

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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**CONTENTS****TABLE DES MATIÈRES**

---

Applications for leave to appeal filed	268 - 272	Demandes d'autorisation d'appel déposées
Applications for leave submitted to Court since last issue	273 - 281	Demandes soumises à la Cour depuis la dernière parution
Oral hearing ordered	-	Audience ordonnée
Oral hearing on applications for leave	-	Audience sur les demandes d'autorisation
Judgments on applications for leave	282 - 290	Jugements rendus sur les demandes d'autorisation
Judgment on motion	-	Jugement sur requête
Motions	291 - 298	Requêtes
Notices of appeal filed since last issue	-	Avis d'appel déposés depuis la dernière parution
Notices of intervention filed since last issue	299	Avis d'intervention déposés depuis la dernière parution
Notices of discontinuance filed since last issue	-	Avis de désistement déposés depuis la dernière parution
Appeals heard since last issue and disposition	300 - 306	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	307	Jugements rendus sur les appels en délibéré
Rehearing	-	Nouvelle audition
Headnotes of recent judgments	308 - 310	Sommaires des arrêts récents
Agenda	-	Calendrier
Summaries of the cases	-	Résumés des affaires
Notices to the Profession and Press Release	-	Avis aux avocats et communiqué de presse
Deadlines: Appeals	311	Délais: Appels
Judgments reported in S.C.R.	-	Jugements publiés au R.C.S.

**APPLICATIONS FOR LEAVE TO  
APPEAL FILED**

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

**H.M.**

H.M.

c. (29554)

**Z.M. (Qué.)**

Marie-Pierre Marquis  
Bélanger, Hébert, Marquis et Associés

DATE DE PRODUCTION 13.1.2003

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**Purandhar Setlur**

Purandhar Setlur

v. (29592)

**Attorney General of Canada (F.C.)**

Christine Mohr  
A.G. of Canada

FILING DATE 20.1.2003

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**Monsanto Canada Inc.**

Freya J. Kristjanson  
Borden Ladner Gervais

v. (29586)

**Superintendent of Financial Services, et al. (Ont.)**

Deborah McPhail  
Financial Services Commission of Ontario

- and between -

**The Association of Canadian Pension Management**

Jeffrey W. Galway  
Blake, Cassels & Graydon

v. (29586)

**Superintendent of Financial Services, et al. (Ont.)**

Deborah McPhail  
Financial Services Commission of Ontario

FILING DATE 21.1.2003

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**Irena Najdowski**

Irena Najdowski

v. (29595)

**University of Montreal (Que.)**

Pierre Magnan  
Marchand, Magnan, Melançon, Forget

FILING DATE 23.1.2003

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**Her Majesty the Queen**

William D. Delaney  
A.G. of Nova Scotia

v. (29596)

**Terrance Maxwell Ryan (N.S.)**

P. Gregory MacIsaac

FILING DATE 23.1.2003

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**Newfoundland and Labrador Association of  
Public and Private Employees**

Sheila H. Greene  
Newfoundland Association of Public and  
Private Employees

v. (29597)

**Her Majesty the Queen in Right of  
Newfoundland as represented by Treasury Board  
and the Minister of Justice (Nfld. & Lab.)**

Donald Burrage, Q.C.  
A.G. of Newfoundland and Labrador

FILING DATE 28.1.2003

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**Les Entreprises Sibeca Inc.**

Pierre Luc Blain

c. (29600)

**Municipalité de Frelighsburg (Qué.)**

Guy Pepin  
Bélanger, Sauvé

DATE DE PRODUCTION 28.1.2003

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**Patrick Assente**

Chantale Gariépy  
Brouillard, Bibeau, Gariépy

c. (29593)

**Sa Majesté la Reine (Qué.)**

Jacques Blais  
P.G. du Québec

DATE DE PRODUCTION 3.2.2003

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**National Union Fire Insurance Company of  
Pittsburgh, P.A.**

Robert J. Clayton  
Genest Murray

v. (29594)

**Lafarge Canada Ltd., et al. (Ont.)**

Glenn A. Smith  
Lenczner Slaght Royce Smith Griffin

FILING DATE 3.2.2003

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**Saul Markman**

Alan D. Gold  
Gold & Associates

v. (29601)

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

M. David Lepofsky  
A.G. for Ontario

FILING DATE 3.2.2003

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**Keith Nigel Madeley**

Christopher D. Hicks  
Hicks, Block, Adams

v. (29602)

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

W. Graeme Cameron  
A.G. for Ontario

FILING DATE 4.2.2003

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**L'industrielle Alliance, compagnie d'assurance  
sur la Vie**

Michel St-Pierre  
Beauvais, Truchon & Associés

c. (29584)

**Gilbert Cabiakman (Qué.)**

Raphael Levy  
Madar Benabou Malamud & Levy

DATE DE PRODUCTION 6.2.2003

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**East Broadway Residents Association**

Greg Reid  
East Broadway Residents Association

v. (29603)

**City of Vancouver, et al. (B.C.)**

François LeTourneux  
City of Vancouver

FILING DATE 6.2.2003

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**David Butt**

Derek J. Hogan

v. (29585)

**United Steelworkers of America, et al. (Nfld. & Lab.)**

Gordon N. Forsyth  
Pink Breen Larkin

FILING DATE 7.2.2003

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**Neil Barry McFadyen**

Emilio S. Binavince  
Binavince Smith

v. (29591)

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

Ernest Wheeler  
A.G. of Canada

FILING DATE 10.2.2003

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**Thinh Duc Vu**

Charles B. Davison  
Abbey Hunter Davison Spencer

v. (29598)

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

James N. Shaw  
A.G. of Canada

FILING DATE 10.2.2003

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**Ontario New Home Warranty Program**

James C. Tory

Torys

v. (29599)

**Allen and Nancy Singer (Ont.)**

Kevin D. Sherkin  
Levine, Sherkin, Boussidan

FILING DATE 10.2.2003

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**Davis Moving & Storage Inc., carrying on business as Kennedy Moving Systems**

John C.F. Hunt  
Black, Sutherland

v. (29606)

**Stuart Solway, et al. (Ont.)**

David E. Fine  
Gardiner, Roberts

FILING DATE 10.2.2003

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**David J. Carter**

William E. Code, Q.C.  
Rath & Company

v. (29587)

**Her Majesty the Queen in Right of the Government of Alberta (Alta.)**

William J. Kenny, Q.C.  
Miller Thomson

FILING DATE 11.2.2003

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**Hem Ramlall, BA., MD., DOHS**

Hem Ramlall

v. (29605)

**The Attorney General of Canada, et al. (Ont.)**

Barney W. Brucker  
A.G. of Canada

FILING DATE 11.2.2003

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**American Home Insurance Company**

Geoffrey D.E. Adair, Q.C.

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Adair Morse

v. (29607)

v. (29610)

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

Donna R. Valgardson

A.G. of Canada

**Lafarge Canada Limited, et al. (Ont.)**

Glenn A. Smith

Lenzner Slaght Royce Smith Griffin

FILING DATE 7.2.2003

FILING DATE 11.2.2003

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**Simon Edward Grennan, Administrator of the  
Estate of Mary-Ann Grennan, deceased**

Robert D. Gibbens

Laxton & Company

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**Le Jean Bleu Inc.**

Richard Bernèche

Dufresne Hébert Comeau

v. (29589)

c. (29612)

**Nathalie Carignan (Qué.)**

Guy Gamache

Poirier, Rivest

**Dr. Allon Reddoch, et al. (Yuk.)**

Christopher E. Hinkson, Q.C.

