SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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Ville de Montréal
Jean-François Longtin
Bélanger Longtin

c. (29637)

Commerce & Industry Insurance Company of Canada, et al. (Qué.)
Gordon Kugler
Kugler Kandestin

DATE DE PRODUCTION 28.2.2003

Joyce Mary Schellak
Rod Ellard
TNT Lawyers

v. (29638)

Janice Rae Barr, et al. (B.C.)
Linda P. Stevens
Stevens Kale

FILING DATE 3.3.2003

121571 Canada Inc.
Peter J. Bishop

v. (29639)

Attorney General of Canada (Ont.)
Brian J. Saunders
A.G. of Canada

FILING DATE 3.3.2003

Allan J. Legere
Allan J. Legere

v. (29641)

Warden of the Regional Reception Centre (Que.)
Christian Jarry
A.G. of Canada

FILING DATE 7.3.2003

Kelly Lesiuk
Byron Williams
Public Interest Law Centre

v. (29642)

The Attorney General of Canada (F.C.)
Mark R. Kindrachuk
A.G. of Canada

FILING DATE 7.3.2003

Joseph Menegon
John W. McDonald
McDonald, Ross

v. (29644)

Salomon Brothers Canada Inc., et al. (Ont.)
Benjamin Zarnett
Goodmans

FILING DATE 7.3.2003

Jean Lapierre
Christian Ladouceur
Les Avocats Ladouceur

c. (29645)

Tribunal du travail, et autres (Qué.)
Tribunal du travail

DATE DE PRODUCTION 7.3.2003

City of Calgary, et al.
Andrew J. Roman
Miller Thomson

v. (29635)

AT&T Canada Corp., et al. (F.C.)
Thomas G. Heintzman, Q.C.
McCarthy Tétrault

- and between -

Federation of Canadian Municipalities
Earl A. Cherniak, Q.C.
Lerner & Associates

v. (29635)

AT&T Canada Corp., et al. (F.C.)
Thomas G. Heintzman, Q.C.
McCarthy Tétrault

- and between -

City of Vancouver
Patsy J. Scheer
City of Vancouver

v. (29635)

AT&T Canada Corp., et al. (F.C.)
Thomas G. Heintzman, Q.C.
McCarthy Tétrault

FILING DATE 3.3.2003

Federal Express Corporation, et al.
G. Bruce Butler
Harper Grey Easton

v. (29643)

MDSI Mobile Data Solutions Inc. (B.C.)
Christopher J. Giaschi
Giaschi & Margolis

FILING DATE 7.3.2003

Prometic Biosciences Inc., et autre
James A. Woods
Woods & Asoociés

c. (29646)

Robert Arcand (Qué.)
Magali Cournoyer-Proulx
Heenan Blaikie

DATE DE PRODUCTION 7.3.2003

Duray Bentley Richards
Peter J. Royal, Q.C.
Royal, McCrum, Duckett & Glancy

v. (29647)

Her Majesty the Queen (B.C.)
William F. Ehrcke, Q.C.
A.G. of British Columbia

FILING DATE 10.3.2003

A.K.
Laura K. Stevens
Anderson, Dawson, Knisely, Stevens & Shaigec

v. (29648)

Her Majesty the Queen (Alta.)
David C. Marriott
A.G. of Alberta

FILING DATE 11.3.2003

MARCH 17, 2003 / LE 17 MARS 2003

CORAM: Chief Justice McLachlin and Bastarache and Deschamps JJ. /
La juge en chef McLachlin et les juges Bastarache et Deschamps

Sa Majesté la Reine

c. (29421)

Denis Bégin (Crim.) (Qué.)

NATURE DE LA CAUSE

Droit criminel - Preuve - Admissibilité de déclaration écrite - La Cour d'appel du Québec a-t-elle erré en droit dans l'exercice de son pouvoir de contrôle quant à la détermination de l'admissibilité de la déclaration de l'accusé? - La Cour d'appel du Québec a-t-elle erré en droit en déclarant inadmissible la déclaration de l'accusé, se fondant pour se faire sur: Des faits postérieurs; et des fait non prouvés?

HISTORIQUE PROCÉDURAL

Le 9 octobre 1997 Cour supérieure du Québec (Martin j.c.s.)	Demande de la demanderesse de déclarer recevable en preuve une déclaration de l'intimé, accordée
Le 30 octobre 1997 Cour supérieure du Québec (Martin j.c.s.)	Intimé déclaré coupable par jury de meurtre au premier degré contrairement à l'article 231 du Code criminel
Le 14 août 2002 Cour d'appel du Québec (Baudouin, Fish et Rousseau-Houle jj.c.a.)	Appel accueilli : verdict de culpabilité annulé; tenue d'un nouveau procès ordonnée
Le 15 octobre 2002 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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The Ontario Secondary School Teachers' Federation, Earl Manners, Mike Walsh, Pam Constable, Rhonda-Kimberley Young, Malcolm Buchanan, Patrick Boulos, Geoff Deleplanque, Greg McGillis, Fay Mombourquette and Bev Ough

v. (29341)

Ontario Teachers' Federation (Ont.)

NATURE OF THE CASE

Labour law - Labour Relations - Commercial law - Company law - Whether Respondent had power to pass by-law requiring Applicant to remit to Respondent fees collected from their mutual members - Whether Respondent had power to suspend participation and voting by Applicants - Whether appellate court erred on issues of corporate law, labour law, and statutory interpretation - Can a union be forced to impose on its members a fee structure dictated by a separate legal

entity in the face of a democratic vote by its members not to make certain payments from union funds - *Corporations Act*, R.S.O. 1990, c. C. 38- *Teaching Profession Act*, R.S.O. 1990 c. T.2.

PROCEDURAL HISTORY

September 28, 2001 Ontario Superior Court of Justice (Archibald J.)	Applicants' application to declare part of Respondent's By-law X *ultra vires*, granted; Respondent's application dismissed
June 21, 2002 Court of Appeal for Ontario (Weiler, Abella and Goudge JJ.A.)	Appeal allowed in part; sections 1-5 of OTF's By-law X declared valid, Applicant Federation to pay fees in default to Respondent; section 6 of By-law X declared invalid
September 5, 2002 Supreme Court of Canada	Application for leave to appeal filed

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The Islamic Center of Québec-El Markaz Islami,
Centre islamique du Québec-El Markaz Islami

v. (29434)

137193 Canada Inc. (Que.)

NATURE OF THE CASE

Procedural Law - Commercial Law - Judgments and Orders - Contracts - Sale - Offer and Acceptance - Whether the Court of Appeal erred by failing to consider the whole of the evidence - Whether the Court of Appeal failed to apply the rule *audi alteram partem*?

PROCEDURAL HISTORY

July 18, 2002 Superior Court of Quebec (Flynn J.)	Applicant's application for the execution of the promise to purchase and for damages resulting in the Respondent's failure to honour the parties' contract dismissed
October 7, 2002 Court of Appeal of Quebec (Gendreau, Dalphond and Rayle JJ.C.A.)	Appeal dismissed
November 26, 2002 Supreme Court of Canada	Application for leave to appeal filed

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Syndicat national des employés Cargill limitée (CSN)

c. (29368)

Cargill limitée (C.F.)

NATURE DE LA CAUSE

Droit administratif - Droit du travail - Compétence - Contrôle judiciaire - Demande de précision - Lock-out - *Functus Officio* - Ordonnance - La Cour d'appel fédérale at-elle erré en droit en statuant que le Conseil canadien des relations industrielles a, dans le cadre de la demande de précisions du demandeur, révisé son ordonnance du 23 juin 2000 concernant l'application de 87.7 (1) du *Code canadien du travail* ? - La Cour d'appel fédérale a-t-elle erré en faits et en droit en statuant que le Conseil canadien des relations industrielles a opté pour la thèse de l'intimée ? - La Cour d'appel fédérale a-t-elle erré en droit en considérant que le Conseil canadien des relations industrielles était *functus officio* d'une part et qu'il ne pouvait pas en vertu de l'article 87.7(3) préciser son ordonnance du 23 juin 2000 d'autre part.

HISTORIQUE PROCÉDURAL

Le 21 mars 2001 Conseil canadien des relations industrielles (Tobin, Charbonneau et Gourdeau, membres)	Demande en précisions du demandeur, accueillie; ordonnance du 23 juin 2000 confirmée: l'intimée a enfreint l'art. 87.7 du *Code canadien du travail*
Le 20 juin 2002 Cour d'appel fédérale (Décary, Noël et Nadon jj.c.a.)	Demande de l'intimée en contrôle judiciaire, accueillie; décision du conseil canadien des relations industrielles, annulée
Le 19 septembre 2002 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Michael Joseph Fitzgerald

v. (29491)

Mountain-West Resources Limited (B.C.)

NATURE OF THE CASE

Procedural law - Civil procedure - Judgments and orders - Jurisdiction - Whether the Court of Appeal erred in law in holding that the Supreme Court of B.C. had apparent jurisdiction *simpliciter* arising from the decision of the Supreme Court of Canada in *Canadian Aero Systems Ltd. v. O'Malley*, [1974] S.C.R. 592 over claims made by a B.C. company against a party residing and domiciled *ex juris* and concerning immovables (i.e., mineral claims) situated *ex juris* - Whether the Court of Appeal erred in law in allowing the appeal from the B.C. Supreme Court Judge's order finding that there was no jurisdiction, and by remitting the matter to the B.C. Supreme Court for further proceedings, including jurisdictional issues, without deciding the existence of jurisdiction simpliciter or whether to decline jurisdiction based upon other grounds raised by the Applicant, including whether (a) the claims had a "real and substantial connection" to B.C.; (b) jurisdiction in personam could be asserted over a foreign party in these circumstances; (c) the claims were fatally flawed by virtue of being (i) barred by the dismissal of claims against Harry Ranspot (NOTE: Ranspot is a second plaintiff not included in this action); (ii) factually devoid of basis; (iii) barred by the *Limitations Act*; or (iv) an abuse of process, by virtue of having their alleged basis in acts done in 1974-75 and not having been brought until 1999 and not having been diligently prosecuted; and (d) whether British Columbia was the *forum conveniens*.

PROCEDURAL HISTORY

December 22, 1999 Supreme Court of British Columbia	Order: *Ex juris* service upon the Applicant set aside;

(Edwards J.)	lack of jurisdiction of the Supreme Court of B.C. over the claims declared
September 30, 2002 Court of Appeal for British Columbia (Southin, Rowles and Ryan JJ.A.)	Appeal allowed; order set aside; case remitted to the Supreme Court of B.C.
November 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

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

Keith Nigel Madeley

v. (29602)

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

NATURE OF THE CASE

Canadian Charter - Criminal - Stay of proceedings - Police misconduct - Constitutional exemption - State agent - Whether the police misconduct and the Crown's failure with respect to its disclosure obligations were sufficient to make this one of those clearest of cases requiring a stay of proceedings be imposed - If this was not one of those clearest of cases meriting a stay, whether the Applicant should receive a reduced period of parole ineligibility as an alternative *Charter* remedy - Whether the inmate witness was a state agent by virtue of the "culture of exchange" operating in the provincial prison system at the time he offered his evidence to police

PROCEDURAL HISTORY

June 13, 1997 Ontario Court of Justice (Blair J.)	Application for stay of proceedings dismissed; Application for exclusion of the evidence of inmate witness denied
March 12, 1998 Ontario Court of Justice (Blair J.)	Applicant convicted by jury of first degree murder contrary to s.235(1) of the *Criminal Code*; Applicant sentenced to life imprisonment with 25-year parole ineligibility
June 17, 2002 Court of Appeal for Ontario (Carthy, Labrosse and Abella JJ.A.)	Appeals against conviction and sentence dismissed
February 4, 2003 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

Najeeb Wahab

v. (29445)

Canadian Arabs' Investment Company Limited (Ont.)

NATURE OF THE CASE

Commercial law - Bankruptcy - Real estate transactions - Breach of Fiduciary duty - Applicant found to have breached fiduciary duties by receiving a secret commission and by using Respondent's money without proper authorization - Whether the Applicant was deprived of his constitutional right to a fair hearing - Whether the Applicant was unable to present full answer and defence as he was unable to secure the attendance of two witnesses - Whether the fresh evidence met the test for admissibility as set out in *R. v. Palmer* - Whether the court of appeal failed to provide adequate reasons for decision.

PROCEDURAL HISTORY

July 4, 2000 Superior Court of Justice of Ontario (Heeney J.)	Respondent's claim against the Applicant, allowed: Applicant ordered to pay the amount of $394,163.00; Applicant's counterclaim dismissed; Applicant ordered to pay punitive damages in the amount of $1.00
September 9, 2002 Court of Appeal for Ontario (Abella, Charron and Moldaver JJ.A.)	Appeal dismissed with costs to be assessed
November 7, 2002 Supreme Court of Canada	Application for leave to appeal filed

Purandhar Setlur

v. (29592)

The Attorney General of Canada (F.C.A.)

NATURE OF THE CASE

Procedural law - Reasonable apprehension of bias - Whether the Respondent served and filed its Book of Authorities in violation of the limitation period in rule 348 of the *Federal Court Rules, 1998* - Whether the judge who directed the registry to accept the late filing was also the presiding judge at the hearing and technically ought not have heard the matter - Whether the matter heard related to the violation of the limitation period of Rules 317 and 318 of the *Federal Court Rules, 1998* by the Respondent's client, the Public Service Commission of Canada, in File Number T-1736-01 and yet a further leeway was given to the Respondent thus making the Applicant's appeal a futile exercise - Whether the pleadings were not put on record - Whether there was a reasonable apprehension of bias on the part of the presiding judge who heard the matter

PROCEDURAL HISTORY

January 3, 2002 Federal Court of Canada, Trial Division (Giles, Prothonotary)	Respondent's motion for an extension of time granted; Applicant's requests denied

February 7, 2002 Federal Court of Canada, Trial Division (Gibson J.)	Appeal from the order of the prothonotary, dismissed
November 21, 2002 Federal Court of Appeal (Linden, Sexton and Sharlow JJ.A.)	Appeal dismissed
January 20, 2003 Supreme Court of Canada	Application for leave to appeal filed

Michael J. Hordo

v. (29511)

Nora Isabel Bartlett (Ont.)

NATURE OF THE CASE

Procedural law - Civil procedure - Judgments and orders - Respondent's motion for an order compelling Applicant to attend examination in aid of execution granted - Court of Appeal quashing appeal of that order - Whether decisions below should be set aside and new trial ordered.

PROCEDURAL HISTORY

March 1, 2002 Ontario Superior Court of Justice (Pepall J.)	Respondent's motion for an order compelling the Applicant to attend an examination in aid of execution granted; Applicant's cross-motion dismissed
October 9, 2002 Court of Appeal for Ontario (Catzman, Abella and Charron JJ.A.)	Appeal quashed
December 9, 2002 Supreme Court of Canada	Application for leave to appeal filed

CORAM: Iacobucci, Binnie and LeBel JJ. /
Les juges Iacobucci, Binnie et LeBel

Barreau du Québec

c. (29344)

Christina McCullock Finney (Qué.)

NATURE DE LA CAUSE

Responsabilité civile - Responsabilité professionnelle - Dommages-intérêts - Relation avocat-client - Immunité relative - Barreau - *Code des professions*, L.R.Q., c. C-26 art. 23, 193 - La Cour d'appel est-elle erronément intervenue dans l'appréciation des faits par le premier juge ? - La Cour d'appel a-t-elle erronément qualifié d'inaction, et par conséquent de faute, la conduite des instances du Barreau impliquées dans le dossier d'inspection professionnelle entre 1990 et 1992, au motif que, *a posteri*, le stage imposé n'a pas empêché les événements de 1993 de se produire ? - La Cour d'appel a-t-elle erronément qualifié d'inaction et de refus d'agir la conduite du syndic entre janvier 1993 et mars 1994 et ce, contrairement à la preuve ? - Le Barreau avait-il un devoir particulier à l'égard de Finney et, dans l'affirmative, l'immunité accordée par l'article 193 du *Code des professions* peut-elle être levée pour un autre motif que la mauvaise foi du bénéficiaire de cette immunité ? - Les considérations autres retenues par la Cour d'appel pour faire tomber l'immunité sont-elles pertinentes ?

HISTORIQUE PROCÉDURAL

Le 4 décembre 1998 Cour supérieure du Québec (Normand j.c.s.)	Action de l'intimée en dommages matériels, compensatoires, moraux et punitifs contre le demandeur pour manquement à son obligation de protection du public dans le processus disciplinaire de Éric Belhassen, rejetée.
Le 14 juin 2002 Cour d'appel du Québec (Deschamps, Robert et Pelletier jj.c.a.)	Appel accueilli; demandeur condamné à payer 25 000 $ à l'intimée.
Le 10 septembre 2002 Cour suprême du Canada	Demande d'autorisation d'appel déposée.

H.M.

c. (29554)

Z.M. (Qué.)

NATURE DE LA CAUSE

Droit de la famille - Action en recherche de paternité - Ordonnance de se soumettre à un test d'ADN - Article 535.1 C.c.Q. - La Cour d'appel a-t-elle erré en rejetant le moyen constitutionnel en raison du défaut d'avis au procureur général? - La Cour d'appel a-t-elle erré en n'accordant pas la permission d'appel? - La Cour d'appel a-t-elle erré dans son interprétation de l'art. 535.1 C.c.Q.?

