Kendall, Grant A. Richards, Darren T. Hagen, Randy K. Katzman, D. Roger Arnold, Greg M. Kuse, Robert H. Goodman, Jay D. Watson and F. Neil Turcott, operating a partnership under the name of Cuelenaere, Kendall, Katzman & Richards, and Ronald Miller (Sask.) (28068)
Indexed as: Heredi *v.* Fensom / Répertorié : Heredi *c.* Fensom
Neutral citation: 2002 SCC 50. / Référence neutre : 2002 CSC 50.
Judgment rendered May 23, 2002 / Jugement rendu le 23 mai 2002

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and LeBel JJ.

Limitation of actions – Statutes – Motor vehicles – Passenger injured while riding on bus suing company and driver in tort and in contract – Whether claims statute-barred – Interpretation of provincial legislation creating a short limitation period for actions seeking the recovery of "damages occasioned by a motor vehicle" – Highway Traffic Act, S.S. 1986, c. H-3.1, s. 88(1).

Actions – Torts – Contracts – Passenger injured while riding on bus suing company and driver in tort and in contract – Examination of distinction in application of limitation periods under provincial Highway Traffic Act between actions framed in contract and actions framed in tort – Highway Traffic Act, S.S. 1986, c. H-3.1, s 88(1).

In March 1994, H was injured while riding on a Paratransit bus, which was owned by TTG and driven by F. F picked H up at her home, assisted her in being seated on the bus, and secured her seat belt. He placed one end of the crutches she used beneath her right shoulder and braced the other end against the interior wheel well of the bus. F resumed driving and the parties are in agreement, pursuant to an agreed statement of facts, that he operated the bus "in such a manner as to cause H's crutches to jar her right shoulder, thereby causing injury". In March 1996, H brought an action against F and TTG alleging both negligence and breach of contract, and an action against her former solicitors, alleging negligence in their failure to bring a claim against F and TTG within the one-year period provided by s. 88(1) of the the *Highway Traffic Act* for the recovery of "damages occasioned by a motor vehicle". At trial, the action against F and TTG was found to be barred. The Court of Appeal found that the action in contract against F and TTG could proceed, but that the action in tort was barred under s. 88(1).

Held: The appeal should be allowed.

The true intent of s. 88(1) is that "damages occasioned by a motor vehicle" requires that the presence of a motor vehicle be the dominant feature, or constitute the true nature, of the claim. Conversely, claims, whether framed in contract or in tort, where the presence of a motor vehicle is a fact ancillary to the essence of the action ought not be regarded as within the scope of that phrase. The Court must depart from the sharp distinction that has, in the opinion of some courts, been created between cases framed in contract and cases framed in tort. The legislation aims to have a reasonably wide effect and does not distinguish between these divergent forms of action.

In order to determine whether an action is for "damages occasioned by a motor vehicle", and thus subject to the *Highway Traffic Act* limitation period, a substantive approach ought to be taken. The nature of the facts and the nature of the action ought to be considered together in order to make a determination as to the fundamental nature of the action. Are the damages sought to be recovered in the action, in their essence, damages that were occasioned by a motor vehicle? In light of the way in which the action is framed, and the facts giving rise to the damages claimed, is the action one that could be primarily classified as an action for damages occasioned by a motor vehicle? If the role of the motor vehicle in the causal chain is too insignificant, or if the causal chain is itself not the most illuminative way to characterize the claim, the action ought not be regarded as subject to the limitation. If, on the other hand, the dominant feature of the damages is their relation to a motor vehicle accident, the limitation period ought to be applied.

In this case, the dominant feature of the facts is that the damage was caused by a motor vehicle. The presence of the vehicle was not in any way ancillary to the damage complained of. Instead, it was the very operation of the motor vehicle itself that, by the parties' mutual admission, centrally caused the damage. Therefore, the claims brought by H are claims for "damages occasioned by a motor vehicle" and cannot proceed.

APPEAL from a judgment of Saskatchewan Court of Appeal, [2000] 9 W.W.R. 191, 189 Sask. R. 312, 216 W.A.C. 312, 5 M.V.R. (4th) 71, [2000] S.J. No. 302 (QL), 2000 SKCA 55, allowing the appellants' appeal in part from a decision of the Court of Queen's Bench, [2000] 3 W.W.R. 62, 188 Sask. R. 188, 48 M.V.R. (3d) 130, [1999] S.J. No. 791 (QL), 1999 SKQB 216. Appeal allowed.

Timothy J. MacLeod and *Donald Phillips*, for the appellants.

Thomas J. Schonhoffer, for the respondents.

Solicitor for the appellants: Saskatchewan Government Insurance, Regina.

Solicitor for the respondents: Saskatchewan Lawyer's Insurance Association, Regina.

Présents : Le juge en chef McLachlin et les juges Gonthier, Iacobucci, Major, Bastarache, Binnie et LeBel.

Prescription – Lois – Véhicules automobiles – Une passagère blessée dans un trajet en autobus poursuit la société de transport et le conducteur en responsabilité délictuelle et contractuelle – Les actions sont-elles prescrites? – Interprétation de la loi provinciale fixant un délai de prescription court pour les actions en indemnisation de « dommages causés par un véhicule à moteur » -- Highway Traffic Act, S.S. 1986, ch. H-31, art. 88(1).