Harper Grey Easton

DATE DE PRODUCTION 11.2.2003

FILING DATE 12.2.2003

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**Apotex Inc.**

Harry Radomski

Goodmans

**Raymond Kyling, et autre**

Robert Jodoin

Jodoin Huppé

v. (29614)

c. (29590)

**Parke-Davis Division, et al. (F.C.)**

Sheila R. Block

Torys

**Carole Poulin, et autre (Qué.)**

Jocelyne Larouche

Bernard, Roy & Associés

FILING DATE 17.1.2003

DATE DE PRODUCTION 31.1.2003

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**Steven Nowack**

Christopher Wirth

Stockwoods

**Francine Lessard**

Francine Lessard

v. (29604)

c. (29611)

**Research Capital Corporation (Ont.)**

John R. Sproat

Miller Thomson

**Société de l'assurance automobile du Québec, et  
autres (Qué.)**

Manon Touchette

Gélinas et Associés

- and between -

DATE DE PRODUCTION 3.2.2003

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**Vartevar E. Brounsuzian**

Jessica Kimmel

Goodmans

**Thao Mai Dao**

Dennis Edney

Edney, Hattersley & Dolphin

v. (29604)

**Research Capital Corporation (Ont.)**

John R. Sproat  
Miller Thomson

FILING DATE 10.2.2003

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**Nicole G lineau, et autre**

Nicole G lineau

c. (29615)

**L'Ordre du Barreau du Qu bec (Qu .)**

Fran ois Beauchamp  
De Grandpr  Chait

DATE DE PRODUCTION 12.2.2003

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

**DEMANDES SOUMISES   LA COUR  
DEPUIS LA DERNI RE PARUTION**

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**FEBRUARY 21, 2003 / LE 21 F VRIER 2003**

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

**Peter Van Osselaer**

**v. (29441)**

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

**NATURE OF THE CASE**

Criminal law - Trial - Evidence - Did the British Columbia Court of Appeal err in finding that consistency between separate hearsay statements of a deceased declarant can be used as part of the reliability inquiry contrary to the Ruling in *R. v. Starr*? - Did the British Columbia Court of Appeal err in finding that the relationship of the deceased declarant and the witness was an adequate basis for a finding of the circumstantial guarantee of trustworthiness of hearsay statements?

**PROCEDURAL HISTORY**

July 25, 1999  
Supreme Court of British Columbia  
(Macaulay J.)

Applicant convicted of second degree murder contrary to s. 235 of the *Criminal Code*; sentenced to life imprisonment without eligibility for parole for 18 years

August 19, 2002  
Court of Appeal of British Columbia  
(Prowse, Hall and Low JJ.A.)

Appeal against conviction dismissed

November 5, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**Kin Yung Ku**

**v. (29516)**

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

**NATURE OF THE CASE**

Canadian Charter - Criminal Law - DNA Databank - Whether the Court of Appeal failed to declare that section 487.052 of the *Criminal Code* is unconstitutional and of no force and effect as it infringes or denies the rights guaranteed by sections 8, 7 and 11(i) of the *Charter* and is not saved by section 1 - Whether the Court of Appeal erred in upholding the decision of the trial judge ordering the Applicant to provide samples of his DNA pursuant to section 487.052 of the *Criminal Code*- *Criminal Code*, R.S.C. 1985, c. C-46, s. 487.052

**PROCEDURAL HISTORY**

July 6, 2001  
Supreme Court of British Columbia  
(Baker J.)

Section 487.052 does not infringe rights guaranteed under sections 7, 8, 11(d), 11(i) and 12 of the *Charter*; Applicant ordered to provide DNA samples pursuant to s. 487.052 of the *Criminal Code*

October 16, 2002  
Court of Appeal of British Columbia  
(Finch, Rowles and Donald JJ.A.)

Appeal dismissed

December 12, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**The City of Calgary**

**v. (29321)**

**The United Taxi Drivers' Fellowship of Southern Alberta, Rashpal Singh Gosal,  
Haringer Singh Dhesi, Aero Cab Ltd. and Air Linker Cab Ltd. (Alta.)**

**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 <i>Charter</i>
May 29, 2002 Court of Appeal of Alberta (O'Leary [ <i>dissenting</i> ], 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 <i>ultra vires</i>
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

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**Centre de rénovation FDS inc.**

**c. (29288)**

**Henri-Paul Boulianne et l'Officier de la publicité des droits de la circonscription foncière de Chicoutimi (Qué.)**

**NATURE DE LA CAUSE**

Droit des biens - Hypothèques - Recours - *Code civil* - Interprétation - Hypothèque légale en faveur de celui qui participe à la construction d'un immeuble - Conservation de l'hypothèque légale assujettie à l'inscription et à la signification d'un avis avant l'expiration d'un délai de trente jours suivant la fin des travaux - La Cour d'appel a-t-elle erré en faits et en droit dans son application et l'interprétation des critères établissant la "fin des travaux" prévue aux art. 2110 et 2727 du *Code civil du Québec*, L.Q. 1991, ch. 64?

**HISTORIQUE PROCÉDURAL**

Le 9 novembre 2000 Cour supérieure du Québec (Larouche j.c.s.)	Requête de l'intimé Boulianne en radiation d'inscriptions sur le registre foncier rejetée
Le 8 mai 2002 Cour d'appel du Québec (Gendreau, Thibault et Rochon jj.c.a.)	Appel accueilli
Le 6 août 2002 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**Robert Langlois**

**c. (29247)**

**Sous-ministre du Revenu du Québec (Qué.)**

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**NATURE DE LA CAUSE**

Droit des biens - Procédure - Biens immeubles - Hypothèque légale - Ministère du Revenu - Avis d'inscription - Prescription - Avis de radiation - La Cour d'appel du Québec a-t-elle incorrectement apprécié les effets de l'abrogation partielle de l'article 1030 de la *Loi sur les impôts*, L.R.Q., C. I-3 en l'instance ? - La Cour d'appel du Québec a-t-elle erronément utilisé cumulativement plusieurs dispositions législatives pour calculer le délai de prescription applicable aux deux avis de cotisation concernant le requérant ? - La Cour d'appel du Québec a-t-elle incorrectement appliqué les règles d'interprétation des lois fiscales ?

**HISTORIQUE PROCÉDURAL**

Le 27 août 1999 Cour supérieure du Québec (Rolland j.c.s.)	Requête du demandeur en radiation d'inscription d'une hypothèque légale pour impôts impayés rejetée
Le 15 avril 2002 Cour d'appel du Québec (Gendreau, Rochon et Dalphond jj.c.a.)	Appel rejeté
Le 14 juin 2002 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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

**J.H.K.**

**v. (29495)**

**United States of America, Her Majesty the Queen and Minister of Justice (Crim.) (Ont.)**

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Principles of fundamental justice - Extradition - Jurisdiction - Whether Applicant's extradition was barred by Art. 4(1)(i) of the Treaty - Whether Applicant's surrender contrary to s. 7 of *Charter* given issues of double jeopardy and the potential imposition of a life sentence with no parole eligibility for twenty-five years.

**PROCEDURAL HISTORY**

Ontario Superior Court of Justice May 21, 1999 Desotti J.	Applicant committed for extradition
June 18, 2002 Court of Appeal for Ontario (McMurtry C.J.O., Cronk and Gillese JJ.A.)	Applicant's appeal against extradition order and application for judicial review, dismissed
December 5, 2002 Supreme Court of Canada	Applications for leave to appeal and extension of time filed

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**Annette Kopp**

**v. (29473)**

**Saskatchewan Government Insurance (Sask.)**

**NATURE OF THE CASE**

Torts - Motor vehicles - Procedural law - Settlement of claim - Applicant injured in motor vehicle accident making claim against no fault accident insurer for income replacement benefits - Applicant appealing Respondent's decision to discontinue benefits - Applicant signing Minutes of Settlement and accepting lump sum in settlement of her claims - Applicant later applying for benefits - Whether Applicant should be entitled to a reinstatement of Income Replacement Benefits - Whether Court of Appeal should have determined the issue of the Applicant's mental capacity at the time the agreement was signed - Whether Court of Appeal should have received certain documents into evidence and granted a hearing

**PROCEDURAL HISTORY**

March 15, 2002  
Court of Queen's Bench of Saskatchewan  
(Maher J.)

Hearing ordered pursuant to s.198 of *The Automobile Accident Insurance Act* to determine issues

October 17, 2002  
Court of Appeal for Saskatchewan  
(Tallis, Gerwing and Sherstobitoff JJ.A.)