HISTORIQUE PROCÉDURAL

Le 6 novembre 2002 Cour supérieure du Québec (Zerbisias j.c.s.)	Requête de l'intimée pour ordonnance d'effectuer un test d'ADN accordée
Le 11 décembre 2002 Cour d'appel du Québec (Rayle j.c.a.)	Requêtes du demandeur pour permission d'en appeler et pour suspendre l'exécution provisoire du jugement interlocutoire rejetées

Le 13 janvier 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Jacques Laurendeau

c. (29425)

Université Laval, Beauvais, Truchon & Associés, Ville de Ste-Foy (Police de Sainte-Foy) et Procureur général du Québec (Qué.)

NATURE DE LA CAUSE

Procédure - Prescription - La Cour d'appel était-elle justifiée de rejeter la demande de permission d'appel pour cause de prescription?

HISTORIQUE PROCÉDURAL

Le 9 mai 2002
Cour supérieure du Québec
(Boisvert j.c.s.)

Requête de la Ville de Ste-Foy en irrecevabilité accueillie; action du demandeur déclarée prescrite

Le 13 septembre 2002
Cour d'appel du Québec
(Rochette, Pelletier et Biron [*ad hoc*] jj.c.a.)

Requête pour permission d'appeler rejetée

Le 17 octobre 2002
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Jacques Laurendeau

c. (29556)

Université Laval, Beauvais, Truchon & associés, Ville de Ste-Foy (Police de Ste-Foy) et Procureur général du Québec (Qué.)

NATURE DE LA CAUSE

Procédure - Exception déclinatoire - Requête du demandeur sur la compétence de la Cour dans un dossier où elle est partie - La Cour d'appel a-t-elle erré en refusant la permission d'appel?

HISTORIQUE PROCÉDURAL

Le 22 août 2002 Cour supérieure du Québec (Lesage j.c.s.)	Requête du demandeur sur la compétence de la Cour dans un dossier où elle est partie rejetée
Le 28 octobre 2002 Cour supérieure du Québec (Lesage j.c.s.)	Requête du demandeur sur la compétence de la Cour dans un dossier où elle est partie rejetée; Requêtes du demandeur pour précisions rejetées; Requêtes des intimés en irrecevabilité accueillies; Requête pour faire déclarer le demandeur plaideur vexatoire accueillie
Le 22 novembre 2002 Cour d'appel du Québec (Gendreau j.c.a.)	Requête pour permission d'appeler rejetée
Le 11 décembre 2002 Cour d'appel du Québec (Robert, Baudouin et Thibault jj.c.a.)	Requêtes des intimés pour faire déclarer l'appelant plaideur vexatoire accueillies
Le 16 janvier 2003 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Coopérative agricole des animaux vivants de la Montérégie

c. (29411)

Régie des marchés agricoles et alimentaires du Québec, Fédération des producteurs de bovins du Québec, Association des marchés publics d'animaux vivants du Québec inc., Association des encans indépendants d'animaux vivants du Québec inc. (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Exception déclinatoire - Délai raisonnable - Intérêt - La Cour d'appel a-t-elle erré en accueillant la requête en irrecevabilité présentée en vertu de l'article 165 (4) C.p.c. au motif que l'action en nullité n'avait pas été intentée dans un délai raisonnable? - La Cour supérieure a-t-elle erré en concluant à l'absence d'intérêt juridique de la demanderesse?

HISTORIQUE PROCÉDURAL

Le 27 octobre 1999 Régie des marchés agricoles et alimentaires du Québec (Bergeron, présidente, Blanchette et Bolduc, régisseurs)	Règlement sur la mise en marché des bovins de réforme et des veaux laitiers du Québec approuvé; modification du Règlement des producteurs de bovins sur la contribution spéciale aux fins de l'application du règlement sur la vente approuvée; conventions aux fins de la vente des bovins de réforme et veaux laitiers 1999 homologuées; conventions de mise en marché actuelles abrogées
Le 5 juillet 2001 Cour supérieure du Québec (Sénécal j.c.s)	Requête en irrecevabilité accueillie; action de la demanderesse en nullité rejetée

Le 12 juillet 2002 Cour d'appel du Québec (Beauregard, Mailhot et Morin jj.c.a.)	Appel rejeté
Le 4 octobre 2002 Cour suprême du Canada	Demande d'autorisation d'appel déposée

MARCH 20, 2003 / LE 20 MARS 2003

29294 **Director, Income Maintenance Branch, Ministry of Community and Social Services, Attorney General for Ontario v. Sandra Falkiner, Deborah Sears, Cynthia Johnston-Pepping and Claude Marie Cadieux** (Ont.) (Civil) (By Leave)

Coram: McLachlin C.J. and Bastarache and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C35052, dated May 13, 2002, is granted on condition that the applicants undertake to pay party and party costs in any event of the cause.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C35052, daté du 13 mai 2002, est accordée sous condition que les demandeurs entreprennent de payer les dépens comme entre parties quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Canadian Charter – Civil – Civil rights – Social welfare – Constitutional law – Statutes – Interpretation – Definition of "spouse" in determining eligibility for social assistance benefits – Presumption of spousal relationship where persons of opposite sex living together unless evidence provided to contrary – Whether "receipt of social assistance" constitutes an analogous ground under s. 15(1) of *Charter* – Whether definition unjustifiably infringes s.15(1) equality rights on basis of sex, marital status and/or receipt of social assistance – *Canadian Charter of Rights and Freedoms, ss. 15(1), 1 – Ontario Regulation 366 (Family Benefits Act), R.R.O.1990, s. 1(1)(d), as amended.*

PROCEDURAL HISTORY

June 28, 2000 Ontario Superior Court of Justice, Divisional Court (Lane, Haley and Belleghem *[dissenting]* JJ.)	Applicants' appeal dismissed: "spouse" as defined in s.1(1)(d) of Ontario Regulation 366 made under the *Family Benefits Act* violates s.15(1) of the *Charter* and is not justified by s.1 of the *Charter*
May 13, 2002 Court of Appeal for Ontario (Osborne *[taking no part in the decision]*, Laskin and Feldman JJ.A.)	Applicants' appeal dismissed
August 12, 2002 Supreme Court of Canada	Application for leave to appeal filed

29351 **The Minister of Human Resources Development Canada v. Betty Hodge** (FC) (Civil) (By Leave)

Coram: McLachlin C.J. and Bastarache and Deschamps JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-77-01, dated June 14, 2002, is granted without costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-77-01, daté du 14 juin 2002, est accordée sans dépens.

NATURE OF THE CASE

Canadian Charter - *Civil* – Civil rights – Social welfare – Constitutional law – Statutes – Definition of "spouse" in determining eligibility for survivor benefit under *Canada Pension Plan* – Common law spouses not cohabiting with contributor spouse at time of contributor's death not eligible for survivor benefit – Married spouses not having same cohabitation requirement – Whether definition is unjustifiably discriminatory under s. 15(1) of the *Charter* on ground of marital status – *Canada Pension Plan*, R.S.C., 1985, c. C-8, s. 2(1).

PROCEDURAL HISTORY

January 9, 1997 Canada Pension Plan Review Tribunal (Covello, Vice and Dumbrell, Members)	Respondent's application to appeal the denial of the survivor's pension under s. 44 of the *Canada Pension Plan* allowed: subsection 2(1), the definition of "spouse", of the *Canada Pension Plan* declared of no force or effect in so far as it violates the respondent's right under s. 15 of the *Charter*
November 20, 2000 Pension Appeals Board (Cameron, Killeen and Holmes JJ.)	Applicant's appeal allowed.
June 14, 2002 Federal Court of Appeal (Linden, Evans and Malone JJ.A)	Respondent's application for judicial review allowed: Review Tribunal's decision restored
September 13, 2002 Supreme Court of Canada	Application for leave to appeal filed

29419 **The Minister of Forests, The Attorney General of British Columbia on behalf of Her Majesty the Queen in Right of the Province of British Columbia v. Council of the Haida Nation and Guujaaw, on their own behalf and on behalf of all members of the Haida Nation AND BETWEEN Weyerhaeuser Company Limited v. Council of the Haida Nation and Guujaaw, on their own behalf and on behalf of all members of the Haida Nation** (B.C.) (Civil) (By Leave)

Coram: McLachlin C.J. and Bastarache and Deschamps JJ.

The application for leave to appeal of the applicant, Weyerhaeuser Company Limited, from the judgment of the Court of Appeal of British Columbia (Vancouver), Number CA027999, dated February 27, 2002 and August 19, 2002, is granted with costs in the cause.

The application for leave to appeal of the applicants, the Minister of Forests and the Attorney General of British Columbia, from the judgment of the Court of Appeal of British Columbia (Vancouver), Number CA027999, dated February 27, 2002 and August 19, 2002, is granted. By agreement, the applicants, the Minister of Forests and the Attorney General of British Columbia, shall pay the party and party costs of the Respondents, Council of the Haida Nation and Guujaaw, for this application for leave to appeal and for the appeal, in any event of the cause.

La demande d'autorisation d'appel du demandeur, Weyerhaeuser Company Limited, de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA027999, daté du 27 février 2002 et du 19 août 2002, est accordée avec dépens selon l'issue de la cause.

La demande d'autorisation d'appel des demandeurs, Le ministre des Forêts et le Procureur général de la Colombie-Britannique, de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA027999, daté du 27 février 2002 et du 19 août 2002, est accordée. De consentement, les demandeurs, Le ministre des Forêts et le Procureur général

de la Colombie-Britannique, paieront les dépens des intimés, Council of the Haida Nation et Guujaaw, sur la base des frais entre parties, pour cette demande d'autorisation d'appel et pour l'appel, quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Administrative law - Native law - Judicial review - Ministerial decision - Nature and scope of duty to consult with First Nations - Whether Provincial Crown in exercising its powers and duties in the management of natural resources, owe constitutional or fiduciary duties to First nations to consult and to seek accommodations prior to the determination of disputed claims of aboriginal rights and title - If such duty exists, standard of review and applicable tests for determining whether decision makers have discharged their duty- Whether private persons or corporations operating on Crown lands, as licensees of the Crown, owe fiduciary or other legal duties to consult with and accommodate First Nations who claim Aboriginal rights or title may be infringed by the licensees' actions and if so, the source, nature and extent of those duties

PROCEDURAL HISTORY

July 10, 2000 Supreme Court of British Columbia (Edwards J.)	Any issues requiring proof of Aboriginal rights or title referred to trial list
November 21, 2000 Supreme Court of British Columbia (Halfyard J.)	Haida Nation's petition for judicial review, dismissed
February 27, 2002 Court of Appeal for British Columbia (Finch C.J.B.C., Lambert and Low JJ.A.)	Haida Nation's appeal allowed: obligation by provincial Crown and Weyerhaeuser to consult with the Haida Nation concerning potential infringements of aboriginal title and rights; parties free to apply to a judge of the Supreme Court of British Columbia for determination of aboriginal title and rights, infringement and justification
August 19, 2002 Court of Appeal for British Columbia (Finch C.B.C., Lambert and Low [*dissenting*] JJ.A.)	Additional reasons for judgment: order that all reference in the original reasons to any breach by Weyerhaeuser of its duty to consult the Haida Nation expunged from the original reasons, by consent of parties; provincial Crown had in 2000 and the Crown and Weyerhaeuser have now, legal enforceable duties to the Haida Nation to consult and seek accommodation
October 17, 2002 Supreme Court of Canada	First application for leave to appeal filed
October 18, 2002 Supreme Court of Canada	Second application for leave to appeal filed

29417 **Board of School Trustees of Regional Administrative Unit #3 v. Richard W. Morin** (P.E.I.) (Civil) (By Leave)

Coram: McLachlin C.J. and Bastarache and Deschamps JJ.

The application for leave to appeal from the judgment of the Supreme Court of Prince Edward Island, Appeal Division, Number AD-0856, dated May 1, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour suprême de l'Île-du-Prince-Édouard, Division d'appel, numéro AD-0856, daté du 1 mai 2002, est rejetée avec dépens.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil – Freedom of expression – Constitutional law – Schools – Labour law – Teachers – Principal prohibiting grade nine teacher from showing video entitled "Thy Kingdom Come, Thy Will Be Done" and carrying out related project on "What Religion Means to Different People" – Whether prohibition constitutes infringement of s. 2(b) *Charter* right of freedom of expression – *Canadian Charter of Rights and Freedoms*, s. 2(b).

PROCEDURAL HISTORY

September 17, 1999 Supreme Court of Prince Edward Island, Trial Division (DesRoches J.)	Respondent's claim dismissed in its entirety
May 1, 2002 Supreme Court of Prince Edward Island, Appeal Division (Carruthers, Webber and McQuaid [*dissenting*] JJ.A.)	Appeal allowed with respect to s. 2(b) of the *Charter*: matter of damages remitted to trial judge; appeal in all other respects, dismissed
October 15, 2002 Supreme Court of Canada	Application for leave to appeal and motion for extension time, filed
November 4, 2002 Supreme Court of Canada (Gonthier, J.S.C.C.)	Motion for extension of time, granted

29531 **Robert Kenneth Hartshorne v. Kathleen Mary Mildred Hartshorne** (B.C.) (Civil) (By Leave)

Coram: McLachlin C.J. and Bastarache and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal of British Columbia (Vancouver), Numbers CA026629 and CA028350, dated October 28, 2002, is granted with costs to the applicant in any event of the cause.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéros CA026629 et CA028350, daté du 28 octobre 2002, est accordée avec dépens en faveur du demandeur quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Family law - Division of property - Marriage agreement - Parties electing separate property regime in marriage agreement - Wife giving up career to raise family - Whether marriage contract unfair - Whether Court of Appeal erred in applying the same test for fairness to the marriage agreement as would be applied to a separation agreement - Whether Court of Appeal erred in reapportioning the parties' assets in a manner which gave no effect to the marriage agreement, or to the

express intention of the parties that the appellant would retain the assets he held prior to the marriage - *Family Relations Act*, R.S.B.C. 1996, c. 128, s. 65(1)

PROCEDURAL HISTORY

February 28, 2001 Supreme Court of British Columbia (Beames J.)	Marriage agreement set aside: family property shares reapportioned
October 28, 2002 Court of Appeal of British Columbia (Rowles, Huddart and Thackray [*dissenting*] JJ.A.)	Appeal dismissed
December 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29321 **The City of Calgary v. The United Taxi Drivers' Fellowship of Southern Alberta, Rashpal Singh Gosal and Haringer Singh Dhesi, Aero Cab Ltd., Air Linker Cab Ltd.** (Alta.) (Civil) (By Leave)

Coram: McLachlin C.J. and Bastarache and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 17693, dated May 29, 2002, is granted with costs to The City of Calgary in any event of the cause.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 17693, daté du 29 mai 2002, est accordée avec dépens en faveur de The City of Calgary quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Canadian Charter - Civil - Municipal Law - Municipal corporations - Municipal powers - Bylaw Regulating Taxi Industry - Bylaw limiting number of available taxi vehicle plate licenses - Whether municipalities may be provided with broad general and regulatory powers rather than with specific powers, functions or activities - Whether power of municipalities may be circumscribed by what they cannot do rather than by what they can do - Whether *Municipal Government Act*, R.S.A. 2000, c. M-26, provides municipalities in Alberta with legislative authority to pass *intra vires* bylaws including, but not limited to, a bylaw limiting the number of taxi vehicle plate licenses to be issued - Whether bylaw violated ss. 2, 7 or 15 of the *Charter* by discriminating on the basis of age and analogous ground or by denying freedom of association or by denying liberty and security of the person to pursue a chosen profession.

PROCEDURAL HISTORY

March 5, 1998 Court of Queen's Bench of Alberta (Rooke J.)	Respondents' application allowed in part; lottery system for taxi plate licenses declared discriminatory and contrary to s. 15 of *Charter*
May 29, 2002 Court of Appeal of Alberta (O'Leary [*dissenting*], Picard and Wittmann JJ.A.)	Respondents' appeal allowed; s. 7(1), portions of s. 9.1 and all of s. 9.2 of the Bylaw declared *ultra vires*
August 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

September 23, 2002
Supreme Court of Canada
Response and application for leave to cross-appeal filed

29310 **Michael Bogart v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36612, dated August 6, 2002, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36612, daté du 6 août 2002, est rejetée.

NATURE OF THE CASE

Criminal law - Sentence - Whether conditional sentence appropriate - Whether Court of Appeal erred in law in interfering with the trial judge's decision in that the trial judge had heard many witnesses for the prosecution and defence.

PROCEDURAL HISTORY

June 13, 2001
Ontario Superior Court of Justice
(Grossi J.)
Conviction: fraud
Sentence: conditional sentence of two years less one day and three years probation

August 6, 2002
Court of Appeal for Ontario
(Laskin, Rosenberg and Goudge JJ.A.)
Appeal against sentence allowed; Applicant sentenced to eighteen months imprisonment

October 7, 2002
Supreme Court of Canada
Application for leave to appeal filed

29314 **Sarg Oils Ltd. v. The Energy Resources Conservation Board, Victor M. Naimish, Victor M. Naimish Professional Corporation, Frederick W. Dent and Parlee McLaws, Barristers & Solicitors** (Alta.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 98-18104/18108, dated July 23, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 98-18104/18108, daté du 23 juillet 2002, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Procedural law - Torts - Appeal - Courts - Collateral attack in civil proceeding to which administrative body a party - Applicability of collateral attack rules - Negligence - Solicitors - Elements in trust condition necessary to impose obligation on solicitor.