Actions – Responsabilité délictuelle – Contrats – Une passagère blessée dans un trajet en autobus poursuit la société de transport et le conducteur en responsabilité délictuelle et contractuelle – Analyse de la distinction faite dans l'application des délais de prescription de codes de la route provinciaux entre les actions délictuelles et contractuelles – Highway Traffic Act, S.S. 1986, ch. H-31, art. 88(1).

En mars 1994, H est blessée pendant un trajet en autobus adapté appartenant à TTG et conduit par F. F prend H chez elle, l'aide à s'asseoir dans l'autobus et attache sa ceinture. Il place une extrémité de ses béquilles sous son épaule droite et coince l'autre extrémité contre le passage de roue. F se remet en route. Les parties conviennent dans un énoncé conjoint des faits qu'il conduit le véhicule « d'une façon telle que la demanderesse est blessée par les béquilles qui lui frappent l'épaule droite ». En mars 1996, H intente une action contre F et TTG, alléguant la négligence et la rupture de contrat, et une action contre ses anciens avocats, alléguant la négligence dans leur défaut d'intenter une action contre F et TTG dans le délai d'un an prévu par l'art. 88 (1) de la *Highway Traffic Act* pour « dommages causés par un véhicule à moteur ». Le juge de première instance déclare prescrite l'action contre F et TTG. La Cour d'appel juge que l'action contractuelle contre F et TTG peut se poursuivre mais que l'action délictuelle est prescrite en vertu de l'art. 88(1).

Arrêt : L'appel est accueilli.

Suivant l'intention véritable du législateur, l'expression « dommages causés par un véhicule à moteur » exige que la présence du véhicule à moteur soit la caractéristique dominante ou la nature véritable de l'action. À l'inverse, que le fondement de l'action soit contractuel ou délictuel, si la présence du véhicule à moteur est un fait accessoire, l'action n'est pas visée par cette expression. La Cour doit écarter la distinction radicale qui a été créée, de l'avis de certains tribunaux, entre les actions ayant un fondement contractuel et celles ayant un fondement délictuel. La loi est censée avoir une application assez étendue et n'établit pas de distinction entre ces différents types d'actions.

Pour déterminer si une action se rapporte à des « dommages causés par un véhicule à moteur » et est donc soumise au délai de prescription de la *Highway Traffic Act*, il faut procéder à une analyse substantielle. Pour déterminer la nature fondamentale de l'action, il faut examiner conjointement la nature des faits et la nature de l'action. Les dommages pour lesquels on demande des dommages-intérêts sont-ils essentiellement des dommages causés par un véhicule à moteur? Compte tenu de la façon dont l'action est présentée et des faits qui ont donné naissance à la demande de dommages-intérêts, peut-on classer l'action comme étant principalement une action résultant de dommages causés par un véhicule à moteur? Si le rôle du véhicule à moteur dans la chaîne de causalité est trop insignifiant ou si la chaîne de

causalité n'est pas la façon la plus éclairée de qualifier l'action, il faut considérer que le délai de prescription ne s'applique pas à l'action. Si par contre la caractéristique dominante des dommages est d'être liés à un accident automobile, la prescription doit s'appliquer.

En l'espèce, la caractéristique dominante des faits est que les dommages ont été causés par un véhicule à moteur. La présence du véhicule n'est en aucune façon accessoire au dommage dont on se plaint. Au contraire, les parties conviennent que c'est la conduite même du véhicule à moteur qui est la cause principale des dommages. Les actions intentées par H se rapportent donc à des « dommages causés par un véhicule à moteur » et sont prescrites.

POURVOI contre un arrêt de la Cour d'appel de la Saskatchewan, [2000] 9 W.W.R. 191, 189 Sask. R. 312, 216 W.A.C. 312, 5 M.V.R. (4th) 71, [2000] S.J. No. 302 (QL), 2000 SKCA 55, qui accueille en partie l'appel des appelants d'un jugement de la Cour du Banc de la Reine, [2000] 3 W.W.R. 62, 188 Sask. R. 188, 48 M.V.R. (3d) 130, [1999] S.J. No. 791 (QL), 1999 SKQB 216. Pourvoi accueilli.

Timothy J. MacLeod et *Donald Phillips*, pour les appelants.

Thomas J. Schonhoffer, pour les intimés.

Procureur des appelants : Saskatchewan Government Insurance, Regina.

Procureur des intimés : Saskatchewan Lawyer's Insurance Association, Regina.

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:

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 :

Motion day	**:**	**June 10, 2002**	**Audience du**	**:**	**10 juin 2002**
Service	:	May 17, 2002	Signification	:	17 mai 2002
Filing	:	May 24, 2002	Dépôt	:	24 mai 2002
Respondent	:	May 31, 2002	Intimé	:	31 mai 2002

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

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.

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.

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.

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

The Supreme Court of Canada has enacted new rules that will come into force on June 28, 2002.

Please consult the Notice to the Profession of April 2002 for further information.

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.

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 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.

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.

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.

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

La Cour suprême du Canada a adopté de nouvelles règles qui entreront en vigueur le 28 juin 2002.

Veuillez consulter l'avis aux avocats du mois d'avril 2002 pour plus de renseignements.

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

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2001 -

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

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

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

- 2002 -

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

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

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

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

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

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

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

M

H

18 sitting weeks / semaines séances de la cour
79 sitting days / journées séances de la cour
9 motion and conference days / journées requêtes, conférences
2 holidays during sitting days / jours fériés durant les sessions