Appeal allowed: judgment set aside; Applicant's appeal to the Queen's Bench dismissed

November 18, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**S.T.B. Holdings Ltd.**

**v. (29517)**

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

**NATURE OF THE CASE**

Taxation - Income tax - Assessment - Whether s. 245(7) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1, requires that a reference to s. 245 and/or the General Anti-Avoidance Rule (GAAR) be made on the face of a notice of assessment or reassessment in order for s. 245 to be relied on by the Minister - Whether s. 245(7) of the Act precludes the use of s. 245 as an alternative assessing position.

**PROCEDURAL HISTORY**

December 20, 2001  
Tax Court of Canada  
(Miller J.T.C.C.)

Decision on Applicant's application for a determination of a matter of law: each question answered negatively

October 15, 2002  
Federal Court of Appeal  
(Décary, Linden and Létourneau JJ.A.)

Appeal dismissed

December 10, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**Kim Nathan Louie and Todd Sheldon Louie**

**v. (29458)**

**Melvin Douglas Lastman (Ont.)**

**NATURE OF THE CASE**

Family law - Maintenance - Child Support - Action brought by adult Applicants against Respondent for damages for breach of fiduciary duty and tort claims arising out of his failure to provide adequate support during their dependence - Respondent's motion to strike out claim on the grounds that it discloses no reasonable cause of action granted - Whether the lower courts erred in dismissing the Applicants' claim for equitable compensation by reclassifying it as a claim for retroactive child support - Whether the scope of fiduciary duty ought to have been expanded to encompass their claim for compensation due to an obvious breach of duty - Whether the lower courts erred in finding that there was no chance of success for the claim and have denied the Applicants access to justice.

**PROCEDURAL HISTORY**

May 22, 2001  
Ontario Superior Court of Justice  
(Senior Justice Benotto J.)

Applicants' claims for damages arising out of the Respondent's failure to provide them with adequate support during their dependency, dismissed

September 17, 2002  
Court of Appeal for Ontario  
(Catzman, Rosenberg and Cronk JJ.A.)

Appeal dismissed without costs

November 14, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**Daleatta Ilnicki**

**v. (29446)**

**David Jeremy Hill (Alta.)**

**NATURE OF THE CASE**

Procedural law - Family law - Maintenance - Courts - Judgments and orders - Standing - Court of Appeal reasons brief - Whether requirement for Court of Appeal to give reasons - If so, what constitutes adequate reasons and when will the

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absence of reasons result in the reversal of their decision - Whether a litigant who is substantially in arrears for child support has status before the Court and, if so, under what circumstances.

**PROCEDURAL HISTORY**

October 6, 2000  
Court of Queen's Bench of Alberta  
(Paperny J.)

Judgment on division of matrimonial property, child support set to monthly payments of \$902.00 and decision on spousal support reserved

January 11, 2002  
Court of Queen's Bench of Alberta  
(Bensler J.)

Chambers order : child support increased to \$2,906.00 per month, retroactive child support issue left to case management judge and spousal support question adjourned

September 23, 2002  
Court of Appeal for Alberta  
(O'Leary, Berger and Costigan JJ.A.)

Appeal and cross-appeal dismissed

November 7, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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

**Sa Majesté la Reine**

**c. (29541)**

**David Carr (Crim.) (Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Détention - Détermination de la peine - Sentence - Suivant quelle norme juridique une Cour d'appel peut-elle autoriser un accusé à répudier en appel une suggestion commune des parties que le juge en première instance a entérinée? - Tout en reconnaissant que la peine infligée par le juge de première instance qui entérinait la suggestion commune des parties se situait dans des limites acceptables, la Cour d'appel a-t-elle erré en intervenant en l'absence de toute nouvelle preuve et malgré son obligation de retenue judiciaire?

**HISTORIQUE PROCÉDURAL**

Le 29 mai 2002  
Cour du Québec  
(Morier j.c.q.)

Déclaration de culpabilité : Condamnation de 15 mois d'emprisonnement en plus d'une période de probation de 3 ans pour infraction de production de cannabis.

Le 28 octobre 2002  
Cour d'appel du Québec  
(Proulx, Delisle et, Letarte [ad hoc] jj.c.a.)

Appel accueilli; la peine est réduite à une journée d'incarcération; les autres éléments de la peine sont maintenus

Le 3 janvier 2003  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Le 29 janvier 2003  
Cour suprême du Canada

Demande de prorogation de délai déposée

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**AB Hassle and Astrazeneca Canada Inc.**

**v. (29533)**

**The Minister of National Health and Welfare and Apotex Inc. (F.C.A.)**

**NATURE OF THE CASE**

Property law - Patents - Patented medicines - Notice of compliance - Whether applying the factual findings made by the trial judge to the correct legal test for infringement ought to have resulted in the conclusion that Apotex' Notice of Allegation was deficient - Whether the Court of Appeal below erred by not applying the correct test to the trial judge's factual finding - Whether the trial judge and the Court of Appeal below both erred in making palpable and overriding errors in their assessment of the evidence relating to infringement of a claim to the use of the medicine under the *NOC Regs* - Whether the courts below erred in law with respect to the test to be applied for the justification of an allegation of non-infringement of a claim for the use of a medicine under the *NOC Regs. - Patented Medicines (Notice of Compliance) Regulations, SOR/93-133*

**PROCEDURAL HISTORY**

November 16, 2001  
Federal Court of Canada  
(O'Keefe J.)

Applicants' application for an order prohibiting the Respondent Minister of National Health and Welfare from issuing a notice of compliance to the Respondent Apotex Inc., dismissed

November 1, 2002  
Federal Court of Appeal  
(Linden, Sexton and Evans JJ.A.)

Appeal dismissed

December 31, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**Garaga Inc.**

**c. (29226)**

**Ernst & Young inc., Gilles N. Lavallée, Les industries Portes Mackie Inc. (Qué.)**

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Interprétation - Appel - Preuve - Accès aux tribunaux - *Code de procédure civile*, L.R.Q., ch. C-25, article 507 - *Règles de procédure de la Cour d'appel en matière civile*, L.R.Q. 1981, ch. C-25, articles 10, 11 - Dans quelle mesure les parties doivent remettre à la Cour d'appel du Québec la totalité de la preuve administrée devant un tribunal de première instance? - Dans quelle mesure un auxiliaire de justice manque à ses obligations en reproduisant

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dans son mémoire de la preuve qui n'a jamais été déposée au dossier de première instance et ce, contrairement aux règles de procédure civile?

### **HISTORIQUE PROCÉDURAL**

Le 1 septembre 2000  
Cour supérieure du Québec  
(Boily j.c.s.)

Requête de la demanderesse en appel de décisions du syndic à la proposition de l'intimée Les Industries Portes Mackie inc. et du séquestre officiel ayant rejeté la preuve de réclamation de la demanderesse et l'ayant empêchée de voter à l'égard de la proposition, rejetée

Le 28 mars 2002  
Cour d'appel du Québec  
(Gendreau, Nuss et Rochette jj.c.a.)

Appel de la demanderesse rejeté

Le 27 mai 2002  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Jack Potter, Chris Lavergne, Mark Piper, Debbie Jennex and Brenda Shaw**

**v. (29303)**

**Halifax Regional School Board (N.S.)**

### **NATURE OF THE CASE**

Administrative law - Judicial review - Schools - School Board - Duty of procedural fairness - Decision of School Board to close two schools - One member of Board not present during public meetings held prior to decision to close - Whether a public authority owing a duty of fairness must "hear" those owed the duty of fairness before voting, even if the hearing is not adjudicative or adversarial - *Education Act*, S.N.S. 1995-96, c. 1, s.89 and its *Regulations*

### **PROCEDURAL HISTORY**

October 19, 2001  
Supreme Court of Nova Scotia  
(Davison J.)

Applicants' application for an Order in the nature of *certiorari* to quash Respondent's decision to close Northbrook Elementary School granted; and to close Notting Park School, dismissed

June 21, 2002  
Nova Scotia Court of Appeal  
(Glube C.J.N.S., Oland and Cromwell JJ.A.)