PROCEDURAL HISTORY

September 23, 1998 Court of Queen's Bench of Alberta (Lutz J.)	Respondent Energy Conservation Board's action dismissed; Applicant's claim over Respondents, other than Energy Conservation Board, dismissed
July 23, 2002 Court of Appeal for Alberta (McFadyen, Hunt and Watson JJ.A.)	Respondent Energy Conservation Board's appeal allowed; judgment entered against Applicant for $310,517.90; Applicant's cross appeal dismissed
September 30, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29381 **Robert Silver, Deanna Silver v. Co-operators General Insurance Company, The Business Development Corporation formerly known as The Federal Business Development Bank, The Bank of Montreal** (N.S.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for an extension of time is granted, the application to file supplementary documents and the application for leave to appeal from the judgment of the Nova Scotia Court of Appeal, Number CA176068, dated June 26, 2002, are dismissed without costs.

La demande de prorogation de délai est accordée, la demande de déposer des documents supplémentaires ainsi que la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Nouvelle-Écosse, numéro CA176068, daté du 26 juin 2002, sont rejetées sans dépens.

NATURE OF THE CASE

Procedural law - Judgments and orders - Order striking Applicants' statement of claim - Whether Court of Appeal erred in concluding that motions judge's function and power was to try issues of fact and law - Whether Court of Appeal erred in upholding order striking statement of claim

PROCEDURAL HISTORY

September 5, 2001 Supreme Court of Nova Scotia (Hall J.)	Respondents' Business Development Corporation and Bank of Montreal's applications to strike Applicants' statement of claim granted; Applicants' claim for damages for wrongful conversion of chattels, dismissed
January 15, 2002 Nova Scotia Court of Appeal (Bateman J.A.)	Respondents' application for security for costs on appeal dismissed
June 26, 2002 Nova Scotia Court of Appeal (Flinn, Freeman and Hamilton JJ.A.)	Appeal dismissed
September 26, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29340 **Kazi K. Bakht v. Minister of Human Resources Development, Canada** (FC) (Civil) (By Leave)

Coram:Gonthier, Major and Arbour JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-226-01, dated June 13, 2002, is dismissed without costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-226-01, daté du 13 juin 2002, est rejetée sans dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Taxation - Determination by Minister relating to the computation of Guaranteed Income Supplement entitlement under the *Old Age Security Act* - Whether the decision of the Court of Appeal to dismiss the application for judicial review was correct - *Old Age Security Act*, R.S.C. 1985, c. O-9 - *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

PROCEDURAL HISTORY

March 9, 2001 Tax Court of Canada (Bowman A.C..J.)	Applicant's appeal under subsection 28(2) of the *Old Age Security Act* dismissed and the decision of the Minister confirmed.
June 13, 2002 Federal Court of Appeal (Isaac, Noël et Sexton JJ.A.)	Applicant's application for judicial review dismissed
September 24, 2002 Supreme Court of Canada	Application for leave to appeal filed
September 30, 2002 Supreme Court of Canada	Motion to extend time to file and/or serve the leave application

29402 **John Howard Teskey v. Mike Grzelak** (Ont.) (Civil) (By Leave)

Coram:Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C34754, dated July 4, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C34754, daté du 4 juillet 2002, est rejetée avec dépens.

NATURE OF THE CASE

Commercial Law - Contracts - Contract executed using name of unincorporated entity, Vacations Brokers Club Inc., instead of similar names of incorporated entities, Vacation Broker C-L-U-B Inc. and Vacation Brokers Inc. - Whether use of unincorporated name defeats contract - Extent to which non-compliance with technical requirements should stand in the way of legitimate business practices - Whether contractual obligations may be shirked - Whether fairness in business

relationships should assist enterprises that need protection to same extent that it protects consumers - Whether business realities of particular industries should be recognized and supported.

PROCEDURAL HISTORY

May 5, 2000 Ontario Superior Court of Justice (Kiteley J.)	Statement of claim dismissed
June 8, 2000 Ontario Superior Court of Justice (Kiteley J.)	Motion to call further evidence allowed in part
June 12, 2000 Ontario Superior Court of Justice (Kiteley J.)	Damages awarded to applicant
July 4, 2002 Court of Appeal for Ontario (McMurtry, Catzman and MacPherson JJ.A.)	Appeal allowed, decision of May 5, 2000 restored
September 30, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29363 **Enid Robitaille, John Stevenson v. Anspor Construction Limited, Nuberg & Dale Construction Limited trading as Nuspor Investments** (Ont.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C33389, dated June 20, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C33389, daté du 20 juin 2002, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Evidence - Admissibility of hospital records - Prior inconsistent statements - Applicant injured in a slip and fall accident - Applicant's testimony conflicting with mechanism of fall evidence contained in hospital and ambulance records - Whether hospital records properly admitted into evidence -Whether hospital records were created in the ordinary course of business - Whether hospital records can be admitted as *prima facie* proof of how the accident occurred - Whether hospital records can be used as prior inconsistent statements where there is no attribution to the alleged deponent - *Ontario Evidence Act*, R.S.O. 1990, c. E.23, s.35

PROCEDURAL HISTORY

November 25, 1999 Ontario Superior Court of Justice (Hoilett J.)	Applicants' action for damages dismissed
June 20, 2002	Appeal dismissed

Court of Appeal for Ontario
(Charron, Sharpe and Simmons JJ.A.)

September 19, 2002 — Application for leave to appeal filed
Supreme Court of Canada

29388 **Krystyna Brebric, Steven Brebric and Krystyna Brebric as Litigation Guardian for Tomy Brebric, a minor v. Ivan Niksic** (Ont.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36570, dated July 29, 2002, is dismissed without costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36570, daté du 29 juillet 2002, est rejetée sans dépens.

NATURE OF THE CASE

Canadian Charter - Civil - Civil Rights - Right to equality - Definition of "spouse" in s. 29 of *Family Law Act*, R.S.O. 1990, c. F.3, including unmarried couples who have cohabited continuously for a period of not less than three year - Applicant challenging constitutionality of definition as it applies to s. 61 of Act to define who may make a claim for damages in tort for the death or injury of a family member through the negligence of a third party - Whether imposition of three-year limitation period for cohabitation an appropriate bar to a dependant's right to claim damages pursuant to s. 61 - Whether definition of "spouse" violates s. 15(1) of *Canadian Charter of Rights and Freedoms*.

PROCEDURAL HISTORY

June 18, 2001 — Applicants' motion for summary judgment dismissed; Applicant Krystyna Brebric's action dismissed
Ontario Superior Court of Justice
(Patterson J.)

July 29, 2002 — Appeal dismissed
Court of Appeal for Ontario
(McMurtry C.J.O., Weiler and Armstrong JJ.A.)

September 26, 2002 — Application for leave to appeal filed
Supreme Court of Canada

29390 **Archean Resources Ltd. v. Her Majesty the Queen in Right of Newfoundland and Labrador, as represented by the Honourable Minister of Finance for the Province of Newfoundlant and Labrador, Her Majesty's Attorney General for Newfoundland and Labrador** (N.L.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Newfoundland and Labrador, Number 99/27, dated July 30, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de Terre-Neuve - et - Labrador, numéro 99/27, daté du 30 juillet 2002, est rejetée avec dépens.

NATURE OF THE CASE

Taxation - Statutes - Interpretation - Mining and mineral rights - Applicant seeking declaration that net smelter royalty it had negotiated was not subject to taxation - Whether "the right to engage in mining operations" in s. 9(1)(a) of the *Mining and Mineral Rights Tax Act*, R.S.N. 1990, c. M-16, encompasses the rights of a licensee under a licence to explore for minerals issued under the *Mineral Act*, R.S.N. 1990, c. M-12 - Appropriate principles governing the interpretation of taxation statutes.

PROCEDURAL HISTORY

March 5, 1999 Supreme Court of Newfoundland, Trial Division (Wells J.)	Net smelter royalty declared to be taxable under s. 9(1)(a) of the *Mining and Mineral Rights Tax Act*
July 30, 2002 Supreme Court of Newfoundland and Labrador Court of Appeal (O'Neill, Marshall and Green JJ.A.)	Appeal dismissed
September 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

29384 **Myra M.D. Simanek v. Garry Lamourie** (Ont.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C37265, dated July 18, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C37265, daté du 18 juillet 2002, est rejetée avec dépens.

NATURE OF THE CASE

Torts - Negligence - Solicitor's negligence - Whether solicitor's representation of client fell below the applicable standard of care - Whether the Court of Appeal erred concluding that the trial judge had not committed any reversible errors in dismissing the Applicant's action

PROCEDURAL HISTORY

October 10, 2001	Ontario Superior Court of Justice

(Keenan J.)	Applicant's action for negligent legal representation and breach of fiduciary trust, dismissed
July 18, 2002 Court of Appeal for Ontario (Rosenberg, Moldaver and Gillese JJ.A.)	Appeal dismissed
September 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29328 **Smithkline Beecham Pharma Inc., Smithkline Beecham P.L.C. v. Apotex Inc., the Minister of Health** (FC) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-422-01, dated May 28, 2002, is dismissed with costs to the Respondent, Apotex Inc.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-422-01, daté du 28 mai 2002, est rejetée avec dépens en faveur de l'intimée, Apotex Inc.

NATURE OF THE CASE

Property law - Patents - Chemical and pharmaceutical inventions - Selection patents - Protection patents - Anticipation - Statutory interpretation - *Patent Act* - Patent medicines (*Notice of Compliance*) *Regulations* - Whether the Federal Court of Appeal erred in law in upholding the finding that the Applicants' Canadian Letters Patent 2,178,637 was "anticipated" by Canadian Letters Patent 1,287,060 - Whether the Federal Court of Appeal erred in applying the test of "anticipation" in respect of Patent 2,178,637 - Whether, as a consequence of this decision, the Federal Court of Appeal is in conflict with established law on selection patents, commonly granted in respect of chemical and pharmaceutical inventions, and will have the unintended effect of interfering with the scope of protection available in Canada for selection patents - *McPhar Engineering Co. of Canada Ltd. v. Sharpe Instruments Ltd. et al* (1960), 35 C.P.R. 105 (Exch. Ct.) - *Free World Trust v. Électro Santé Inc.*, [2000] 2 S.C.R. 1024.

PROCEDURAL HISTORY

July 6, 2001 Federal Court of Canada, Trial Division (Gibson J.)	Applicant's application to issue an order prohibiting the Respondent Minister of Health from issuing a notice of compliance under s.C.08.004 of the *Food and Drug Regulations* to the Respondent Apotex in connection with paroxetine hydrochloride tablets dismissed
May 28, 2002 Federal Court of Appeal (Linden, Evans and Malone JJ.A.)	Appeal dismissed
August 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29404 **Russell Deigan v. Attorney General of Canada (Industry Canada)** (FC) (Civil) (By Leave)

Coram:Gonthier, Major and Arbour JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-240-01, dated June 25, 2002, is dismissed with costs on a party-and-party basis.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-240-01, daté du 25 juin 2002, est rejetée avec dépens comme entre parties.

NATURE OF THE CASE

Administrative law - Labour law - Adjudication - Judicial review - Applicant grieving his discharge and indefinite suspension - Adjudicator awarding Applicant six months' compensation in lieu of reinstatement - Whether a citizen has the right to inform top officials of events he knows about as a citizen without losing his government job - Whether a public servant has the right to bring harassment and other concerns to the attention of senior officials, on a "confidential basis", without being suspended, dismissed, and having his possessions seized.

PROCEDURAL HISTORY

March 31, 1998 Public Service Staff Relations Board (Vondette Simpson, Member)	Applicant's grievance against his discharge allowed; Applicant's grievance against his indefinite suspension dismissed
March 20, 2001 Federal Court of Canada, Trial Division (Tremblay-Lamer J.)	Applicant's application for judicial review dismissed
June 25, 2002 Federal Court of Appeal (Létourneau, Rothstein and Sharlow JJ.A.)	Appeal dismissed
October 1, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29378 **Municipality of the County of Antigonish v. Town of Antigonish** (N.S.) (Civil) (By Leave)

Coram:Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Nova Scotia Court of Appeal, Number CA176023, dated June 26, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Nouvelle-Écosse, numéro CA176023, daté du 26 juin 2002, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Environmental law - Public utilities - Connected water systems - Respondent's water utility supplying all water to Applicant's water utility - Allocation of fire protection charge between Applicant and Respondent - Required fire flows inadequate at some connection points - Whether Applicant received a tangible benefit for the fire protection charge - Whether Board erred in holding that rate could be based what a payor utility required, rather than what was actually available - Whether Court of Appeal erred in failing to address issue of retroactivity

PROCEDURAL HISTORY

November 16, 2001 Nova Scotia Utility and Review Board (Morash, Chair, and Harris, Member)	Existing fire protection charge declared unjust and unreasonable; new methodology for determination of total fire protection charge and allocation of charge between the Applicant and the Respondent prescribed
June 26, 2002 Nova Scotia Court of Appeal (Roscoe, Bateman and Hamilton JJ.A.)	Applicant's appeal dismissed
September 25, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29396 **Syntex (U.S.A) L.L.C., Hoffmann-La Roche Limited, Allergan, Inc. and Allergan Inc. v. The Minister of Health, Apotex Inc.** (FC) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-654-01, dated July 8, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-654-01, daté du 8 juillet 2002, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Judicial Review - Jurisdiction - Property law - Patents - Applicants submit deceptive or misleading notice of allegation is tantamount to no notice of allegation at all - Order of prohibition must be brought within the forty-five days pursuant to subsection 6(1) of the *Regulations* - After expiration of the forty-five day period, Applicants seeking judicial review under sections 18 and 18.1 of the *Federal Court Act* seeking to prohibit the Minister from issuing a notice of compliance to Apotex - Whether the federal court of appeal erred in holding, as a rule of law, that judicial review is not available in connection with a decision of an administrative tribunal made on the basis of regulatory documents that are deceptive or misleading - Whether the federal court of appeal's decision conflicts with, and reverses, a decade of jurisprudence interpreting the *Regulations* and thus frustrates the regulatory scheme.

PROCEDURAL HISTORY

November 1, 2001 Federal Court of Canada (Trial Division) (Kelen J.)	Respondent's Apotex Inc. motion to strike Applicants' application for judicial review, allowed with costs
July 8, 2002 Federal Court of Appeal (Linden, Rothstein and Sharlow JJ.A.)	Appeal dismissed with costs
September 30, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29392 **Water's Edge Village Estates (Phase II) Ltd. v. Her Majesty the Queen AND BETWEEN James S. Duncan v. Her Majesty the Queen AND BETWEEN Anthony R. Young v. Her Majesty the Queen AND BETWEEN Mark Langdon v. Her Majesty the Queen AND BETWEEN Norman Eden v. Her Majesty the Queen AND BETWEEN Twin Oaks Village Estates Ltd. v. Her Majesty the Queen** (FC) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Numbers A-55-01, A-56-01, A-57-01, A-58-01, A-59-01 and A-60-01, dated July 9, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéros A-55-01, A-56-01, A-57-01, A-58-01, A-59-01 et A-60-01, daté du 9 juillet 2002, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Taxation - Assessment - Appeal from assessment of tax made under the *Income Tax Act* - Partnership - Capital Cost Allowance - General Anti-Avoidance Rule - Whether the Federal Court of Appeal incorrectly applied the anti-avoidance provisions in Section 245 of the *Income Tax Act (Canada)* to a transaction undertaken by the applicants - Whether the Federal Court of Appeal undertook an analysis of the capital costs provisions of the *Income Tax Act (Canada)* which was unsupported by evidence of the clear words of the relevant sections.

PROCEDURAL HISTORY

January 8, 2001 Tax Court of Canada (Bowie J.)	Applicants' appeals from the assessment of tax made under the *Income Tax Act*, dismissed.
July 9, 2002 Federal Court of Appeal (Desjardins, Linden and Noël JJ.A.)	Appeals dismissed
September 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

29448 **Magnaflex Industries Inc. v. Victoria Park Avenue Associates Limited Partnership, Regentor IC Properties Inc.** (Ont.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C35642, dated September 11, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C35642, daté du 11 septembre 2002, est rejetée avec dépens.

NATURE OF THE CASE

Property law - Landlord tenant - Commercial lease - Parties signing proposal to lease containing clause obliging them to execute landlord's standard form of lease - Whether bad faith conduct of a party in a commercial transaction can constitute or have the same effect as a fundamental breach, when considered with breaches that are determined not to be fundamental

PROCEDURAL HISTORY

December 12, 2000 Ontario Superior Court of Justice (Sutherland J.)	Respondents' action allowed; Applicant to pay Respondents $64,056.92 in damages plus prejudgment interests in the amount of $12, 678.73
September 11, 2002 Court of Appeal for Ontario (McMurtry C.J.O., Abella and Moldaver JJ.A.)	Appeal dismissed
November 8, 2002 Supreme Court of Canada	Application for leave to appeal filed

29407 **Karen L. Turner-Lienaux, Smith's Field Manor Development Limited v. Wesley G. Campbell**
(N.S.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Nova Scotia Court of Appeal, Number CA172420, dated August 16, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Nouvelle-Écosse, numéro CA172420, daté du 16 août 2002, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law – Fraud – Fiduciary duty – Disclosure – Equity contributions of individuals investing in development of retirement home partly in form of corporate loan – Applicants, also investors, believed investment was from personal resources – Whether failure to disclose the source of funds constitutes a material non-disclosure amounting to fraud and breach of a fiduciary duty – Whether investment funding met legal requirements to qualify as equity capital – Whether lower courts erred in finding no breach of fiduciary duty or fraud.

PROCEDURAL HISTORY

June 18, 2001 Supreme Court of Nova Scotia (Hood J.)	Applicants' claims against respondent for breach of fiduciary duty, including allegations of criminal fraud, acquiescence in fraud or equitable fraud, dismissed.
August 16, 2002 Nova Scotia Court of Appeal (Roscoe, Freeman and Cromwell JJ.A.)	Appeal partially allowed: on the issue regarding the effect of a promissory note; appeal on all other grounds dismissed.

October 10, 2002 Supreme Court of Canada	Application for leave to appeal filed.
January 14, 2003 Supreme Court of Canada	Motion to file supplementary material, filed.

29431 **Sinclair-Cockburn Insurance Brokers Limited v. Linda Anne Richards, Wiggins Mechanical Contractors and Rudolph Schrempf** (Ont.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36972, dated August 30, 2002, is dismissed with costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36972, daté du 30 août 2002, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Civil procedure - Actions - Pre-trial procedure - Stay of proceedings - Motion to stay part of Applicant's claims granted - Whether Court of Appeal erred in failing to reverse finding of motions judge that it was just and appropriate in all of circumstances to grant a stay - *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 106 - *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rule 21.01(3).

PROCEDURAL HISTORY

September 5, 2001 Ontario Superior Court of Justice (Mesbur J.)	Motion to stay part of Applicant's claims granted
August 30, 2002 Court of Appeal for Ontario (Laskin, Charron and Armstrong JJ.A.)	Appeal dismissed
October 29, 2002 Supreme Court of Canada	Application for leave to appeal filed
November 8, 2002 Supreme Court of Canada	Amended application for leave to appeal filed

29478 **Guangshu Li, Guangxia Li and Guanghwa Li v. Nina Li, Kiki Li and Karen Li** (Ont.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C38120, dated November 7, 2002, is dismissed with costs on a party and party basis.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38120, daté du 7 novembre 2002, est rejetée avec dépens comme entre parties.

NATURE OF THE CASE

Property law – Estates – Real property – Partnership agreement – Joint tenancy – Deceased entered partnership agreement governing real property consisting of forty-six townhouses – Children of deceased living in China residual beneficiaries under deceased will, along with spouse and children in Canada – Whether partnership agreement provided property interests held in joint tenancy such that property excluded from residue of deceased's estate.

PROCEDURAL HISTORY

April 4, 2002 Ontario Superior Court of Justice (Carnwath J.)	Interest in the partnership agreement of the deceased and Respondent Nina Li as joint tenants, not as tenants in common, declared
November 7, 2002 Court of Appeal for Ontario (McMurtry C.J.O., Catzman and Rosenberg JJ.A.)	Appeal dismissed
November 20, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29464 **Barbara Parravano, Mario Parravano v. KPMG Incorporated, Laurentian Bank of Canada** (Ont.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36486, dated September 19, 2002, is dismissed with costs to the Respondent, KPMG Incorporated.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36486, daté du 19 septembre 2002, est rejetée avec dépens en faveur de l'intimée, KPMG Incorporated.

NATURE OF THE CASE

Commercial law – Receivership – Procedural law – Courts – Bias – Assessment of court-appointed receiver's accounts, including fees and disbursements of solicitors – Motions judge approving receiver's accounts in entirety as fair and reasonable – Motions judge refused to allow applicant to cross-examine receiver – Whether motions judge correct in refusing to allow cross examination of receiver – Whether motion judge demonstrated reasonable apprehension of bias such that fair hearing denied.

PROCEDURAL HISTORY

April 18, 2001 Ontario Superior Court of Justice (Farley J.)	Respondent KPMG Inc.'s interim fees and disbursements approved; Respondent KPMG Inc.'s second report as Receiver, approved.
September 9, 2002	Appeal allowed, in part: solicitors fees to be re-submitted,

Court of Appeal for Ontario (Catzman, Doherty and Borins JJ.A.)	verified by affidavit and assessed by different judge; in all other respects, appeal dismissed.
November 14, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29397 **Daniel Edward Webb v. Waterloo Regional Police Services Board, Chief R. Larry Gravill, P.C. George Gillingham, P.C. P. Foy and P.C. Dickson** (Ont.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for an extension of time to apply for leave to appeal is granted. The applicant's motion for an extension of time to file an additional affidavit in support of the application for leave to appeal is dismissed. The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C34771, dated June 26, 2002, is dismissed with costs.

La demande de prorogation de délai pour déposer la demande d'autorisation d'appel est accordée. La demande de prorogation de délai pour déposer un affidavit supplémentaire au soutien de la demande d'autorisation d'appel est rejetée. La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C34771, daté du 26 juin 2002, est rejetée avec dépens.

NATURE OF THE CASE

Canadian Charter - Civil - Canadian Charter - Criminal - Police - Sting operations - Evidence - Torts - Negligence - Abuse of process - Malicious prosecution - Whether conduct of police in response to alleged complaints of gay public sex in public park violated *Charter* or was tortious conduct - Whether applicant committed sexual assault - Whether undercover police operation was a sting operation that resulted in charges of sexual assault inconsistently with *Charter* - Whether police policy to identify to the media and public the names of persons arrested on allegations of criminal conduct prior to swearing Information or issuance of warrant violates *Charter* - Whether *Charter* violated by refusal to allow testimony from experts on standards of police practice or discriminatory differences in policing of sexual activity or social organization of sexual interaction among gay men or human rights issues in social action connecting police, media and employers- Test for admission of expert evidence in constitutional litigation - Whether harmful non-consensual disclosure of an individual's homosexuality by a state actor gives rise to liability under the *Charter* or common law - Whether it was an error to decline jurisdiction to adjudicate s. 15 *Charter* claim - Whether Courts erred in interpreting *Charter* restrictively and in making conclusions not supported by the record - Whether Courts erred in reversing or disregarding long lines of authority.

PROCEDURAL HISTORY

June 30, 2000 Ontario Superior Court of Justice (Borkovich J.)	Applicant's action for negligence, malicious prosecution, *Charter* violations and intentional infliction of mental distress dismissed
June 26, 2002 Court of Appeal for Ontario (Finlayson, Carthy and Cronk JJ.A.)	Appeal dismissed
September 30, 2002 Supreme Court of Canada	Application for leave to appeal filed

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29481 **Susan Lynn Czaban v. Brandy Rai MacPherson** (B.C.) (Civil) (By Leave)

Coram: Gonthier, Major and Arbour JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal of British Columbia (Victoria), Number CA029228, dated September 13, 2002, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Victoria), numéro CA029228, daté du 13 septembre 2002, est rejetée.

NATURE OF THE CASE

Procedural law - Civil procedure - Trial - Jury - Chambers judge striking defendant's notice requiring trial by jury - Court of Appeal upholding decision - Whether, in determining if a jury notice should be struck, the chambers judge should have regard only for whether the issues before the court are complex, with respect to both the evidence and the issues - Whether, in the alternative, a chambers judge should also seek to place the onus on the party seeking to strike to explain why the alleged complexities cannot be simplified and made understandable.

PROCEDURAL HISTORY

November 29, 2001 Supreme Court of British Columbia (Downs J.)	Applicant's jury notice struck
September 13, 2002 Court of Appeal for British Columbia (Lambert, Newbury and Mackenzie JJ.A.)	Appeal dismissed
November 22, 2002 Supreme Court of Canada	Application for leave to appeal filed

7.3.2003

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the book of authorities of the Attorney General of New Brunswick

Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine du procureur général du Nouveau-Brunswick

Her Majesty the Queen

v. (28533)

Steve Powley, et al. (Crim.)(Ont.)

GRANTED / ACCORDÉE Time extended to February 5, 2003.

7.3.2003

Before / Devant: THE REGISTRAR

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

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

Her Majesty the Queen

v. (28533)

Steve Powley, et al. (Crim.)(Ont.)

GRANTED / ACCORDÉE Time extended to February 6, 2003.

7.3.2003

Before / Devant: BINNIE 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

Paula Buchholz

v. (29630)

Davis & Company (B.C.)

GRANTED / ACCORDÉE Time extended to 40 days from this order.

10.3.2003

Before / Devant: BINNIE J.

Miscellaneous motion **Autre requête**

Commission de la santé et de la sécurité du travail, et al.

c. (29480)

Nutribec Ltée, et al. (Qué.)

GRANTED / ACCORDÉE

Dans la présente demande d'autorisation, l'intervenante, la Commission des lésions professionnelles, sollicite ce qui suit:

> L'intervenante demande à cette Cour de retenir la norme de l'erreur manifestement déraisonnable aux fins de l'examen de la demande d'autorisation d'appel. [Je souligne.]

Les requérants demandent la radiation de la documentation de l'intervenante pour différentes raisons allant de la non-pertinence à l'inadmissibilité.

Il va sans dire que, comme c'est le cas pour toute demande d'autorisation d'appel, la présente demande d'autorisation sera examinée en fonction du critère de l'« importance de l'affaire pour le public », mentionné à l'art. 43 de la *Loi sur la Cour suprême*. La norme de l'« erreur manifestement déraisonnable » n'a aucun rapport avec ce critère.

Il se peut que l'intervenante ait à l'esprit son point de vue selon lequel la cour d'instance inférieure a adopté la mauvaise norme de contrôle et, si l'appel est autorisé, notre Cour devrait s'en remettre à la décision de l'intervenante à moins qu'elle ne soit manifestement déraisonnable. Ni les requérants ni les intimés n'ont invoqué cette question pour justifier d'accorder ou de refuser l'autorisation sollicitée. Il n'appartient pas à une partie intervenante de soulever de nouvelles questions à ce stade.

Si l'autorisation est accordée, la Cour appliquera immanquablement la bonne norme de contrôle à l'appel.

La documentation de l'intervenante est donc radiée pour le motif qu'elle est sans rapport avec la demande d'autorisation d'appel. Aucuns dépens ne sont accordés.

In this leave application, the intervener *Commission des lésions professionnelles*, makes the following request:

> [TRANSLATION] The intervener asks this Court to adopt the patent unreasonableness standard for purposes of considering the application for leave to appeal. [Emphasis added.]

The applicants have moved to strike out the intervener's material on various grounds from irrelevancy to inadmissibility.

This leave application, of course, as in the case of any leave application, will be dealt with according to the "public importance" test in s. 43 of the *Supreme Court Act*. The "patent unreasonableness" test is irrelevant to that test.

What the intervener may have in mind, perhaps, is its view that the court below adopted the wrong standard of review and, if leave be granted, this Court should defer to the intervener's decision unless it is patently unreasonable.

Neither the applicants nor the respondents have raised this issue as a ground for granting or denying leave. It is not for an intervener to raise new issues at this stage.

If leave is granted, this Court will inevitably consider the appropriate standard of review as part of the appeal.

The intervener's material will therefore be struck out as irrelevant to the motion for leave to appeal. There will be no order as to costs.

11.3.2003

Before / Devant: THE CHIEF JUSTICE

Motion for an order expediting the hearing of the appeal **Requête visant à accélérer l'audition de l'appel**

Deloitte & Touche LLP

v. (29300)

Ontario Securities Commission (Ont.)

GRANTED / ACCORDÉE

UPON APPLICATION by the respondent, Ontario Securities Commission, for an order expediting the hearing of this appeal;

AND HAVING READ the material filed ;

IT IS HEREBY ORDERED THAT:

1) The application is granted;

2) The appellant's factum, record and book of authorities shall be served and filed on or before March 18, 2003;

3) Motions for leave to intervene, if any, shall be served and filed on or before April 15, 2003;

4) The respondent's factum, record and book of authorities shall be served and filed on or before May 1, 2003; and

5) Any interveners' factums and books of authorities shall be served and filed or or before May 13, 2003.

IT IS FURTHER ORDERED THAT this appeal is scheduled to be heard on June 10, 2003.

11.3.2003

Before / Devant: THE CHIEF JUSTICE

Motion to state a constitutional question

Requête pour formulation d'une question constitutionnelle

The Corporation of the Town of Oakville

v. (29359)

Vann Niagara Ltd. (Ont.)

GRANTED / ACCORDÉE

UPON APPLICATION by the appellant for an order stating constitutional questions in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT THE CONSTITUTIONAL QUESTIONS BE STATED AS FOLLOWS:

a) Does s. 2(5)(a) of the Town of Oakville By-law No. 1994-142 infringe the right to freedom of expression guaranteed by section 2(*b*) of the *Canadian Charter of Rights and Freedoms*?

b) If so, is the infringement a reasonable limit, prescribed by law, as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

1. L'alinéa 2(5)a) du règlement n^{o} 1994-142 de la ville de Oakville porte-il atteinte au droit à la liberté d'expression garanti par l'al. 2*b*) de la *Charte canadienne des droits et libertés*?

2. Dans l'affirmative, cette atteinte constitue-elle une limite raisonnable prescrite par une règle de droit, dont la justification peut se démontrer dans le cadre d'une société libre et démocratique, au sens de l'article premier de la *Charte canadienne des droits et libertés*?

11.3.2003

Before / Devant: BINNIE 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

James Roger Demers

v. (29632)

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

GRANTED / ACCORDÉE Time extended to May 17, 2003.

11.3.2003

Before / Devant: BINNIE J.

Motion to seal transcripts **Requête en vue de sceller des transcriptions**

Apotex Inc.

v. (29614)

Parke-Davis Division, et al. (FC)

GRANTED / ACCORDÉE

UPON APPLICATION by counsel on behalf of the applicant for an order permitting the applicant to file under seal the transcripts of the cross-examination and re-examination of James Rowan conducted February 4, 2000;

AND HAVING READ the material filed ;

IT IS HEREBY ORDERED THAT:

1) The applicant shall file six copies of the transcripts of the cross-examination and re-examination of James Rowan conducted February 4, 2000 in six separate sealed envelopes.

2) These sealed envelopes will only be made available to counsel for the applicant, counsel for the respondents, members of this Court, Court staff and other persons as the parties may, in writing, agree or as this Court may further order.

12.3.2003

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the book of authorities of the Attorney General of Manitoba

Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine du procureur général du Manitoba

Her Majesty the Queen

v. (28533)

Steve Powley, et al. (Crim.)(Ont.)

GRANTED / ACCORDÉE Time extended to February 28, 2003.

12.3.2003

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimée aux deux demandes d'autorisation

Steven Nowack, et al.

v. (29604)

Research Capital Corporation (Ont.)

GRANTED / ACCORDÉE Time extended to March 31, 2003.

13.3.2003

Before / Devant: THE REGISTRAR

Miscellaneous motion

Autre requête

Zurich Insurance Company

v. (29577)

686234 Ontario Limited (Ont.)

GRANTED / ACCORDÉE The motion to accept the leave application as filed is granted.

13.3.2003

Before / Devant: THE REGISTRAR

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

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

Travailleurs et Travailleuses Unis de l'Alimentation et du Commerce, Section 501

c. (29456)

Syndicat des Travailleurs et Travailleuses des Épiciers Unis Métro-Richelieu (CSN), et al. (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 17 février 2003.

13.3.2003

Before / Devant: THE REGISTRAR

Motion to file a supplementary response **Requête pour déposer une réponse supplémentaire**

Her Majesty the Queen, et al.

v. (29559)

Penner International Inc., et al. (FC)

GRANTED / ACCORDÉE The motion by the respondent, Penner International Inc., to file a supplementary response within 10 days of this decision, is granted.

14.3.2003

Before / Devant: BINNIE J.

Motion to adduce new evidence **Requête visant à produire de nouveaux éléments de preuve**

Her Majesty the Queen

v. (28533)

Steve Powley, et al. (Crim.)(Ont.)

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

This is an application by the Federal Crown, as intervenor in the Respondent's cross-appeal on the constitutional issue, to adduce fresh evidence consisting of a Statistics Canada analysis of certain data in the 2001 census entitled "Aboriginal people of Canada: a demographic profile", dated January 2003. While the underlying data may be uncontroversial, the federal Crown wishes to adduce the accompanying "Analysis", or commentary, as "social, cultural and economic context of the constitutional matter in issue".

The evidence is sought to be introduced through the affidavit of a lawyer in the federal Department of Justice who claims no special expertise in statistics and does not identify what part of the commentary is particularly to be relied upon.

Applying the usual tests, it is evident that the underlying data is reliable and, being recently issued, could not have been made available at trial by the exercise of due diligence. However, the federal Crown wishes to file the entire report, including commentary as well as data, but does not indicate with any specificity what aspect of the constitutional issue the Analysis relates to, nor why it could be expected to affect the result of the cross appeal, *Palmer v. The Queen*, [1980] 1 S.C.R. 759 at 775; *Danson v. Ontario (AG)*, [1990] 2 S.C.R. 1086, at p. 1099; *Public School Boards' Assn. of Alberta v. Alberta (AG)*, [2000] 1 S.C.R. 44 at para 17.

The document is potentially prejudicial to the respondents. For example, at p. 14, the authors of the Analysis express an opinion about the significant increase in the number of people identifying themselves as Métis since the previous census:

Not all of the growth can be attributed to demographic factors. Increased awareness of Métis issues coming from court cases related to Métis rights, and constitutional discussions, as well as better enumeration of Métis communities have contributed to the increase in the population identifying as Métis.