Appeal allowed: Respondent permitted to close Northbrook Elementary School; cross-appeal dismissed

August 16, 2002  
Supreme Court of Canada

Application for leave to appeal filed

APPLICATIONS FOR LEAVE  
SUBMITTED TO COURT SINCE LAST ISSUE

DEMANDES SOUMISES À LA COUR DEPUIS  
LA DERNIÈRE PARUTION

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**FEBRUARY 20, 2003 / LE 20 FÉVRIER 2003**

**29323**                    **The Board of Governors of Lethbridge Community College - v. - Alberta Union of Provincial Employees and Sylvia Babin** (Alta.) (Civil)

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 (Edmonton), Number 0103-0038-AC, dated May 30, 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 l'Alberta (Edmonton), numéro 0103-0038-AC, daté du 30 mai 2002, est accordée avec dépens au demandeur quelle que soit l'issue de l'appel.

**NATURE OF THE CASE**

Labour law - Arbitration - Statutes - Interpretation - Remedial jurisdiction of an Arbitration Board - Appropriate Remedy - Grievor dismissed for non-culpable deficiency in job performance - Court of Appeal overturning damage award by Board and ordering reinstatement - Interpretation of s. 142(2) of the Alberta *Labour Relations Code* - Whether s. 142(2) of the *Code* applies to dismissals for non-culpable deficiencies - Whether the court of appeal erred in its interpretation of s. 142(2) of the *Code* - Whether the Board has broad remedial powers to order damages rather than reinstatement - Whether the court of appeal improperly exercised its supervisory jurisdiction - Alberta *Labour Relations Code*, R.S.A. 2000, c. L-1, s. 142(2).

**PROCEDURAL HISTORY**

December 21, 1999 Arbitration Board (McFetridge, Chairman, and Day, Barteo (dissenting))	Damages equal to four months' salary granted to the Respondent Sylvia Babin
November 7, 2000 Court of Queen's Bench of Alberta (Smith J.)	Respondents' application for judicial review, dismissed
May 30, 2002 Court of Appeal of Alberta (Conrad, Berger and Paperny JJ.A.)	Appeal allowed; Respondent Sylvia Babin's employment reinstated with the Applicant
August 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

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**29415**                    **D.J.M. - v. - The Minister of Community Services** (N.S.) (Civil)

Coram:                    Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Nova Scotia Court of Appeal, Number CA17775, 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 CA17775, daté du 16 août 2002, est rejetée avec dépens.

**NATURE OF THE CASE**

*Canadian Charter - Civil - Civil Rights - Whether the court of appeal erred in law in deciding that the compellability of the Applicant as a witness, before a hearing to determine whether the Applicant's name should be entered into a Child Abuse Register pursuant to section 63(3) of the *Children and Family Services Act*, SNS 1990, c. 5, was a limit on a person's "life, liberty and security of the person" in accord "with the principles of fundamental justice", and therefore not contrary to section 7 of the *Canadian Charter of Rights and Freedoms*.*

**PROCEDURAL HISTORY**

March 4, 2002 Supreme Court of Nova Scotia (Family Division) (Hood J.)	Applicant's applications dismissed
August 16, 2002 Nova Scotia Court of Appeal (Batemen, Cromwell and Hamilton JJ.A.)	Appeal dismissed
October 11, 2002 Supreme Court of Canada	Application for leave to appeal filed

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**29346**            **Richard Carlson - v. - Her Majesty the Queen** (Ont.) (Crim.)

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 C36150, dated May 7, 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 l'Ontario, numéro C36150, daté du 7 mai 2002, est rejetée.

**NATURE OF THE CASE**

Criminal Law (Non Charter) - Jury Charge - Evidence - Whether Court of Appeal erred in concluding that while the trial judge erred in instructing the jury that they could return a verdict of guilty on the identification evidence of one witness alone, it was open to the Court of Appeal to infer upon what basis the jury returned its verdict - Whether Court of Appeal erred in finding that there was evidence that the instrument brandished by a robber was a firearm within the meaning of the *Criminal Code*.

**PROCEDURAL HISTORY**

January 28, 1998 Ontario Court (General Division) (Platana J.)	Convictions for armed robbery, pointing a firearm, being masked with intent to commit an indictable offence
December 30, 1999 Ontario Court (General Division) (Platana J.)	Global sentence of 21 years less credit for pre-trial custody
May 15, 2002 Court of Appeal for Ontario (Rosenberg, Moldaver and Simmons JJ.A.)	Appeals from convictions and sentences dismissed

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September 11, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**29315**            **Kevin Joseph Simmonds - v. - Her Majesty the Queen** (B.C.) (Crim.)

Coram:            **Gonthier, Major and Arbour JJ.**

The application for leave to appeal from the judgment of the Court of Appeal of British Columbia (Vancouver), Number CA027305, dated May 27, 2002, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA027305, daté du 27 mai 2002, est rejetée.

**NATURE OF THE CASE**

Criminal Law (Non-Charter) - Trial - Jury Charge - First Degree Murder - Party to offence - Whether it was open to the trial judge to leave the jury with the option of convicting for first degree murder pursuant to s. 231(5) of the *Criminal Code* where liability for murder was as a party under s. 21(1) - Whether lack of instruction on the applicable *Harbottle* standard of causation in charge to the jury on party liability for first degree murder was reversible error, especially given a jury question about the meaning of "omit" in s. 21(1)(b).

**PROCEDURAL HISTORY**

May 30, 2000  
Supreme Court of British Columbia  
(Smith J.)

Conviction, first degree murder

May 27, 2002  
Court of Appeal for British Columbia  
(Finch C.J., Lambert and Low JJ.A.)

Appeal dismissed

August 22, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**29216**            **Mark Anthony MacPhail and Unifund Assurance Company of Canada - v. - Brenda MacKinnon, Katelyn MacKinnon, Jackson MacKinnon and Brenda MacKinnon, Administratrix of the Estate of Kent MacKinnon and Litigation Guardian of Katelyn MacKinnon and Jackson MacKinnon, on behalf of the Estate and Dependants of Kent MacKinnon, Irwin Guy MacKinnon, Wawanesa Mutual Insurance Company, Economical**

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**Mutual Insurance Company, Facility Association and Insurance Company of Prince Edward Island** (P.E.I.) (Civil)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Supreme Court of Prince Edward Island, Appeal Division, Number AD-0904, dated March 18, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour suprême de l'Île-du-Prince-Édouard, Cour d'appel, numéro AD-0904, daté du 18 mars 2002, est rejetée avec dépens.

**NATURE OF THE CASE**

Statutes - Interpretation - Whether the Respondent Irwin MacKinnon was driving the Applicant MacPhail's vehicle with his consent, expressed or implied, within the meaning of the *Highway Traffic Act*, R.S.P.E.I. 1988 c. H-5, s. 287.

**PROCEDURAL HISTORY**

December 15, 2000 Supreme Court of Prince Edward Island, Trial Division (Jenkins J.)	Respondent Irwin MacKinnon found driving the Applicant MacPhail's automobile with his express or implied consent when the accident occurred
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March 18, 2002 Supreme Court of Prince Edward Island, Appeal Division (Mitchell C.J.P.E.I., McQuaid [ <i>dissenting</i> ] and Webber J.J.A.)	Applicants' appeal dismissed
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May 17, 2002 Supreme Court of Canada	Application for leave to appeal filed
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**29355** **New Solutions Financial Corporation - v. - Transport North American Express Inc.** (Ont.)  
(Civil)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36517, dated June 17, 2002, is granted with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36517, daté du 17 juin 2002, est accordée avec dépens.

**NATURE OF THE CASE**

Commercial law - Criminal law - Statutes - Contracts - Loan - Creditor and debtor - *Criminal Code* - Criminal rate of interest - Severability - Whether the decision of the Court of Appeal, which overturned the lower court's application of the remedy it termed "notional severance", was correct in this case?