This opinion may or may not be valid, but it is certainly opinion evidence that goes beyond the raw Statistics Canada census data.

It is not possible to cross-examine the document to test this opinion and the deponent does not pretend to have the expertise to answer questions with respect to its validity.

I note as well that the order dated November 25, 2002, permitting the federal Crown to intervene on the cross appeal specifically provided that "The interveners shall not be entitled to adduce further evidence or otherwise to supplement the record of the parties."

The application is therefore dismissed with costs.

14.3.2003

Before / Devant: THE REGISTRAR

Motion to file supplementary material

Requête pour déposer des documents supplémentaires

Her Majesty the Queen

v. (28533)

Steve Powley, et al. (Crim.)(Ont.)

GRANTED / ACCORDÉE The motion for an order permitting the appellant to file two pages of supplemental transcript evidence from trial within its condensed book is granted.

14.3.2003

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the applicant's reply

Requête en prorogation du délai imparti pour signifier et déposer la réplique du demandeur

Claude Fortin

c. (29513)

Sa Majesté la Reine (Crim.)(Qué.)

GRANTED / ACCORDÉE Délai prorogé au 18 février 2003.

11.3.2003

BY/PAR: Attorney General of Canada
Attorney General of Ontario
Attorney General of Quebec
Attorney General of New Brunswick
Attorney General of Manitoba
Attorney General of British Columbia
Attorney General of Alberta
Attorney General of Saskatachewan

IN/DANS: **Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Forests**

v. (28981)

Chief Ronnie Jules, in his personal capacity and as representative of the Adam Lake Band, et al. (B.C.)

11.3.2003

BY/PAR: Attorney General of Canada
Attorney General of Ontario
Attorney General of Quebec
Attorney General of New Brunswick
Attorney General of Manitoba
Attorney General of British Columbia
Attorney General of Alberta
Attorney General of Saskatchewan

IN/DANS: **Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Forests**

v. (28988)

Chief Dan Wilson, in his personal capacity and as representative of the Okanagan Indian Band, et al. (B.C.)

14.3.2003

Hawker Siddeley Canada Inc.

c. (29075)

Canadian Steel Foundries Ltd., et autres

(demande)

14.3.2003

CORAM: Gonthier, Binnie, Arbour, LeBel and Deschamps JJ.

Richard Willis

v. (29304)

Her Majesty the Queen (Man.) (Criminal) (As of Right) 2003 SCC 12 / 2003 CSC 12

Evan J. Roitenberg and Sarah A. Inness for the appellant.

Donald R. Slough for the respondent.

DISMISSED / REJETÉ

The appeal from the judgment of the Court of Appeal of Manitoba, Number AR01-30-05119, dated June 20, 2002, was heard this day and the following judgment was rendered:

L'appel contre l'arrêt de la Cour d'appel du Manitoba, numéro AR01-30-05119, en date du 20 juin 2002, a été entendu aujourd'hui et le jugement suivant a été rendu :

Gonthier J. (orally) —

We are not persuaded that the Court of Appeal was in error in concluding that the verdict was reasonable. The appeal is dismissed.

Le juge Gonthier (oralement) —

[TRADUCTION] Nous ne sommes pas convaincus que la Cour d'appel a fait erreur en jugeant que le verdict était raisonnable. Le pourvoi est rejeté.

Nature of the case:

Criminal law - Evidence - Identification evidence - Verdict - Whether the trial judge erred by failing to appreciate the weaknesses in identification evidence and by failing to alert himself to the danger of an honest and straightforward witness being mistaken, but nonetheless convincing.

Nature de la cause:

Droit criminel - Preuve - Preuve d'identification - Verdict - Le juge du procès a-t-il commis une erreur en ne se rendant pas compte de la faiblesse de la preuve d'identification et du risque qu'un témoin honnête et franc soit dans l'erreur, mais néanmoins convaincant.

17.3.2203

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

Her Majesty the Queen

v. (28533)

Steve Powley, et al (Ont.) (Criminal) (By Leave)

Lori Sterling and Peter Lemmond for the appellant.

Jean Teillet and Arthur Pape for the respondents.

Ivan G. Whitehall, Q.C., Michael H. Morris and Barbara Ritzen for the intervener Attorney General of Canada.

René Morin pour l'intervenant Procureur général du Québec.

Gabriel Bourgeois, Q.C. and Pierre Castonguay for the intervener Attorney General of New Brunswick.

Deborah L. Carlson and Holly D. Penner for the intervener Attorney General of Manitoba.

Darlene A. Leavitt for the intervener Attorney General of British Columbia.

Margaret Unsworth and Kurt Sandstrom for the intervener Attorney General of Alberta.

No one appearing for the intervener Attorney General for Saskatchewan (written submission only by P. Mitch McAdam).

Donald H. Burrage, Q.C. for the intervener Attorney General of Newfoundland and Labrador.

Timothy S. B. Danson for the intervener Ontario Federation of Anglers and Hunters (written submission only).

No one appearing for the intervener British Columbia Fisheries Survival Coalition (written submission only by J. Keith Lowes).

Joseph Eliot Magnet for the intervener Congress of Aboriginal Peoples.

D. Bruce Clarke for the intervener Labrador Métis Nation.

Robert MacRae for the intervener Ontario Métis Aboriginal Association.

Clem Chartier and Jason T. Madden for the interveners Métis National Council, et al.

Alan Pratt and Carla M. McGrath for the intervener Métis Chief Roy E. J. DeLaRonde.

No one appearing for the intervener Aboriginal Legal Services of Toronto Inc. (written submission only by Brian Eyolfson).

No one appearing for the intervener North Slave Métis Alliance (written submission only by Janet L. Hutchison).

Arthur Pape and Jean Teillet for the appellants on cross-appeal.

Lori Sterling and Peter Lemmond for the respondent on cross-appeal.

Michael H. Morris, Ivan Whitehall, Q.C. and Barbara Ritzen for the intervener Attorney General of Canada on cross-appeal.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Constitutional law - Native law - Métis -Hunting rights - Two members of Sault Ste. Marie Métis community charged with unlawfully hunting moose - Whether ss.46 and 47(1) of the *Game and Fish Act*, R.S.O.1990, c.G.1, as they read on October 22, 1993, of no force or effect with respect to the Respondents, being Métis, in the circumstances of this case, by reason of their aboriginal rights under s. 35 of the *Constitution Act, 1982* - What was the effect of the Court of Appeal's decision to stay its judgment for one year- Whether the Court of Appeal had jurisdiction to stay its judgment - If it had jurisdiction, did the Court of Appeal err in granting a stay of its judgment for one year?

Nature de la cause:

Droit criminel - Droit constitutionnel - Droit des Autochtones - Métis -Droits de chasse - Accusations de chasse illégale à l'orignal portées contre deux membres de la collectivité métisse de Sault Ste. Marie - L'article 46 et le par. 47(1) de la *Loi sur la chasse et la pêche*, L.R.O. 1990, ch. G.1, dans leur version en vigueur le 22 octobre 1993, sont-ils inopérants à l'égard des intimés, des Métis, dans les circonstances en cause, en raison de leur droits ancestraux consacrés par l'art. 35 de la *Loi constitutionnelle de 1982*? - Quel est l'effet de la décision de la Cour d'appel de suspendre l'effet de son jugement pour une période de un an? - La Cour d'appel avait-elle compétence pour suspendre l'effet de son jugement? - Dans l'affirmative, la Cour d'appel a-t-elle commis une erreur en suspendant l'effet de son jugement pour une période de un an?

18.3.2203

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

Ernest Lionel Joseph Blais

v. (28645)

Her Majesty the Queen (Man.) (Criminal) (By Leave)

Lionel Chartrand for the appellant.

Holly D. Penner and Deborah L. Carlson for the respondent.

Joseph Eliot Magnet for the intervener Congress of Aboriginal Peoples.

Jean Teillet, Clem Chartier, Arthur Pape and Jason T. Madden for the intervener Métis National Council.

Ivan G. Whitehall, Q.C., Barbara Ritzen and Michael H. Morris for the intervener Attorney General of Canada.

Kurt Sandstrom and Margareth Unsworth for the intervener Attorney General of Alberta.

No one appearing for the intervener Attorney General for Saskatchewan (written submission only by P. Mitch McAdam).

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Constitutional law - Native law - Métis -

Hunting rights -Métis convicted of hunting on unoccupied Crown land in an area where hunting was prohibited - Whether Appellant, as a Métis person, falls within the constitutional meaning of the term "Indian" under s. 13 of the Natural Resources Transfer Agreement ("NRTA")- Whether s. 26 of Manitoba's *The Wildlife Act* is inapplicable in respect to the Appellant, and of no force or effect to the extent that it infringes or limits the Appellant's right to hunt for food for himself and his family under s. 13 of the NRTA.

Nature de la cause:

Droit criminel - Droit constitutionnel - Droit relatif aux Autochtones - Métis - Droits de chasse -Métis déclaré coupable d'avoir chassé sur des terres domaniales inoccupées à un endroit où cette activité était interdite - En tant que Métis, l'appelant est-il visé par le terme « Indiens » figurant à l'article 13 de la Convention sur le transfert des ressources naturelles (la « Convention ») - L'article 26 de la *Loi sur la conservation de la faune*,C.P.L.M., ch. W130, du Manitoba est-il inapplicable à l'égard de l'appelant et sans effet à son endroit dans la mesure où il limite le droit de l'appelant de chasser, en vertu de l'art. 13 de la Convention, pour se nourrir et nourrir sa famille, ou porte atteinte à ce droit.

19.3.2203

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

S.A.B.

v. (28862)

Her Majesty the Queen (Alta.) (Criminal) (As of Right / By Leave)

Larry G. Anderson, Q.C. and Laura K. Stevens for the appellant.

Arnold Schlayer for the respondent.

Roslyn J. Levine, Q.C. and Moiz Rahman for the intervener Attorney General of Canada.

Michal Fairburn and Janet Gallin for the intervener Attorney General of Ontario.

Joanne Marceau pour l'intervenant Procureur général du Québec.

John J. Walsh, Q.C. and Pierre Gionet for the intervener Attorney General of New Brunswick.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter - Criminal - DNA - Search and Seizure - Warrants to seize DNA samples - Seizure of a blood sample to conduct a DNA analysis under ss. 487.04 to 487.09 of the *Criminal Code* - Whether sections 487.05 to 487.09 of the *Criminal Code*, R.S.C. 1985, c. C-46 (as they read in January 1997) infringe sections 7 or 8 of the *Canadian Charter of Rights and Freedoms* - If so, is the infringement a reasonable limit which can be demonstrably justified under section 1? -

Whether trial judge erred by placing weight on the opinion of the expert.

Nature de la cause:

Charte canadienne - Criminel - ADN - Fouilles, perquisitions et saisies - Mandats de saisie d'échantillons recueillis pour fins d'analyse génétique - Saisie d'un échantillon de sang recueilli pour fins d'analyse génétique en application des art. 487.04 à 487.09 du *Code criminel* - Les articles 487.05 à 487.09 du *Code criminel*, L.R.C. 1985, ch. C-46 (en vigueur en janvier 1997) violent-ils l'art. 7 ou l'art. 8 de la *Charte canadienne des droits et libertés*? - Dans l'affirmative, la violation est-elle une limite raisonnable dont la justification peut se démontrer au sens de l'article premier? - Le juge du procès a-t-il commis une erreur en accordant de l'importance à l'opinion de l'expert?

20.3.2203

CORAM: Chief Justice McLachlin and Gonthier, Binnie, Arbour and LeBel JJ.

Her Majesty the Queen

v. (29331)

James David Knight (Alta.) (Criminal) (As of Right)

- and -

Her Majesty the Queen

v. (29332)

Robert Merlin Hay (Alta.) (Criminal) (As of Right)
2003 SCC 15 / 2003 CSC 15

ALLOWED / ACCUEILLI

James A. Bowron for the appellant.

F. Kirk MacDonald for the respondent James David Knight.

Laura K. Stevens for the respondent Robert Merlin Hay.

Nature of the case:

Criminal law - Victim assaulted and died of the effects of a subdural hematoma - Whether the verdict of the trial judge that Knight and Hay were parties to the assaults on Currie that either caused the victim's death or accelerated and materially contributed to it is reasonable and supported by the evidence and did not warrant appellate intervention - Whether the verdict of the trial judge that the assaults on Currie at the rail yard either caused the victim's death or accelerated and materially contributed to it are reasonable and supported by the evidence and did not warrant appellate intervention.

Nature de la cause:

Droit criminel - Victime de voies de fait décédant des suites d'un hématome sous-dural - Il s'agit de déterminer si le verdict du juge du procès selon lequel MM. Knight et Hay ont participé aux voies de fait qui ont soit causé le décès de la victime soit hâté son décès et contribué de façon appréciable à celui-ci était raisonnable et appuyé par la preuve, et, de ce fait, ne commandait pas l'intervention de la Cour d'appel - Il s'agit de déterminer si le verdict du juge du procès selon lequel les voies de fait commises contre Currie dans la gare de triage ont soit causé le décès de ce dernier soit hâté son décès et contribué de façon appréciable à celui-ci était raisonnable et appuyé par la preuve, et, de ce fait, ne commandait pas l'intervention de la Cour d'appel.

MARCH 20, 2003 / LE 20 MARS 2003

28834 **The Crown in Right of Alberta and Jim Dixon, Public Service Commissioner of Alberta - v. - Audrey Allen, William Bentley, Faye Chorney, B.C. Desai, Po Y. Fok, Cynthia Formaniuk, Larry Fraser, Cecile Gartner, George Gordon, Joseph Huba, Allan Jones, James Kocyba, Sai-Bong Lee, Patrick Malcolmson, Donald Maltais, Harold Matheson, Robert Osokin, Christine Ostanoski, George Parsons, Beverly Peterson, Satwant Rakhra, Alfred Richards, Robert Roseberg, Fernando Raul Scherpenisse, Duane Sears, Volesh Shaikh, Normin Simpson, Robin Sundstrom, Christine Vaillancourt, Donna Vanderbrink, Daniel Warkentin, Edward Waud and Nyuk-Ken Wong** (Ont.) **2003 SCC 13 / 2003 CSC 13**

Coram: McLachlin C.J. and Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

The appeal from the judgment of the Court of Appeal of Alberta (Edmonton), Number 9903-0401-AC, dated June 29, 2001, was heard on December 10, 2002 and the Court on that day delivered the following judgment orally:

The appeal is allowed with reasons to follow.

On this day reasons were delivered and the judgment was restated as follows:

The appeal is allowed, the judgment of the Alberta Court of Appeal is reversed, and the judgment of the Court of Queen's Bench staying the action is reinstated, with costs throughout.

L'appel contre l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 9903-0401-AC, en date du 29 juin 2001, a été entendu le 10 décembre 2002 et la Cour a prononcée oralement le même jour le jugement suivant :

L'appel est accueilli avec motifs à suivre.

Aujourd'hui la Cour a déposé des motifs et reformulé le jugement comme suit :

L'appel est accueilli, l'arrêt de la Cour d'appel de l'Alberta est infirmé et le jugement de la Cour du Banc de la Reine qui a suspendu l'action est rétabli, avec dépens devant toutes les cours.

28469 **The Corporation of the City of Ottawa - v. - Ken Goudie, Ron Labonté, Lloyd Laframboise, Conrad Lirette and Rémi Séguin** (Ont.) **2003 SCC 14 / 2003 CSC 14**

Coram: McLachlin C.J. and Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

The appeal from the judgment of the Court of Appeal for Ontario, Number C34365, dated January 18, 2001, heard on December 10, 2002 is dismissed with costs to the respondents.

L'appel contre l'arrêt de la Cour d'appel de l'Ontario, numéro C34365, en date du 18 janvier 2001, entendu le 10 décembre 2002 est rejeté avec dépens aux intimés.

MARCH 21, 2003 / LE 21 MARS 2003

28540 **American International Assurance Life Company Ltd. and American Life Insurance Company - v. - Dorothy Martin** (B.C.) **2003 SCC 16 / 2003 CSC 16**

Coram: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

The appeal from the judgment of the Court of Appeal of British Columbia (Vancouver), Number CA026011, dated February 23, 2001, heard on October 28, 2002 is dismissed with costs.

L'appel contre l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA026011, en date du 23 février 2001, entendu le 28 octobre 2002 est rejeté avec dépens.

28660 **Les Éditions Chouette (1987) inc. et Christine L'Heureux - v. - Hélène Desputeaux - et - Me Régis Rémillard - et - Centre d'arbitrage commercial national et international du Québec, Union des écrivaines et écrivains québécois, Conseil des métiers d'art du Québec et Regroupement des artistes en arts visuels du Québec** (Qué.) **2003 SCC 17 / 2003 CSC 17**

Coram : Les juges Gonthier, Iacobucci, Bastarache, Binnie, Arbour, LeBel et Deschamps

L'appel contre l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-006389-985, en date du 18 avril 2001, entendu le 6 novembre 2002 est accueilli, l'arrêt de la Cour d'appel est infirmé et la requête en annulation de la sentence est rejetée avec dépens dans toutes les cours.

The appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-006389-985, dated April 18, 2001, heard on November 6, 2002, is allowed, the decision of the Court of Appeal is set aside and the application for annulment of the award is dismissed with costs throughout.

The Crown in Right of Alberta and Jim Dixon, Public Service Commissioner of Alberta - v. - Audrey Allen, William Bentley, Faye Chorney, B.C. Desai, Po Y. Fok, Cynthia Formaniuk, Larry Fraser, Cecile Gartner, George Gordon, Joseph Huba, Allan Jones, James Kocyba, Sai-Bong Lee, Patrick Malcolmson, Donald Maltais, Harold Matheson, Robert Osokin, Christine Ostanoski, George Parsons, Beverly Peterson, Satwant Rakhra, Alfred Richards, Robert Roseberg, Fernando Raul Scherpenisse, Duane Sears, Volesh Shaikh, Normin Simpson, Robin Sundstrom, Christine Vaillancourt, Donna Vanderbrink, Daniel Warkentin, Edward Waud and Nyuk-Ken Wong (Ont.) (28834)

Indexed as: Allen *v.* Alberta / Répertorié : Allen *c.* Alberta

Neutral citation: 2003 SCC 13. / Référence neutre : 2003 CSC 13.

Judgment rendered March 20, 2003 / Jugement rendu le 20 mars 2003

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

Labour law — Arbitration — Jurisdiction of forums other than arbitration board — Collective agreement providing for severance pay — Crown employees' positions privatized — Employees accepting employment with private employer — Letter of intent between government and union providing that employees not entitled to severance pay on acceptance of employment with private employer — Letter of intent stating that it not part of the collective agreement and not subject to grievance procedure — Employees seeking declaration of entitlement to severance pay in civil courts — Whether the civil courts could be seized of claim.

When the respondents' positions in the Alberta public service were privatized, they accepted work with the Association that took over that work. Although their collective agreement with the Alberta government provided for severance pay, a letter of intent signed by the government and the union provided that these employees would have to resign from the public service and would not be entitled to severance pay. It also stated that it did not form part of the collective agreement and was not subject to its grievance procedure. The respondents brought an action seeking a declaration of entitlement to severance pay in the Court of Queen's Bench. That court struck the claim and stayed the action because the claim arose out of the collective agreement. A majority of the Court of Appeal allowed an appeal from that decision. At issue here was whether the civil courts could be seized of the respondents' claim.

Held: The appeal should be allowed.

Claims arising out of a collective agreement should be dealt with exclusively under the grievance procedure established in accordance with the agreement or the relevant labour legislation. As a general rule, such claims should be disposed of by labour arbitrators and regular civil courts do not retain concurrent jurisdiction over them. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

Here, any entitlement to severance was based on the collective agreement. The letter of intent did not change the legal situation of the parties. Any claim that severance pay had been lost through resignations procured under duress would have fallen in all its aspects within the jurisdiction of the arbitrator. In the course of the arbitration, the question as to whether the letter of intent was a bar to the claim would have been raised and dealt with by the arbitrator. Even if it was not formally a part of the collective agreement, the letter was at least an agreement which addressed potential grievances and the status of employees who were being transferred to a new employer. In a context where no claim of unfair or inadequate union representation had been advanced, such issues remained a matter for the arbitrator and for the process of collective negotiation between the employer and the union.

APPEAL from a judgment of the Court of Appeal of Alberta, [2001] 9 W.W.R. 609, 93 Alta. L.R. (3d) 213, 286 A.R. 132, [2001] A.J. No. 863 (QL), 2001 ABCA 171, setting aside a judgment of the Court of Queen's Bench (1999), 245 A.R. 32, [1999] A.J. No. 529 (QL), 1999 ABQB 352. Appeal allowed.

Hugh J. D. McPhail, Q.C., and *David Ross*, for the appellants.

G. Brent Gawne, for the respondents.

Solicitors for the appellants: McLennan Ross, Edmonton.

Solicitors for the respondents: G. Brent Gawne & Associates, Edmonton.

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

Relations de travail — Compétence des arbitres en droit du travail et des tribunaux judiciaires — Privatisation des postes de fonctionnaires provinciaux — Acceptation par les employés de l'offre d'emploi de l'employeur privé — Indemnité de départ prévue dans la convention collective — Lettre d'intention signée par le gouvernement et le syndicat stipulant que les employés n'auront pas droit à l'indemnité de départ s'ils acceptent de travailler pour l'employeur privé — Lettre d'intention précisant aussi qu'elle ne fait pas partie de la convention collective et qu'elle n'est pas assujettie à la procédure de traitement des griefs — Les employés demandent aux tribunaux civils de déclarer qu'ils ont droit à l'indemnité de départ — Leur demande échappe-t-elle à la compétence des tribunaux civils?

Au moment de la privatisation de leurs postes au sein de la fonction publique de l'Alberta, les intimés acceptent de travailler pour le nouvel employeur désormais responsable de l'accomplissement du travail. Leur convention collective avec le gouvernement de l'Alberta prévoit une indemnité de départ, mais une lettre d'intention signée par le gouvernement et le syndicat stipule que ces employés doivent démissionner de la fonction publique et n'auront pas droit à l'indemnité de départ. La lettre précise aussi qu'elle ne fait pas partie de la convention collective et qu'elle n'est pas assujettie à la procédure de traitement des griefs. Les intimés intentent une action devant la Cour du Banc de la Reine, leur demandant de statuer qu'ils ont droit à une indemnité de départ. La cour radie la demande parce qu'elle découle d'une convention collective. La Cour d'appel annule cette décision à la majorité.

Arrêt : Le pourvoi est accueilli.

Les demandes résultant de l'interprétation, de l'application ou de l'inexécution d'une convention collective doivent être tranchées exclusivement au moyen de la procédure de traitement des griefs établie conformément à la convention ou à la législation pertinente. Dans la mesure où ils relèvent de la convention collective, ces litiges doivent généralement être tranchés par des arbitres en droit du travail et les tribunaux civils ne conservent aucune compétence concurrente à leur égard. Il s'agit, dans chaque cas, de savoir si le litige, dans son essence, relève de l'interprétation, de l'application, de l'administration ou de l'inexécution de la convention collective.

En l'espèce, la demande des intimés relève de la compétence d'un arbitre en droit du travail. Tout droit à une indemnité de départ repose sur la convention collective. La lettre d'intention n'a rien changé à la situation juridique des parties. Toute prétention à l'extinction du droit à une indemnité de départ par suite des démissions obtenues par la contrainte relève entièrement de la compétence de l'arbitre. Dans le cadre de l'arbitrage, l'arbitre aurait examiné et tranché la question de savoir si la lettre d'intention rend la demande irrecevable. Bien qu'elle ne fasse pas officiellement partie de la convention collective, cette lettre constitue à tout le moins une convention qui traite des griefs éventuels et du statut des employés transférés à un nouvel employeur. Dans un contexte où il n'est pas allégué que le syndicat aurait manqué à son devoir de représenter les employés adéquatement et de façon juste, ces questions relèvent de l'arbitre et de la procédure de négociation collective entre l'employeur et le syndicat.

POURVOI contre un arrêt de la Cour d'appel de l'Alberta, [2001] 9 W.W.R. 609, 93 Alta. L.R. (3d) 213, 286 A.R. 132, [2001] A.J. No. 863 (QL), 2001 ABCA 171, qui a infirmé une décision de la Cour du Banc de la Reine (1999), 245 A.R. 32, [1999] A.J. No. 529 (QL), 1999 ABQB 352. Pourvoi accueilli.

Hugh J. D. McPhail, c.r., et *David Ross*, pour les appelants.

G. Brent Gawne, pour les intimés.

Procureurs des appelants : McLennan Ross, Edmonton.

Procureurs des intimés : G. Brent Gawne & Associates, Edmonton.

The Corporation of the City of Ottawa - v. - Ken Goudie, Ron Labonté, Lloyd Laframboise, Conrad Lirette and Rémi Séguin (Ont.) (28469)
Indexed as: Goudie *v.* Ottawa (City) / Répertorié : Goudie *c.* Ottawa (Ville)
Neutral citation: 2003 SCC 14. / Référence neutre : 2003 CSC 14.
Judgment rendered March 20, 2003 / Jugement rendu le 20 mars 2003

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

Labour relations — Jurisdiction of labour arbitrators and courts — Employees' action arising out of alleged pre-employment agreement with municipality — Whether cause of action asserted by employees within jurisdiction of courts or labour arbitrator under collective agreement.

Civil procedure — Determination of an issue before trial — Jurisdiction — Employees' action arising out of alleged pre-employment agreement with municipality — Jurisdictional issue as to whether courts or labour arbitrator had jurisdiction — Disagreement between parties essentially factual, not legal — Whether jurisdictional issue could be determined on preliminary motion — Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rr. 20, 20.01(3)(a).

The respondents, who had been civilian members of the Ottawa Police Force and covered by its collective agreement with the Ottawa Police Association (an employees' union), were transferred to the appellant City of Ottawa's Physical Environment Department, whose employees were represented by the Canadian Union of Public Employees (CUPE). The respondents claimed that in 1983 the City had agreed, while they were still members of the Police Force represented by the police union, that they would continue to enjoy the same terms and conditions when they eventually joined the City as they had enjoyed with the Police Force. The City denied that any such agreement had been made. The respondents were not transferred to the City until 1985. Thereafter they asserted a complaint about reduced wages and benefits and brought this action against the City for damages. The City counterclaimed for an over-payment of wages to some of the respondents. Given that the respondents were now covered by the CUPE collective agreement, the City moved, under clause 21.01(3)(a) of the Ontario *Rules of Civil Procedure* to have the respondents' claim struck out for want of jurisdiction on the basis that the court had no jurisdiction over a "labour relations" subject matter. The motions judge gave effect to this objection and dismissed the action. The Court of Appeal reversed that decision on the basis that it would be open to a trial judge to find a pre-employment agreement altogether outside the City's collective agreement with CUPE.

Held: The appeal should be dismissed.

While a dispute which "in its essential character" arises from a collective agreement is to be determined by an arbitrator appointed in accordance with the collective agreement, access to the courts is not denied to a plaintiff who alleges a cause of action outside the collective agreement. If, as alleged in this case, the City's officials entered into a pre-employment agreement with the respondents, a dispute over such an agreement, in its essential character, could not have arisen out of the interpretation, application or administration of the collective agreement between CUPE and the City. A court therefore had jurisdiction to deal with the cause of action asserted by the respondents.

As to the procedure adopted in this case, the Court of Appeal properly held that the jurisdictional issue could not be dealt with by way of a preliminary motion. The disagreement between the parties was essentially factual, not legal. To meet the allegation of a pre-employment contract, the City filed an affidavit to show that there was no such contract. Yet it confirmed, by doing so, the existence of a serious factual dispute. While it is the practice in Ontario for the motions court to receive limited evidence pertinent to the jurisdictional issue, it was not appropriate for the City to attempt to turn a jurisdictional challenge under clause 21.01(3)(a) into a mini-trial on a disputed, central question of fact. The City could not avoid the exigencies of a summary judgment motion (Rule 20) by framing its attack as a jurisdictional challenge under clause 21.01(3)(a). If the City was of the view that the pleading of a pre-employment contract was a sham and raised no genuine issue for trial, it ought to have moved for summary judgment pursuant to rule 20.01. However, this was not a jurisdictional issue that turned on uncontroverted or easily ascertainable facts. Credibility is very much an issue. The decision of the Court of Appeal was therefore correct.

APPEAL from a judgment of the Ontario Court of Appeal (2001), 197 D.L.R. (4th) 543, 139 O.A.C. 372, [2001] O.J. No. 101 (QL), setting aside a decision of the Superior Court of Justice. Appeal dismissed.

Eugene Meehan, Q.C., and *Stuart Huxley*, for the appellant.

Emilio S. Binavince and *Helen Lanctôt*, for the respondents.

Solicitors for the appellant: Lang Michener, Ottawa; Corporation of the City of Ottawa, Ottawa.

Solicitors for the respondents: Binavince Smith, Ottawa.

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

Relations de travail — Compétence des arbitres en droit du travail et des cours de justice — Action des employés découlant d'une prétendue entente de pré-emploi conclue avec la municipalité — La cause d'action invoquée par les employés relève-t-elle de la compétence des cours de justice ou d'un arbitre en droit du travail en vertu de la convention collective?

Procédure civile — Décision d'une question avant l'instruction — Compétence — Action des employés découlant d'une prétendue entente de pré-emploi conclue avec la municipalité — Question de compétence quant à savoir qui des cours de justice ou d'un arbitre en droit du travail a compétence — Désaccord entre les parties essentiellement factuel et non pas juridique — La question de compétence pouvait-elle être tranchée par voie de motion préliminaire? — Règles de procédure civile, R.R.O. 1990, Règl. 194, règles 20, 20.01(3)a).

Les intimés, des membres civils du Service de la police d'Ottawa assujettis à la convention collective signée avec l'Association des policiers d'Ottawa (un syndicat), ont été transférés au Service de l'environnement physique de la ville d'Ottawa dont les employés étaient représentés par le Syndicat canadien de la fonction publique (SCFP). Les intimés prétendent qu'en 1983, alors qu'ils étaient encore employés du Service de la police représentés par le syndicat des policiers, la ville a convenu qu'ils continueraient de bénéficier des mêmes conditions lorsqu'ils commenceraient à travailler pour la ville que celles dont ils bénéficiaient en travaillant pour le Service de la police. La ville nie qu'une telle entente a été conclue. Les intimés n'ont été transférés à la ville qu'en 1985. Ils ont ensuite déposé une plainte pour contester la réduction de leur salaire et de leurs avantages sociaux et intenté la présente action en dommages-intérêts contre la ville. La ville a formé une demande reconventionnelle pour recouvrer le salaire versé en trop à certains intimés. Comme les intimés étaient maintenant assujettis à la convention collective du SCFP, la ville a présenté une motion, en vertu de l'al. 21.01(3)*a*) des *Règles de procédure civile* de l'Ontario, en vue de faire radier l'action pour défaut de compétence en soutenant que la cour n'avait pas compétence pour connaître des questions de « relations de travail ». Le juge des motions a retenu cette objection et rejeté l'action. La Cour d'appel a infirmé cette décision parce que le juge du procès pourrait conclure à l'existence d'une entente de pré-emploi totalement étrangère à la convention collective conclue avec le SCFP.

Arrêt : Le pourvoi est rejeté.

Bien qu'un litige qui, « dans son essence », découle d'une convention collective doive être tranché par un arbitre nommé en conformité avec la convention collective, rien n'empêche les demandeurs qui invoquent une cause d'action en dehors du cadre d'une convention collective d'avoir accès aux tribunaux. Si, comme le prétendent les intimés, les représentants de la ville ont conclu une entente de pré-emploi avec eux, un litige portant sur cette entente ne peut, dans son essence, découler de l'interprétation, de l'application ou de l'administration de la convention collective conclue entre le SCFP et la ville. Une cour de justice a donc compétence pour connaître de la cause d'action invoquée par les intimés.

Quant à la procédure suivie en l'espèce, la Cour d'appel a statué à bon droit que la question de compétence ne pouvait pas être tranchée par voie de motion préliminaire. Le désaccord entre les parties était essentiellement factuel et non pas juridique. Pour réfuter la prétention qu'il existait un contrat de pré-emploi, la ville a déposé un affidavit tendant

à établir qu'il n'existait pas de tel contrat. Par contre, elle a confirmé du même coup l'existence d'un important désaccord sur les faits. Bien que la pratique en Ontario permette à la cour qui entend les motions de recevoir une preuve limitée sur la question de la compétence, il ne convenait pas que la ville tente de transformer une contestation de la compétence en vertu de l'al. 21.01(3)*a*) en un mini-procès sur une question de fait cruciale litigieuse. La ville ne pouvait se soustraire aux exigences d'une motion en jugement sommaire (Règle 20) en formulant sa demande comme une contestation de la compétence sous le régime de l'al. 21.01(3)*a*) des Règles. Si la ville était d'avis que l'acte de procédure alléguant l'existence d'un contrat de pré-emploi était frivole et qu'il ne soulevait pas de véritable question à débattre, elle aurait dû demander un jugement sommaire en vertu de la règle 20.01. Or, il ne s'agissait pas d'une question de compétence portant sur des faits non contestés ou facilement vérifiables. La crédibilité est une importante question en litige. La décision de la Cour d'appel était donc correcte.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (2001), 197 D.L.R. (4th) 543, 139 O.A.C. 372, [2001] O.J. No. 101 (QL), qui a infirmé une décision de la Cour supérieure de justice. Pourvoi rejeté.

Eugene Meehan, c.r., et *Stuart Huxley*, pour l'appelante.

Emilio S. Binavince et *Helen Lanctôt*, pour les intimés.

Procureurs de l'appelante : Lang Michener, Ottawa; Ville d'Ottawa, Ottawa.

Procureurs des intimés : Binavince Smith, Ottawa.

American International Assurance Life Company Ltd. and American Life Insurance Company - v. - Dorothy Martin (B.C.) (28540)

Indexed as: Martin *v.* American International Assurance Life Co. /
Répertorié : Martin *c.* American International Assurance Life Co.

Neutral citation: 2003 SCC 16. / Référence neutre : 2003 CSC 16.
Judgment rendered March 21, 2003 / Jugement rendu le 21 mars 2003

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

Insurance — Life insurance — Interpretation of accidental death benefit provision in policy — Insured dying from overdose caused by intravenous injection of demerol — Accidental death benefit provision stipulating coverage would be provided only for deaths effected through "accidental means" — Whether category of deaths caused by "accidental means" narrower than that of "accidental deaths" — Whether insured's death effected through "accidental means".