**PROCEDURAL HISTORY**

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May 23, 2001  
Ontario Superior Court of Justice  
(Cullity J.)

Rate of interest in the agreement between the parties contravenes section 347(1)(a) of the *Criminal Code*; Applicant entitled to enforce payments except that monthly interest rate changed to reduce effective annual interest rate for purposes of s. 347 to 60%

June 17, 2002  
Court of Appeal for Ontario  
(Rosenberg, Feldman and Sharpe [*dissenting*] JJ.A.)

Appeal allowed

September 16, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**29398**            **The Minister of Justice for Canada - v. - Rodolfo Pacificador** (Ont.) (Crim.)

Coram:            Gonthier, Major and Arbour JJ.

The motion to adduce new evidence and the application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C32995, dated August 1<sup>st</sup>, 2002, are dismissed.

La requête pour déposer des nouvelles preuves et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C32995, daté du 1<sup>er</sup> août 2002, sont rejetées.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Civil rights - Extradition - Whether the Court of Appeal erred in holding that the assurances of the Republic of the Philippines that the Respondent would get a speedy trial could not be relied upon - Whether extradition of the Respondent to face trial for alleged involvement in an assassination in the Philippines would shock the conscience of Canadians.

**PROCEDURAL HISTORY**

January 18, 1999  
Ontario Court (General Division)  
(Dambrot J.)

Application for an order granting *habeas corpus*, *certiorari*, prohibition and relief under s. 24(1) of the *Canadian Charter of Rights and Freedoms* dismissed

August 1, 2002  
Court of Appeal for Ontario  
(Catzman, Sharpe and Simmons JJ.A.)

Appeal allowed; order of the applications judge and warrant of surrender set aside

September 30, 2002  
Supreme Court of Canada

Application for leave to appeal filed

December 4, 2002  
Supreme Court of Canada

Motion to extend time for response to motion to adduce new evidence allowed

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**29371**            **Charanjit Kaur Deol - v. - The Minister of Citizenship and Immigration** (FC) (Civil)

Coram:            Gonthier, Major and Arbour JJ.

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The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-403-01, dated June 21, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-403-01, daté du 21 juin 2002, est rejetée avec dépens.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Civil - Civil Rights - Section 15 of the *Charter* - Immigration law - *Immigration Act* - Applicant seeking to sponsor family for admission into Canada - Request denied - Principal applicant denied on grounds of medical admissibility - Administrative law - Judicial review - Whether the denial of family reunification in Canada is a violation of the *Charter* when that denial is based on the disability of a relative abroad - *Charter of Rights and Freedoms*, s. 15 - *Immigration Act*, R.S.C. 1985, c. I-2, s. 19(1)(a)(ii).

**PROCEDURAL HISTORY**

February 22, 2000 Immigration and Refugee Board (Appeal Division) (Wiebe, member)	Applicant's appeal against the decision that her father was medically inadmissible, dismissed
June 22, 2001 Federal Court of Canada (Trial Division) (Muldoon J)	Applicant's application for judicial review, dismissed
June 21, 2002 Federal Court of Appeal (Linden, Evans and Malone JJ.A.)	Appeal dismissed
September 19, 2002 Supreme Court of Canada	Application for leave to appeal filed

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**29330**      **Hank W. Kolstee and Donna Kolstee - v. - John Metlin, Michael Metlin and Beatrice Metlin**  
(N.S.) (Civil)

Coram:      Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Nova Scotia Court of Appeal, Number CA 175075, dated June 7, 2002, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Nouvelle-Écosse, numéro CA 175075, daté du 7 juin 2002, est rejetée.

**NATURE OF THE CASE**

Property law - Real property - Deeds - Interpretation - Whether the Court of Appeal was right in stating that the trial judge erred in his application of the law - Whether the Court of Appeal was justified in disturbing the trial judge's findings of fact and credibility by merely diverging in its own assessment of the facts and credibility on the balance of probabilities rather than attempting to correct any specific or identifiable error made by the trial judge - Whether the Supreme Court should provide clarification on the state of the law regarding the interpretation of deeds.

**PROCEDURAL HISTORY**

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June 5, 2001  
Supreme Court of Nova Scotia  
(Coughlan J.)

Applicants' claim allowed; Respondents' counterclaim dismissed

June 7, 2002  
Nova Scotia Court of Appeal  
(Glube C.J.N.S., Hallett and Oland JJ.A.)

Appeal allowed

September 3, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**29376**            **Her Majesty the Queen - v. - Kenneth Roy Hurrell** (Ont.) (Crim.)

Coram:            Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36968, dated July 19, 2002, is granted.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36968, daté du 19 juillet 2002, est accordée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Constitutional law - Search and seizure - Unsworn affidavit - Statutory interpretation - *Criminal Code of Canada* - Whether the Court of Appeal erred in determining that s. 117.04(1) of the *Criminal Code* was inconsistent with s. 8 of the *Charter* - Whether the Court of Appeal, in interpreting that s. 117.04(1) is inconsistent with section 8 of the *Charter*, erred in failing to grant a "reading in" or "reading down" remedy which would have preserved the constitutionality of the section without jeopardizing public safety - *Hunter v. Southam*, [1984], 2 S.C.R. 532

**PROCEDURAL HISTORY**

April 12, 2001  
Ontario Superior Court of Justice  
(McGarry J.)

Respondent's application for various items of relief including a declaration that s. 117.04(1) of the *Criminal Code* violates s. 8 of the *Charter* and is of no force and effect, dismissed

July 19, 2002  
Court of Appeal for Ontario  
(Moldaver, Cronk and Gillese JJ.A.)

Appeal allowed

September 26, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**29307**            **Allstate Insurance Company of Canada - v. - James D. Craig, Jeanne Craig and Jamie Craig, by his litigation guardian, James D. Craig** (Ont.) (Civil)

Coram:            Gonthier, Major and Arbour JJ.

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The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C35933, dated May 29, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C35933, daté du 29 mai 2002, est rejetée avec dépens.

**NATURE OF THE CASE**

Commercial law - Insurance - Torts - Motor vehicles - Respondents seeking indemnification from insurer under underinsured motorist coverage endorsement in policy - Whether the Court of Appeal erred in finding that the tortfeasor met the definition of "inadequately insured motorist", under the endorsement to the policy, where the motor vehicle liability insurance limits on the vehicle exceed the limits on the endorsement.

**PROCEDURAL HISTORY**

February 21, 2001  
Ontario Superior Court of Justice  
(Philp J.)

Respondents found to have a cause of action pursuant to the underinsured provisions of the S.E.F. 44 Family Protection Endorsement to the automobile insurance policy issued by Applicant

May 29, 2002  
Court of Appeal for Ontario  
(Carthy, Weiler and Cronk JJ.A.)

Appeal dismissed

August 20, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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**29347**      **Mae Edmonds, O/A A-1 Lumpers - v. - The Minister of National Revenue** (FC) (Civil)

Coram:      Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-216-00, dated June 12, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-216-00, daté du 12 juin 2002, est rejetée avec dépens.

**NATURE OF THE CASE**

Administrative law - Judicial review - Taxation - Employee/Independent Contractor - Determination by Minister of National Revenue pursuant to *Employment Insurance Regulations*, SOR/96-332 - Whether factoring, as a contemporary labour organization scheme, is antithetical to the creation of an employer/employee relationship - Whether the lower courts were correct in confirming the determination of the respondent that the lumpers engaged by the Applicant were her employees

**PROCEDURAL HISTORY**

February 21, 2000  
Tax Court of Canada  
(Cain D.J.T.C.C.)

Applicant's appeal from a determination of the Respondent that the lumpers engaged by the Applicant were her employees, dismissed; Respondent's determination confirmed



June 12, 2002  
Federal Court of Appeal  
(Isaac, Noël and Sexton JJ.A.)

Application for judicial review dismissed

September 11, 2002  
Supreme Court of Canada

Application for leave to appeal filed

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10.2.2003

Before / Devant: MAJOR J.

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

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

Attorney General of British Columbia, et al.

v. (28974)

Thomas Paul (B.C.)

**GRANTED / ACCORDÉE** Time extended to January 27, 2003. The respondent may present oral argument at the hearing of the appeal.

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11.2.2003

Before / Devant: MAJOR J.

**Motion for a stay of execution**

**Requête en vue de surseoir à l'exécution**

Benjamin Krela, et al.

v. (29567)

Sulzer Medica AG, et al. (Qué.)

**DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS**

**À LA SUITE D'UNE DEMANDE** de sursis d'exécution présentée par les demandeurs;

**ET APRÈS AVOIR PRIS CONNAISSANCE** de la documentation déposée;

**IL EST PAR LES PRÉSENTES ORDONNÉ CE QUI SUIT:**

La demande de sursis d'exécution est rejetée avec dépens et sous réserve du droit de la présenter devant la Cour d'appel du Québec.

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11.2.2003

Before / Devant: MAJOR 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**

Léontine Godin-Duguay

c. (29563)

Lucie Anna McLaughlin Anfossi (N.-B.)

**DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS**

**À LA SUITE D'UNE DEMANDE** de la demanderesse visant à obtenir une prorogation de délai pour signifier et déposer une demande d'autorisation d'appel;

**ET APRÈS AVOIR PRIS CONNAISSANCE** de la documentation déposée;

**IL EST PAR LES PRÉSENTES ORDONNÉ CE QUI SUIT:**

La demande de prorogation de délai pour signifier et déposer une demande d'autorisation d'appel est rejetée avec dépens.

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11.2.2003

Before / Devant: MAJOR J.

**Motion to extend the time in which to serve and file the application for leave and to file a memorandum of argument of over 20 pages**

**Requête en prorogation du délai imparti pour signifier et déposer la demande d'autorisation et pour permission de déposer un mémoire de plus de 20 pages**

Arthur Roman Zins

v. (29566)

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

**DISMISSED / REJETÉE**

**UPON APPLICATION** by the applicant for an order extending the time to serve and file an application for leave to appeal and for an order granting permission to file a memorandum of argument not exceeding 60 pages in length;

**AND HAVING READ** the material filed ;

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**IT IS HEREBY ORDERED THAT:**

The application for an order extending the time to serve and file an application for leave to appeal and for an order granting permission to file a memorandum of argument not exceeding 60 pages in length is dismissed.

13.2.2003

Before / Devant: THE CHIEF JUSTICE

**Motions to state a constitutional question**

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 Adams Lake Band, et al. (B.C.)

and

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.)

**Requêtes pour formulation d'une question constitutionnelle**

The following questions have been stated. Notices of intervention are to be filed on or before March 17, 2003.

1. Is Rule 57 of the British Columbia *Supreme Court Rules*, B.C. Reg. 221/90, inconsistent with the respondents' rights under s. 35 of the *Constitution Act, 1982* and therefore constitutionally inapplicable to them in the circumstances of this case?
2. Is a common law rule to the effect that, subject to the court's discretion, a prevailing party is entitled to its costs of a proceeding only at the conclusion of the proceeding, inconsistent with the respondents' rights under s. 35 of the *Constitution Act, 1982* and therefore constitutionally inapplicable to them in the circumstances of this case?
3. Is Rule 57 of the British Columbia *Supreme Court Rules*, B.C. Reg. 221/90, inconsistent with a right of access to justice protected by the Preamble of the *Canadian Charter of Rights and Freedoms* and therefore constitutionally inapplicable to the respondents in the circumstances of this case?
4. Is a common law rule to the effect that, subject to the court's discretion, a prevailing party is entitled to its costs of a proceeding only at the conclusion of the proceeding, inconsistent with a right of access to justice protected by the Preamble of the *Canadian Charter of Rights and Freedoms* and therefore constitutionally inapplicable to the respondents in the circumstances of this case?

1. L'article 57 des *Supreme Court Rules* de la Colombie-Britannique, B.C. Reg. 221/90, est-il incompatible avec les droits que l'art. 35 de la *Loi constitutionnelle de 1982* garantit aux intimés, et donc constitutionnellement inapplicable à ces derniers dans les circonstances de la présente affaire?
2. La règle de common law voulant que, sous réserve du pouvoir discrétionnaire de la cour, la partie qui a gain de cause n'ait droit à ses dépens qu'à la fin de l'instance est-elle incompatible avec les droits que l'art. 35 de la *Loi constitutionnelle de 1982* garantit aux intimés, et donc constitutionnellement inapplicable à ces derniers dans les circonstances de la présente affaire?
3. L'article 57 des *Supreme Court Rules* de la Colombie-Britannique, B.C. Reg. 221/90, est-il incompatible avec le droit d'accès à la justice protégé par le préambule de la *Charte canadienne des droits et libertés*, et donc constitutionnellement inapplicable aux intimés dans les circonstances de la présente affaire?
4. La règle de common law voulant que, sous réserve du pouvoir discrétionnaire de la cour, la partie qui a gain de cause n'ait droit à ses dépens qu'à la fin de l'instance est-elle incompatible avec le droit d'accès à la justice protégé par le préambule de la *Charte canadienne des droits et libertés*, et donc constitutionnellement inapplicable aux intimés dans les circonstances de la présente affaire?

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13.2.2003

Before / Devant: THE CHIEF JUSTICE

**Motion to state a constitutional question**

**Requête pour formulation d'une question constitutionnelle**

Réjean Demers

c. (29234)

Sa Majesté la Reine (Crim.)(Qué.)

The following questions have been stated. Notices of intervention are to be filed on or before March 17, 2003.

1. Les articles 672.33, 672.54 et le paragraphe 672.81(1) du *Code criminel*, L.R.C. 1985, ch. C-46, portent-ils atteinte aux droits et libertés garantis par l'article 7 de la *Charte canadienne des droits et libertés* pour le motif qu'ils privent de leur droit à la liberté et à la sécurité de leur personne les personnes faisant l'objet d'un verdict d'incapacité à subir leur procès et ce, d'une manière incompatible avec les principes de justice fondamentale?
2. Dans l'affirmative, ces atteintes constituent-elles des limites raisonnables dont la justification peut se démontrer dans le cadre d'une société libre et démocratique en vertu de l'article premier de la *Charte*?
3. Les articles 672.33, 672.54 et le paragraphe 672.81(1) du *Code criminel* portent-ils atteinte aux droits et libertés garantis par l'alinéa 11d) de la *Charte* pour le motif qu'ils privent de leur droit à la présomption d'innocence les personnes faisant l'objet d'un verdict d'incapacité à subir leur procès?
4. Dans l'affirmative, ces atteintes constituent-elles des limites raisonnables dont la justification peut se démontrer dans le cadre d'une société libre et démocratique en vertu de l'article premier de la *Charte*?
5. Les articles 672.33, 672.54 et le paragraphe 672.81(1) du *Code criminel* portent-ils atteinte aux droits et libertés garantis par le paragraphe 15(1) de la *Charte* pour le motif qu'ils créent de la discrimination à l'endroit des personnes atteintes de déficience mentale qui font l'objet d'un verdict d'incapacité à subir leur procès?
6. Dans l'affirmative, ces atteintes constituent-elles des limites raisonnables dont la justification peut se démontrer dans le cadre d'une société libre et démocratique en vertu de l'article premier de la *Charte*?

1. Do ss. 672.33, 672.54 and 672.81(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, infringe the rights and freedoms guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms* on the ground that they deprive persons who have been found unfit to stand trial of their right to liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice?
2. If so, are the infringements reasonable limits that can be demonstrably justified in a free and democratic society under s. 1 of the *Charter*?
3. Do ss. 672.33, 672.54 and 672.81(1) of the *Criminal Code* infringe the rights and freedoms guaranteed by s. 11(d) of the *Charter* on the ground that they deprive persons who have been found unfit to stand trial of the right to be presumed innocent?
4. If so, are the infringements reasonable limits that can be demonstrably justified in a free and democratic society under s. 1 of the *Charter*?
5. Do ss. 672.33, 672.54 and 672.81(1) of the *Criminal Code* infringe the rights and freedoms guaranteed by s. 15(1) of the *Charter* on the ground that they create discrimination against persons with a mental disability who have been found unfit to stand trial?
6. If so, are the infringements reasonable limits that can be demonstrably justified in a free and democratic society under s. 1 of the *Charter*?