The insured, Dr. E, was a physician who developed an addiction to opiate medications. He completed a residential treatment program. However, after a painful orthopaedic injury, he became physiologically dependent on both morphine and demerol and was placed on a program of gradual withdrawal from these drugs. Dr. E was found dead in his office and the coroner concluded he died from an overdose caused by an intravenous injection of demerol. The level of demerol found in his blood was at the low end of the range for lethal doses. Dr. E's life insurance policy stipulated that coverage would be provided only for deaths effected through "accidental means". At trial, the claim for coverage under the provision was dismissed. The Court of Appeal allowed the appeal and determined that the respondent beneficiary could recover under the policy.

Held: The appeal should be dismissed.

The phrase "accidental means" in the insurance policy does not refer to a narrow subclass of the broader category of "accidental deaths". Both phrases connote a death that was in some sense unexpected. To determine whether death occurred by accidental means, it is necessary to look to the chain of events as a whole, and consider whether the insured expected death to be a consequence of his actions and circumstances. The central question is whether the insured expected to die. The circumstances of the death may point to the answer. However, if the answer is unclear when the matter is viewed solely from the perspective of the insured, the court may consider whether a reasonable person in the position of the insured would have expected to die. In this case, the circumstances surrounding Dr. E's death support the inference that his death was effected through "accidental means". Dr. E did not expect to die but simply made a miscalculation concerning how much demerol his body could tolerate. In concluding otherwise, the trial judge erred in his appreciation of the law and the facts. The appeal is dismissed. The respondent is entitled to payment of the accidental death benefit.

APPEAL from a judgment of the British Columbia Court of Appeal (2001), 196 D.L.R. (4th) 427, 4 W.W.R. 404, 149 B.C.A.C. 249, 86 B.C.L.R. (3d) 4, 25 C.C.L.I. (3d) 1, [2001] I.L.R. I-3957, [2001] B.C.J. No. 325 (QL), 2001 BCCA 130, setting aside a decision of the Supreme Court of British Columbia (1999), 16 C.C.L.I. (3d) 180, [1999] I.L.R. I-3721, [1999] B.C.J. No. 1523 (QL). Appeal dismissed.

Peter H. Griffin, David Norwood and *Nina Bombier*, for the appellants.

David A. Critchley and *Robert B. Kearl*, for the respondent.

Solicitors for the appellants: Lenczner Slaght Royce Smith Griffin, Toronto.

Solicitors for the respondent: Cherrington Easingwood Kearl Critchley Wenner, Fort Langley, B.C.

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

Assurance — Assurance-vie — Interprétation d'une clause d'indemnisation en cas de décès accidentel contenue dans une police d'assurance — Assuré ayant succombé à une surdose de Demerol administré par intraveineuse — Clause d'indemnisation en cas de décès accidentel précisant que la garantie ne s'applique qu'aux décès dus à une « cause accidentelle » — La catégorie des « décès dus à une cause accidentelle » est-elle plus restreinte que celle des « décès accidentels »? — Le décès de l'assuré est-il dû à une « cause accidentelle »?

L'assuré, le D[r] E, était un médecin ayant développé une dépendance à des médicaments opiacés. Il a suivi un programme de traitement en établissement. Toutefois, à la suite d'une douloureuse blessure musculosquelettique, il a développé une dépendance physiologique à la morphine et au Demerol, et il a été inscrit à un programme de désintoxication destiné à enrayer la dépendance à ces drogues. Le D[r] E a été découvert sans vie à son bureau et la coroner a conclu qu'il avait succombé à une surdose de Demerol administré par intraveineuse. Le taux de Demerol dans le sang de la victime se situait au bas de l'échelle des doses létales. La police d'assurance-vie du D[r] E précisait que la garantie ne s'appliquait qu'aux décès dus à une « cause accidentelle ». Au procès, la demande d'indemnisation fondée sur la clause en question a été rejetée. La Cour d'appel a accueilli l'appel et a statué que la bénéficiaire intimée pouvait être indemnisée en vertu de la police d'assurance.

Arrêt : Le pourvoi est rejeté.

L'expression « cause accidentelle », contenue dans la police d'assurance, ne désigne pas une sous-catégorie limitée de la catégorie générale des « décès accidentels ». Les deux expressions évoquent un décès en quelque sorte inattendu. Pour déterminer si le décès est dû à une cause accidentelle, il faut examiner la suite des événements dans son ensemble et se demander si l'assuré s'attendait à ce que la mort résulte de ses actes et des circonstances les ayant entourés. La question centrale est de savoir si l'assuré s'attendait à mourir. Les circonstances du décès peuvent être utiles pour répondre à cette question. Toutefois, si la réponse n'est pas claire lorsqu'on se place du seul point de vue de l'assuré, la cour peut se demander si une personne raisonnable dans la situation de l'assuré se serait attendue à mourir. En l'espèce, les circonstances ayant entouré le décès du D[r] E étayent l'inférence selon laquelle son décès est dû à une « cause accidentelle ». Le D[r] E ne s'attendait pas à mourir; il a simplement commis une erreur de jugement au sujet de la quantité de Demerol que son corps pouvait tolérer. En tirant une autre conclusion, le juge de première instance a mal apprécié le droit et les faits. Le pourvoi est rejeté. L'intimée a droit à l'indemnité prévue en cas de décès accidentel.

POURVOI contre un arrêt de la Cour d'appel de la Colombie-Britannique (2001), 196 D.L.R. (4th) 427, 4 W.W.R. 404, 149 B.C.A.C. 249, 86 B.C.L.R. (3d) 4, 25 C.C.L.I. (3d) 1, [2001] I.L.R. I-3957, [2001] B.C.J. No. 325 (QL), 2001 BCCA 130, annulant une décision de la Cour suprême de la Colombie-Britannique (1999), 16 C.C.L.I. (3d) 180, [1999] I.L.R. I-3721, [1999] B.C.J. No. 1523 (QL). Pourvoi rejeté.

Peter H. Griffin, David Norwood et *Nina Bombier*, pour les appelantes.

David A. Critchley et *Robert B. Kearl*, pour l'intimée.

Procureurs des appelantes : Lenczner Slaght Royce Smith Griffin, Toronto.

Procureurs de l'intimée : Cherrington Easingwood Kearl Critchley Wenner, Fort Langley (C.-B.).

Les Éditions Chouette (1987) inc. et Christine L'Heureux - v. - Hélène Desputeaux - et - M^e Régis Rémillard - et - Centre d'arbitrage commercial national et international du Québec, Union des écrivaines et écrivains québécois, Conseil des métiers d'art du Québec et Regroupement des artistes en arts visuels du Québec (Qué.) (28660)
Répertorié : Éditions Chouette (1987) inc. *c.* Desputeaux / Indexed as: Éditions Chouette (1987) inc. *v.* Desputeaux
Référence neutre : 2003 CSC 17. / Neutral citation: 2003 SCC 17.
Jugement rendu le 21 mars 2003 / Judgment rendered March 21, 2003

Présents : Les juges Gonthier, Iacobucci, Bastarache, Binnie, Arbour, LeBel et Deschamps.

Arbitrage — Interprétation d'un contrat entre un artiste et un diffuseur — Droit d'auteur — La Loi sur le droit d'auteur empêche-t-elle un arbitre de statuer sur la question des droits d'auteur? — Loi sur le droit d'auteur, L.R.C. 1985, ch. C-42, art. 37.

Arbitrage — Interprétation d'un contrat entre un artiste et un diffuseur — Droit d'auteur — Ordre public — La question relative à la paternité des droits d'auteur échappe-t-elle à la compétence arbitrale parce qu'elle est assimilable à une question d'ordre public tenant à l'état des personnes et aux droits de la personnalité? — La Cour d'appel a-t-elle commis une erreur en indiquant que le caractère erga omnes des décisions concernant la paternité des droits d'auteur fait obstacle à la procédure arbitrale? — Code civil du Québec, L.Q. 1991, ch. 64, art. 2639 — Loi sur le statut professionnel des artistes des arts visuels, des métiers d'art et de la littérature et sur leurs contrats avec les diffuseurs, L.R.Q., ch. S-32.01, art. 37.

Arbitrage — Sentence arbitrale — Validité — Étendue du mandat de l'arbitre — Interprétation d'un contrat entre un artiste et un diffuseur — L'arbitre a-t-il outrepassé son mandat en se prononçant sur la question de la propriété des droits d'auteur? — La sentence doit-elle être annulée parce que l'arbitre n'a pas respecté les exigences relatives à la forme et au contenu des contrats entre les artistes et les diffuseurs? — Loi sur le statut professionnel des artistes des arts visuels, des métiers d'art et de la littérature et sur leurs contrats avec les diffuseurs, L.R.Q., ch. S-32.01, art. 31, 34.

Arbitrage — Sentence arbitrale — Examen d'une question d'ordre public — Limites du contrôle de la validité des sentences arbitrales — Code de procédure civile, L.R.Q., ch. C-25, art. 946.4, 946.5.

Arbitrage — Procédure — Justice naturelle — Modes de preuve — Interprétation d'un contrat entre un artiste et un diffuseur — La procédure arbitrale a-t-elle été conduite en violation des règles de justice naturelle?

D, L et C s'associent en vue de créer des livres pour enfants. L est dirigeante et actionnaire majoritaire de C. D dessine et L rédige les textes des premiers livres de la série Caillou. Entre 1989 et 1995, plusieurs contrats relatifs à la publication des illustrations du personnage Caillou interviennent entre D et C. D signe à titre d'auteure et L signe à titre d'éditrice. En 1993, les parties signent un contrat de licence d'exploitation du personnage Caillou. D et L s'y représentent comme coauteures et cèdent à C, à l'exclusion des droits accordés dans les contrats d'édition, certains droits de reproduction pour le monde entier et sans aucune stipulation de durée. Les parties renoncent à exercer toute revendication fondée sur leur droit moral à l'égard de Caillou. Elles autorisent également C à concéder à des tiers des sous-licences sans leur approbation. Un avenant signé en 1994 stipule que dans l'éventualité où D réaliserait des illustrations destinées à l'un des projets d'utilisation de Caillou, un forfait correspondant au travail exigé lui serait payé. En 1996, confrontée à des difficultés d'interprétation et d'application du contrat de licence d'exploitation, C présente une requête pour faire reconnaître ses droits de reproduction. D lui oppose une requête en exception déclinatoire visant à renvoyer les parties devant un arbitre comme le prévoit l'art. 37 de la *Loi sur le statut professionnel des artistes des arts visuels, des métiers d'art et de la littérature et sur leurs contrats avec les diffuseurs*. La Cour supérieure, constatant que l'existence du contrat n'est pas en cause et qu'on n'y retrouve aucune allégation relative à sa validité, renvoie l'affaire à arbitrage. L'arbitre décide que son mandat inclut l'interprétation de tous les contrats et de l'avenant. Selon l'arbitre, Caillou est une oeuvre créée en collaboration par D et L. En ce qui concerne le contrat de licence et l'avenant, l'arbitre conclut que C détient les droits de reproduction et qu'elle seule est autorisée à utiliser Caillou sous toute forme et tout support, à la condition cependant qu'un tribunal judiciaire convienne de la validité des contrats. La Cour supérieure rejette la requête en annulation de la sentence arbitrale présentée par D. La Cour d'appel infirme ce jugement.

Arrêt : Le pourvoi est accueilli. L'arbitre a agi conformément à sa mission et n'a commis aucune erreur qui donne ouverture à l'annulation de la sentence arbitrale.

Les parties à une convention d'arbitrage jouissent d'une autonomie quasi illimitée pour identifier les différends qui pourront faire l'objet de la procédure d'arbitrage. Sous réserve des dispositions législatives pertinentes, cette convention constitue l'acte de mission de l'arbitre et définit le cadre fondamental de son intervention. Toutefois, dans le présent litige, la mission arbitrale n'est pas définie par un document unique. Son cadre et son contenu ont été établis par un jugement de la Cour supérieure, ainsi que par un échange de lettres entre les parties et l'arbitre. Le premier jugement de la Cour supérieure a limité la compétence de l'arbitre en lui retirant l'examen des problèmes de validité des ententes intervenues. Cette restriction incluait nécessairement les moyens de nullité fondés sur la conformité des conventions aux formalités impératives imposées par les art. 31 et 34 de la *Loi sur le statut professionnel des artistes des arts visuels, des métiers d'art et de la littérature et sur leurs contrats avec les diffuseurs*. L'arbitre devait donc tenir pour acquis qu'il n'était pas saisi de ce problème. En ce qui concerne la question du droit d'auteur et de sa titularité, pour comprendre la portée du mandat de l'arbitre, il ne suffit pas de se livrer à une analyse purement textuelle des communications entre les parties. En plus de ce qui est expressément énoncé à la convention d'arbitrage, le mandat de l'arbitre s'étend à tout ce qui entretient des rapports étroits avec la convention. En l'espèce, une interprétation libérale de la convention d'arbitrage, fondée sur la recherche de ses objectifs, permet de conclure que la question des coauteures était intrinsèquement liée à la détermination des autres questions soulevées par la convention d'arbitrage.

L'article 37 de la *Loi sur le droit d'auteur* n'empêche pas un arbitre de statuer sur la question des droits d'auteur. Cette disposition vise deux objectifs : affirmer la compétence de principe des tribunaux provinciaux dans les litiges de droit privé concernant les droits d'auteur et éviter la fragmentation des procès concernant les droits d'auteur en raison du partage des compétences matérielles entre les tribunaux fédéraux et provinciaux dans ce domaine. Elle n'entend pas exclure la procédure arbitrale. Elle ne fait qu'identifier le tribunal qui, au sein de l'organisation judiciaire, aura compétence pour entendre des litiges concernant une matière particulière. En partageant la compétence matérielle sur les droits d'auteur entre la Cour fédérale et les tribunaux provinciaux, l'art. 37 demeure suffisamment général pour inclure les procédures arbitrales créées par une loi provinciale.

La sentence arbitrale n'est pas contraire à l'ordre public. L'interprétation et l'application de la notion d'ordre public dans le domaine de l'arbitrage conventionnel au Québec doivent prendre en compte la politique législative qui accepte cette forme de règlement des différends et qui entend même en favoriser le développement. Sauf dans quelques matières fondamentales mentionnées à l'art. 2639 *C.c.Q.*, l'arbitre peut statuer sur des règles d'ordre public, puisqu'elles peuvent faire l'objet de la convention d'arbitrage. L'ordre public intervient principalement lorsqu'il s'agit d'apprécier la validité de la sentence arbitrale. En vertu de l'art. 946.5 *C.p.c.*, le tribunal doit examiner la sentence dans son ensemble afin d'apprécier son résultat. Il doit rechercher si la décision elle-même, dans son dispositif, contrevient à des dispositions législatives ou à des principes qui relèvent de l'ordre public. Une erreur d'interprétation d'une disposition législative à caractère impératif ne permettrait pas l'annulation de la sentence pour violation de l'ordre public, à moins que le résultat de l'arbitrage se révèle inconciliable avec les principes fondamentaux pertinents de l'ordre public. En l'espèce, la Cour d'appel a commis une erreur en décidant que les litiges concernant la paternité des droits d'auteur ne peuvent être soumis à l'arbitrage parce qu'ils doivent être assimilés à des questions d'ordre public, tenant à l'état des personnes et aux droits de la personnalité. Dans le cadre de la législation canadienne sur le droit d'auteur, bien que l'oeuvre constitue une « manifestation de la personnalité de l'auteur », on se trouve fort loin des questions relatives à l'état et à la capacité des personnes et aux matières familiales au sens de l'art. 2639 *C.c.Q.* Visant d'abord l'aménagement économique du droit d'auteur, la *Loi sur le droit d'auteur* n'interdit pas aux artistes de transiger sur leur droit d'auteur ni même de monnayer l'exercice des droits moraux qui en font partie. Par ailleurs, l'art. 37 de la *Loi sur le statut professionnel des artistes des arts visuels, des métiers d'art et de la littérature et sur leurs contrats avec les diffuseurs* du Québec reconnaît la légitimité des transactions sur le droit d'auteur et la validité du recours à l'arbitrage pour régler les différends survenus à leur sujet.

La Cour d'appel a également commis une erreur en mentionnant que l'opposabilité d'une décision en matière de droit d'auteur à l'égard de tous et, par conséquent, la nature de ses effets sur les tiers font obstacle à la procédure arbitrale. Le *Code de procédure civile* ne considère pas l'effet d'une sentence arbitrale sur les tiers comme un motif permettant de l'annuler ou d'en refuser l'homologation. L'arbitre s'est prononcé sur la titularité des droits d'auteur afin

de départager les droits et obligations des parties au contrat. Cette décision arbitrale fait autorité entre les parties mais ne lie pas les tiers.

Enfin, en adoptant une norme de révision fondée sur le contrôle pur et simple de toute erreur de droit commise à l'examen d'une question d'ordre public, la Cour d'appel a appliqué une approche qui porte atteinte au principe fondamental de l'autonomie de l'arbitrage et qui étend l'intervention judiciaire au moment de l'homologation ou de la demande d'annulation de la sentence arbitrale bien au-delà des cas prévus par le *Code de procédure civile*. L'ordre public reste certes pertinent, mais uniquement au niveau de l'appréciation du résultat global de la procédure arbitrale.

D n'a pas établi une violation des règles de justice naturelle pendant la procédure arbitrale.

POURVOI contre un arrêt de la Cour d'appel du Québec, [2001] R.J.Q. 945, 16 C.P.R. (4th) 77, [2001] J.Q. nº 1510 (QL), qui a infirmé une décision de la Cour supérieure, [1997] A.Q. nº 716 (QL). Pourvoi accueilli.

Stefan Martin et *Sébastien Grammond*, pour les appelantes.

Normand Tamaro, pour l'intimée.

Pierre Bienvenu et *Frédéric Bachand*, pour l'intervenant le Centre d'arbitrage commercial national et international du Québec.

Daniel Payette, pour les intervenants l'Union des écrivaines et écrivains québécois et le Conseil des métiers d'art du Québec.

Louis Linteau, pour l'intervenant le Regroupement des artistes en arts visuels du Québec.

Procureurs des appelantes : Fraser Milner Casgrain, Montréal.

Procureurs de l'intimée : Tamaro, Goyette, Montréal.

Procureurs de l'intervenant le Centre d'arbitrage commercial national et international du Québec : Ogilvy Renault, Montréal.

Procureurs des intervenants l'Union des écrivaines et écrivains québécois et le Conseil des métiers d'art du Québec : Boivin Payette, Montréal.

Procureurs de l'intervenant le Regroupement des artistes en arts visuels du Québec : Laurin Lamarre Linteau & Montcalm, Montréal.

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Present: Gonthier, Iacobucci, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

Arbitration — Interpretation of contract between artist and promoter — Copyright — Whether Copyright Act prevents arbitrator from ruling on question of copyright — Copyright Act, R.S,C. 1985, c. C-42, s. 37.

Arbitration — Interpretation of contract between artist and promoter — Copyright — Public order — Whether question relating to ownership of copyright falls outside arbitral jurisdiction because it must be treated in same manner as question of public order relating to status of persons and rights of personality — Whether Court of Appeal erred in stating that erga omnes nature of decisions concerning copyright ownership is bar to arbitration proceeding — Civil Code of Québec, S.Q. 1991, c. 64, art. 2639 — Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters, R.S.Q., c. S-32.01, s. 37.

Arbitration — Arbitration award — Validity — Extent of arbitrator's mandate -- Interpretation of contract between artist and promoter — Whether arbitrator exceeded mandate by ruling on question of copyright ownership— Whether award should be annulled because arbitrator did not comply with requirements respecting form and substance of contracts between artists and promoters — Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters, R.S.Q., c. S-32.01, ss. 31, 34.

Arbitration — Arbitration award — Consideration of matter of public order — Limits on review of validity of arbitration awards — Code of Civil Procedure, R.S.Q., c. C-25, arts. 946.4, 946.5.

Arbitration — Procedure — Natural justice — Methods of proof — Interpretation of contract between artist and promoter — Whether arbitration proceeding conducted in violation of rules of natural justice.

D, L and C formed a partnership for the purpose of creating children's books. L was the manager and majority shareholder in C. D drew and L wrote the text for the first books in the Caillou series. Between 1989 and 1995, D and C entered into a number of contracts relating to the publication of illustrations of the Caillou character. D signed as author and L signed as publisher. In 1993, the parties signed a contract licensing the use of the Caillou character. D and L represented themselves in it as co-authors and assigned certain reproduction rights to C, excluding rights granted in the publishing contracts, for the entire world, with no stipulation of a term. The parties waived any claims based on their moral right in respect of Caillou. They also authorized C to grant sub-licences to third parties without their approval. A rider signed in 1994 provided that in the event that D produced illustrations to be used in one of the projects in which Caillou was to be used, she was to be paid a lump sum corresponding to the work required. In 1996, faced with difficulties in respect of the interpretation and application of the licence contract, C brought a motion to secure recognition of its reproduction rights. D brought a motion for declinatory exception seeking to have the parties referred to an arbitrator as provided in s. 37 of the *Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters*. The Superior Court, finding that the existence of the contract was not in issue, and that there were no allegations in respect of its validity, referred the case to arbitration. The arbitrator decided that his mandate included interpreting all the contracts and the rider. In the arbitrator's view, Caillou was a work of joint authorship by D and L. With respect to the licence and the rider, the arbitrator concluded that C held the reproduction rights and that it alone was authorized to use Caillou in any form and on any medium, provided that a court agreed that the contracts were valid. The Superior Court dismissed D's motion for annulment of the arbitration award. The Court of Appeal reversed that judgment.

Held: The appeal should be allowed. The arbitrator acted in accordance with his terms of reference and made no error such as would permit annulment of the arbitration award.

The parties to an arbitration agreement have virtually unfettered autonomy in identifying the disputes that may be the subject of the arbitration proceeding. Subject to the applicable statutory provisions, that agreement comprises the arbitrator's terms of reference and delineates the task he or she is to perform. In this case, however, the arbitrator's terms of reference were not defined by a single document. His task was delineated, and its content determined, by a judgment of the Superior Court, and by an exchange of correspondence between the parties and the arbitrator. The Superior Court's first judgment limited the arbitrator's jurisdiction by removing any consideration of the problems relating to the validity of the agreements from him. That restriction necessarily included any issues of nullity based on compliance by the agreements with the mandatory formalities imposed by ss. 31 and 34 of the *Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters*. The arbitrator therefore had to proceed on the basis that this problem was not before him. With respect to the question of copyright, and ownership of that copyright, in order to understand the scope of the arbitrator's mandate, a purely textual analysis of the communications between the parties is not sufficient. In addition to what is expressly set out in the arbitration agreement, the arbitrator's mandate includes everything that is closely connected with that agreement. Here, from a liberal interpretation of the arbitration agreement, based on identification of its objectives, it can be concluded that the question of co-authorship was intrinsically related to the other questions raised by the arbitration agreement.

Section 37 of the *Copyright Act* does not prevent an arbitrator from ruling on the question of copyright. The provision has two objectives: to affirm the jurisdiction that the provincial courts, as a rule, have in respect of private law

matters concerning copyright and to avoid fragmentation of trials concerning copyright that might result from the division of jurisdiction *ratione materiae* between the federal and provincial courts in this field. It is not intended to exclude arbitration. It merely identifies the court which, within the judicial system, will have jurisdiction to hear cases involving a particular subject matter. By assigning shared jurisdiction *ratione materiae* in respect of copyright to the Federal Court and provincial courts, s. 37 is sufficiently general to include arbitration procedures created by a provincial statute.

The arbitration award is not contrary to public order. In interpreting and applying the concept of public order in the realm of consensual arbitration in Quebec, it is necessary to have regard to the legislative policy that accepts this form of dispute resolution and even seeks to promote its expansion. Except in certain fundamental matters referred to in art. 2639 *C.C.Q.*, an arbitrator may dispose of questions relating to rules of pubic order, since they may be the subject matter of the arbitration agreement. Public order arises primarily when the validity of an arbitration award must be determined. Under art. 946.5 *C.C.P.*, the court must examine the award as a whole to determine the nature of the result. It must determine whether the decision itself, in its disposition of the case, violates statutory provisions or principles that are matters of public order. An error in interpreting a mandatory statutory provision would not provide a basis for annulling the award as a violation of public order, unless the outcome of the arbitration was in conflict with the relevant fundamental principles of public order. Here, the Court of Appeal erred in holding that cases involving ownership of copyright may not be submitted to arbitration, because they must be treated in the same manner as questions of public order, relating to the status of persons and rights of personality. In the context of Canadian copyright legislation, although the work is a "manifestation of the personality of the author", this issue is very far removed from questions relating to the status and capacity of persons and to family matters, within the meaning of art. 2639 *C.C.Q.* The *Copyright Act* is primarily concerned with the economic management of copyright, and does not prohibit artists from entering into transactions involving their copyright, or even from earning revenue from the exercise of the moral rights that are part of it. In addition, s. 37 of the *Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters* recognizes the legitimacy of transactions involving copyright, and the validity of using arbitration to resolve disputes arising in respect of such transactions.

The Court of Appeal also erred in stating that the fact that a decision in respect of copyright may be set up against the entire world, and accordingly the nature of its effects on third parties, is a bar to the arbitration proceeding. The *Code of Civil Procedure* does not consider the effect of an arbitration award on third parties to be a ground on which it may be annulled or its homologation refused. The arbitrator ruled as to the ownership of the copyright in order to decide as to the rights and obligations of the parties to the contract. The arbitral decision is authority between the parties, but is not binding on third parties.

Finally, by adopting a standard of review based on simple review of any error of law made in considering a matter of public order, the Court of Appeal applied an approach that runs counter to the fundamental principle of the autonomy of arbitration and extends judicial intervention at the point of homologation or an application for annulment of the arbitration award well beyond the cases provided for in the *Code of Civil Procedure*. Public order will of course always be relevant, but solely in terms of the determination of the overall outcome of the arbitration proceeding.

D has not established a violation of the rules of natural justice during the arbitration proceeding.

APPEAL from a judgment of the Quebec Court of Appeal, [2001] R.J.Q. 945, 16 C.P.R. (4th) 77, [2001] Q.J. No.1510 (QL), reversing a decision of the Superior Court, [1997] Q.J. No. 716 (QL). Appeal allowed.

Stefan Martin and *Sébastien Grammond*, for the appellants.

Normand Tamaro, for the respondent.

Pierre Bienvenu and *Frédéric Bachand*, for the intervener the Quebec National and International Commercial Arbitration Centre.

Daniel Payette, for the interveners the Union des écrivaines et écrivains québécois and the Conseil des métiers d'art du Québec.

Louis Linteau, for the intervener the Regroupement des artistes en arts visuels du Québec.

Solicitors for the appellants: Fraser Milner Casgrain, Montréal.

Solicitors for the respondent: Tamaro, Goyette, Montréal.

Solicitors for the intervener the Quebec National and International Commercial Arbitration Centre: Ogilvy Renault, Montréal.

Solicitors for the interveners the Union des écrivaines et écrivains québécois and the Conseil des métiers d'art du Québec: Boivin Payette, Montréal.

Solicitors for the intervener the Regroupement des artistes en arts visuels du Québec: Laurin Lamarre Linteau & Montcalm, Montréal.

The Winter Session of the Supreme Court of Canada started January 13, 2003.

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

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

1) For notices of appeal filed on and after June 28, 2002

Appellant's record; appellant's factum; and appellant's book(s) of authorities must be filed within 12 weeks of the filing of the notice of appeal or 12 weeks from decision on the motion to state a constitutional question.

Respondent's record (if any); respondent's factum; and respondent's book(s) of authorities must be filed within eight weeks after the service of the appellant's documents.

Intervener's factum and intervener's book(s) of authorities, (if any), must be filed within eight weeks of the order granting leave to intervene or within 20 weeks of the filing of a notice of intervention under subrule 61(4).

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

2) For notices of appeal filed before June 28, 2002

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 documents.

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 Registrar shall enter the appeal on a list of cases to be heard after the respondent's factum is filed or at the end of the eight-week period referred to in Rule 36.

La session d'hiver de la Cour suprême du Canada a commencé le 13 janvier 2003.

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

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

1) Pour les avis d'appel déposés le ou après le 28 juin 2002

Le dossier de l'appelant, son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les douze semaines du dépôt de l'avis d'appel ou douze semaines de la décision de la requête pour formulation d'une question constitutionnelle.

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 des documents de l'appelant.

Le mémoire de l'intervenant et son recueil de jurisprudence et de doctrine, le cas échéant, doivent être déposés dans les huit semaines suivant l'ordonnance autorisant l'intervention ou dans les vingt semaines suivant le dépôt de l'avis d'intervention visé au paragraphe 61(4).

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

2) Pour les avis d'appel déposés avant le 28 juin 2002

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 des documents 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.

Le registraire inscrit l'appel pour audition après le dépôt du mémoire de l'intimé ou à l'expiration du délai de huit semaines prévu à la règle 36.

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

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

Judgments reported in [2002] 1 S.C.R. Part 1

Jugements publiés dans [2002] 1 R.C.S. Partie 1

Suresh *v.* Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1

Suresh *c.* Canada (Ministre de la Citoyenneté et de l'Immigration), [2002] 1 R.C.S. 3, 2002 CSC 1

Ahani *v.* Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 72, 2002 SCC 2

Ahani *c.* Canada (Ministre de la Citoyenneté et de l'Immigration), [2002] 1 R.C.S. 72, 2002 CSC 2

Chieu *v.* Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 84, 2002 SCC 3

Chieu *c.* Canada (Ministre de la Citoyenneté et de l'Immigration), [2002] 1 R.C.S. 84, 2002 CSC 3

Al Sagban *v.* Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 133, 2002 SCC 4

Al Sagban *c.* Canada (Ministre de la Citoyenneté et de l'Immigration), [2002] 1 R.C.S. 133, 2002 CSC 4

R. *v.* Benji, [2002] 1 S.C.R. 142, 2002 SCC 5

R. *c.* Benji, [2002] 1 R.C.S. 142, 2002 CSC 5

R. *v.* Tessier, [2002] 1 S.C.R. 144, 2002 SCC 6

R. *c.* Tessier, [2002] 1 R.C.S. 144, 2002 CSC 6

Bank of *v.* Dynex Petroleum Ltd., [2002] 1 S.C.R. 146, 2002 SCC 7

Banque de Montréal *c.* Dynex Petroleum Ltd., [2002] 1 R.C.S. 146, 2002 CSC 7

R.W.D.S.U., Local 558 *v.* Pepsi-Cola Canada Beverages (West) Ltd., [2002] 1 S.C.R. 156, 2002 SCC 8

S.D.G.M.R., section locale 558 *c.* Pepsi-Cola Canada Beverages (West) Ltd., [2002] 1 R.C.S. 156, 2002 CSC 8

Judgments reported in [2002] 1 S.C.R. Part 2

Jugements publiés dans [2002] 1 R.C.S. Partie 2

Krangle (Guardian ad litem of) *v.* Brisco, [2002] 1 S.C.R. 205, 2002 SCC 9

Krangle (Tutrice à l'instance) *c.* Brisco, [2002] 1 R.C.S. 205, 2002 CSC 9

R. *v.* Law, [2002] 1 S.C.R. 227, 2002 SCC 10

R. *c.* Law, [2002] 1 R.C.S. 227, 2002 CSC 10

Moreau-Bérubé *v.* New Brunswick (Judicial Council), [2002] 1 S.C.R. 249, 2002 SCC 11

Moreau-Bérubé *c.* Nouveau-Brunswick (Conseil de la magistrature), [2002] 1 R.C.S. 249, 2002 CSC 11

R. *v.* Regan, [2002] 1 S.C.R. 297, 2002 SCC 12

R. *c.* Regan, [2002] 1 R.C.S. 297, 2002 CSC 12

Judgments reported in [2002] 1 S.C.R. Part 3

Jugements publiés dans [2002] 1 R.C.S. Partie 3

Mackin *v.* New Brunswick (Minister of Finance); Rice *v.* New Brunswick, [2002] 1 S.C.R. 405, 2002 SCC 13

Mackin *c.* Nouveau-Brunswick (Ministre des Finances); Rice *c.* Nouveau-Brunswick, [2002] 1 R.C.S. 405, 2002 CSC 13

R. *v.* Guignard, [2002] 1 S.C.R. 472, 2002 SCC 14

R. *c.* Guignard, [2002] 1 R.C.S. 472, 2002 CSC 14

St-Jean *v.* Mercier, [2002] 1 S.C.R. 491, 2002 SCC 15

St-Jean *c.* Mercier, [2002] 1 R.C.S. 491, 2002 CSC 15

R. *v.* Fliss, [2002] 1 S.C.R. 535, 2002 SCC 16

R. *c.* Fliss, [2002] 1 R.C.S. 535, 2002 CSC 16

Ward *v.* Canada (Attorney General), [2002] 1 S.C.R. 569, 2002 SCC 17

Ward *c.* Canada (Procureur général), [2002] 1 R.C.S. 569, 2002 CSC 17

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2002 -

OCTOBER - OCTOBRE

S D	M L	T M	W M	T J	F V	S S
	M 30	**1**	**2**	**3**	**4**	5
6	**7**	**8**	**9**	**10**	**11**	12
13	H 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	**M 4**	**5**	**6**	**7**	**8**	9
10	H 11	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	**M 2**	**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				

- 2003 -

JANUARY - JANVIER

S D	M L	T M	W M	T J	F V	S S
			H 1	2	3	4
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12	**M 13**	**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
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9	**M 10**	**11**	**12**	**13**	**14**	15
16	**17**	**18**	**19**	**20**	**21**	22
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MARCH - MARS

S D	M L	T M	W M	T J	F V	S S
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9	**M 10**	**11**	**12**	**13**	**14**	15
16	**17**	**18**	**19**	**20**	**21**	22
23	24	25	26	27	28	29
30	31					

APRIL - AVRIL

S D	M L	T M	W M	T J	F V	S S
		1	2	3	4	5
6	**M 7**	**8**	**9**	**10**	**11**	12
13	**14**	**15**	**16**	**17**	H 18	19
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27	28	29	30			

MAY - MAI

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	**12**	**13**	**14**	**15**	**16**	17
18	H 19	20	21	22	23	24
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JUNE - JUIN

S D	M L	T M	W M	T J	F V	S S
1	**M 2**	**3**	**4**	**5**	**6**	7
8	**9**	**10**	**11**	**12**	**13**	14
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Sittings of the court: / Séances de la cour: — 18 sitting weeks / semaines séances de la cour

Motions: / Requêtes: — M — 80 sitting days / journées séances de la cour

9 motion and conference days / journées requêtes, conférences

Holidays: / Jours fériés: — H — 1 holidays during sitting days / jours fériés durant les sessions