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13.2.2003

Before / Devant: MAJOR J.

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

BY/PAR: Métis National Council  
 Congress of Aboriginal Peoples  
 Attorney General of Canada  
 Attorney General of Alberta  
 Attorney General for Saskatchewan

IN/DANS: Ernest Lionel Joseph Blais

v. (28645)

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

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

**UPON APPLICATION** by Métis National Council, Congress of Aboriginal Peoples, Attorney General of Canada, Attorney General of Alberta and Attorney General for Saskatchewan for leave to intervene in the above appeal and pursuant to the order of March 19, 2002;

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

- Métis National Council 15 minutes

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-	Congress of Aboriginal Peoples	15 minutes
-	Attorney General of Canada	10 minutes
-	Attorney General of Alberta	10 minutes
-	Attorney General for Saskatchewan	10 minutes

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13.2.2003

Before / Devant: MAJOR J.

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

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

BY/PAR: Congress of Aboriginal Peoples;  
 Labrador Metis Nation, a body corporate;  
 B.C. Fisheries Survival Coalition;  
 Ontario Metis Aboriginal Association;  
 Métis National Council and the Métis Nation of Ontario;  
 Aboriginal Legal Services of Toronto Inc.;  
 Ontario Federation of Anglers and Hunters;  
 Métis Chief Roy E.J. DeLaRonde, on behalf of the Red Sky Métis Independent Nation;  
 Attorney General for New Brunswick;  
 Attorney General of British Columbia  
 Attorney General of Manitoba;  
 Attorney General of Alberta;  
 Attorney General of Canada;  
 Attorney General of Newfoundland;  
 Attorney General of Québec;  
 Attorney General for Saskatchewan ; The North Slave Métis Alliance.

IN/DANS: Her Majesty the Queen

v.(28533)

Steve Powley and Roddy Charles Powley  
 (Ont.)

**UPON APPLICATION** by Congress of Aboriginal Peoples, Labrador Metis Nation, a body corporate, B.C. Fisheries Survival Coalition, Ontario Metis Aboriginal Association, Métis National Council and the Métis Nation of Ontario, Aboriginal Legal Services of Toronto Inc., Ontario Federation of Anglers and Hunters, Métis Chief Roy E.J. DeLaRonde, on behalf of the Red Sky Métis Independent Nation, Attorney General for New Brunswick, Attorney General of British Columbia, Attorney General of Manitoba, Attorney General of Alberta, Attorney General of Canada, Attorney General of Newfoundland, Attorney General of Québec, Attorney General for Saskatchewan and The North Slave Métis Alliance for leave to intervene in the above appeal and pursuant to the orders of February 18, March 22, June 21, September 20 and November 25, 2002;

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

- Congress of Aboriginal Peoples	15 minutes
- Labrador Metis Nation, a body corporate	15 minutes
- Ontario Metis Aboriginal Association	15 minutes
- Métis National Council and the Métis Nation of Ontario	15 minutes
- Métis Chief Roy E.J. DeLaRonde, on behalf of the Red Sky Métis Independent Nation	10 minutes
- Attorney General of New Brunswick	10 minutes
- Attorney General of British Columbia	10 minutes
- Attorney General of Manitoba	10 minutes
- Attorney General of Alberta	10 minutes
- Attorney General of Canada	10 minutes
- Attorney General of Newfoundland	10 minutes
- Attorney General of Québec	10 minutes
- Attorney General for Saskatchewan	10 minutes

**IT IS HEREBY FURTHER ORDERED THAT** the request of each of the following interveners, B.C. Fisheries Survival Coalition, Aboriginal Legal Services of Toronto Inc., Ontario Federation of Anglers and Hunters and the North Slave Métis Alliance to present oral argument is denied.

**À LA SUITE D'UNE DEMANDE** de Congrès des peuples Autochtones, Nation des Métis du Labrador, une personne morale, B.C. Fisheries Survival Coalition, Association des Métis autochtones de l'Ontario, Métis National Council and the Métis Nation of Ontario, Aboriginal Legal Services of Toronto Inc., Ontario Federation of Anglers and Hunters, Chef Métis Roy E. J. DeLaRonde, au nom de la Red Sky Métis Independent Nation, Procureur général du Nouveau-Brunswick, Procureur général de la Colombie-Britannique, Procureur général du Manitoba, Procureur général de l'Alberta, Procureur général du Canada, Procureur général de Terre-Neuve, Procureur général du Québec, Procureur général de la Saskatchewan et l'Alliance métis North Slave visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné et suite aux ordonnances du 18 février, 22 mars, 21 juin, 20 septembre et 25 novembre, 2002;

**IL EST EN OUTRE ORDONNÉ** que les plaidoiries des intervenants soient respectivement limitées de la façon suivante:

- Congrès des peuples Autochtones	15 minutes
- Nation des Métis du Labrador, une personne morale	15 minutes
- Association des Métis autochtones de l'Ontario	15 minutes
- Métis National Council and the Métis Nation of Ontario	15 minutes
- Chef Métis Roy E. J. DeLaRonde, au nom de la Red Sky Métis Independent Nation	10 minutes
- Procureur général du Nouveau-Brunswick	10 minutes
- Procureur général de la Colombie-Britannique	10 minutes
- Procureur général du Manitoba	10 minutes
- Procureur général de l'Alberta	10 minutes



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-	Procureur général du Canada	10 minutes
-	Procureur général de Terre-Neuve	10 minutes
-	Procureur général du Québec	10 minutes
-	Procureur général de la Saskatchewan	10 minutes

**IL EST EN OUTRE ORDONNÉ** que la demande de plaidoiries des intervenants B.C. Fisheries Survival Coalition, Aboriginal Legal Services of Toronto Inc., Ontario Federation of Anglers and Hunters et l'Alliance métis North Slave soit rejetée.

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17.2.2003

Before / Devant: MAJOR J.

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

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

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

IN/DANS: CanadianCable Television  
Association

v. (28826)

Barrie Public Utilities, et al. (F.C.)

**HAVING READ** the factum filed by the interveners, the Attorney General of Canada, the Attorney General for Ontario, the Attorney General of Manitoba, the Attorney General of Alberta, the Attorney General of British Columbia and the Attorney General of New Brunswick; who intervened by virtue of Rule 61(4) and having regard to the provisions of Rule 71(5)(c);

**IT IS HEREBY ORDERED THAT** the Attorney General of Canada, the Attorney General for Ontario, the Attorney General of Manitoba, the Attorney General of Alberta, the Attorney General of British Columbia and the Attorney General of New Brunswick are granted permission to present oral argument not exceeding ten (10) minutes each in total at the hearing of the appeal.

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**NOTICES OF INTERVENTION FILED  
SINCE LAST ISSUE**

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

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3.2.2003

BY/PAR: Attorney General of Alberta

IN/DANS: **The Attorney General of Canada**

**v. (29207)**

**Joseph Patrick Authorson, deceased, by his Litigation Administrator,  
Peter Mountney and by his Litigation Guardian, Lenore Majors (Ont.)**

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7.2.2003

BY/PAR: Attorney General of Canada  
Attorney General of Manitoba

IN/DANS: **Gordon Garland**

**v. (29052)**

**The Consumers' Gas Company Limited (Ont.)**

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**APPEALS HEARD SINCE LAST ISSUE  
AND DISPOSITION**

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

14.2.2003

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

**La Compagnie Pétrolière Impériale Limitée**

c. (28835)

**Le Procureur général du Québec pour et au nom du  
ministre de l'Environnement, Monsieur André  
Boisclair** (Qué.) (Civile) (Autorisation)

Pierre Legault et Olivier Therrien pour l'appelante.

Claude Bouchard, Dominique Rousseau et Anne-Marie Brunet pour l'intimé.

Jack D. Coop for the intervener Attorney General of Ontario.

Jerry V. DeMarco, Robert V. Wright and Lynda M. Collins for the intervener Friends of the Earth/ Les Ami(e)s de la Terre (written submission only).

Michel Laliberté pour la mise en cause Ville de Lévis (pas de plaidoirie orale).

**EN DÉLIBÉRÉ / RESERVED**

**Nature de la cause:**

Droit de l'environnement - Sol contaminé par des hydrocarbures - Le ministre de l'Environnement ordonne la réalisation d'une étude de caractérisation du sol - *Loi sur la qualité de l'environnement*, L.R.Q., ch. Q-2, art. 31.42, 31.44, 96 et 115.1 - Droit administratif - Appel - *Loi sur la justice administrative*, L.R.Q., ch. J-3, art. 2, 15 et 137 - Le ministre était-il tenu à une obligation d'équité procédurale lui imposant d'agir avec impartialité? - Les faits au présent dossier démontrent-ils une crainte raisonnable de partialité? - Quelles sont les conditions d'application de la doctrine de la nécessité dans un contexte de révision judiciaire d'une décision administrative comportant l'exercice d'une discrétion et quelle est la portée exacte des exceptions à cette doctrine dans ce même contexte, le cas échéant? - La Cour d'appel a-t-elle commis une erreur de droit en appliquant l'exception de la doctrine de la nécessité et celle du chevauchement des fonctions? - La Cour d'appel a-t-elle commis une erreur de droit en voyant dans l'exception du chevauchement de fonctions une exception au devoir d'agir avec impartialité du Ministre applicable dans le cadre du présent dossier? - La Cour d'appel a-t-elle commis une erreur de droit en ce qu'elle ne pouvait ignorer les conclusions du juge de première

instance portant sur la mauvaise foi du décideur et de l'« objet irrégulier » à moins d'intervenir dans les

**Nature of the case:**

Environmental law - Soil contaminated by hydrocarbons - Minister of Environment ordering soil characterization study - *Environment Quality Act*, R.S.Q., c. Q-2, ss. 31.42, 31.44, 96 and 115.1 - Administrative law - Appeal - *Act respecting administrative justice*, R.S.Q., c. J-3, ss. 2, 15 and 137 - Whether Minister bound by duty of procedural fairness requiring him to act impartially - Whether facts of case show reasonable apprehension of bias - Conditions for application of doctrine of necessity in context of judicial review of administrative decision involving exercise of discretion and exact scope of exceptions to doctrine in same context, where appropriate - Whether Court of Appeal erred in law in applying exception of doctrine of necessity and of overlapping of functions - Whether Court of Appeal erred in law in treating exception of overlapping of functions as exception to Minister's obligation to act impartially in this case - Whether Court of Appeal erred in law in ignoring findings of trial judge concerning bad faith of decision maker and "improper purpose" without intervening in factual findings of judge *a quo* and determining that he had patently erred in assessing the evidence, which the Court of Appeal did not do and did not attempt to do.

conclusions factuelles du juge *a quo* et d'établir qu'il avait commis une erreur manifeste dans l'appréciation

de la preuve, ce que la Cour d'appel n'a pas fait et n'a pas cherché à démontrer?

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17.2.2203

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

**The Estate of Manish Odhavji, Deceased, et al**

**v. (28425)**

**Detective Martin Woodhouse, et al** (Ont.) (Civil) (By Leave)

Julian N. Falconer and Richard Macklin for the appellants (respondents on cross-appeal).

Kevin McGivney, Cheryl Woodin and Robert W. Traves for the respondents Woodhouse and Gerrits.

Ansuya Pachai and Kerri Kitchura for the respondents Metropolitan Toronto Chief of Police David Boothby, et al (appellants on cross-appeal).

John P. Zarudny, Troy Harrison and James Kendik for the respondent Her Majesty the Queen in Right of Ontario.

John B. Laskin and Kristine M. Di Bacco for the intervener Canadian Civil Liberties (written submission only).

Marie Chen for the intervener African Canadian Legal Clinic (written submission only).

Suzan E. Fraser for the intervener Mental Health Legal Committee (written submission only).

Peter J. Pliszka and Anne C. McConville for the intervener Urban Alliance on Race Relations (written submission only).

No one appearing for the intervener Association in Defence for the Wrongly Convicted, et al (written submission only by Marlys Edwardh, Breese Davies, Sean Dewart and Louis Sokolov).

David Sgayias, Q.C. and Anne M. Turley for the intervener Attorney General of Canada.

D. Clifton Prowse and J. Gareth Morley for the intervener Attorney General of British Columbia.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Torts - Civil Procedure - Costs - Tort of breach of public duty or misfeasance in a public office - Tort of negligent supervision - Whether majority of the Court of Appeal

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narrowed the test for the tort of abuse of public office - Whether case law conflicts with respect to tort of abuse of public office - Definition and application of tort of abuse of public office to the facts - Whether Court of Appeal adopted overly restrictive view of tort of negligent supervision - Definition and application of tort of negligent supervision to the facts - Whether the Court of Appeal erred in ordering costs.

**Nature de la cause:**

Responsabilité civile - Procédure civile - Dépens - Délit de manquement à une fonction d'ordre public ou de faute dans l'exercice d'une charge publique - Délit de supervision négligente - La Cour d'appel à la majorité a-t-elle restreint le critère applicable à l'existence d'un délit d'exercice abusif d'une charge publique? - La jurisprudence est-elle contradictoire en ce qui touche le délit d'exercice abusif d'une charge publique? - Définition du délit d'exercice abusif d'une charge publique et application aux faits - La Cour d'appel a-t-elle adopté une interprétation trop restrictive du délit de supervision négligente? - Définition du délit de supervision négligente et application aux faits - La Cour d'appel a-t-elle commis une erreur en ordonnant le paiement de dépens?

18.2.2203

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

**KP Pacific Holdings Ltd.**

**v. (28815)**

**Guardian Insurance Company of Canada, et al  
(B.C.) (Civil) (By Leave)**

Michael G. Armstrong and Janet E. Currie for the appellant KP Pacific Holdings Ltd.

Donald W. Yule, Q.C. and Alex Sayn-Wittgenstein for the respondents.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Commercial law - Insurance - Procedure - Actions - Limitations - Application of fire insurance provisions, including the limitation of action provisions, found in Part 5 of the *Insurance Act*, R.S.B.C. 1996 to insurance policies - Extent to which all-risk and multi-peril policies of property insurance are governed by the general provisions, including the limitation of action provisions, of Part 2 of the *Insurance Act*, R.S.B.C. 1996 and the general provisions in insurance legislation in the other common law provinces - Whether application of limitation provision depends on characterization of policy as a whole or on characterization of the specific peril or perils giving rise to the loss - Whether insurers, as a matter of statutory

**Nature de la cause:**

Droit commercial - Assurance - Procédure - Actions - Prescription - Application aux polices d'assurance des dispositions relatives à l'assurance contre l'incendie, dont les dispositions en matière de prescription des actions, figurant à la partie 5 de l'*Insurance Act*, R.S.B.C. 1996. - Mesure dans laquelle les polices d'assurance de biens tous risques et multirisques sont régies par les dispositions générales de la partie 2 de l'*Insurance Act*, R.S.B.C. 1996, y compris les dispositions en matière de prescription des actions, et par les dispositions générales des lois en matière d'assurance des autres provinces de common law. - L'application de la disposition en matière de prescription dépend-elle de la qualification de la police

interpretation or public policy, have the right to contractually incorporate in policies of insurance

limitation provisions more restrictive than those otherwise applicable by legislation - Whether, and the extent to which, the Courts of Appeal of the common

law provinces are bound by the rule of *stare decisis* - Whether the Respondent have, by their conduct, waived reliance on statutory condition 14 or are estopped from relying on it.

dans son ensemble ou de la qualification du risque ou des risques particuliers à l'origine de la perte? - Sur le plan de l'interprétation législative ou de l'intérêt public, les assureurs ont-ils le droit d'insérer par contrat dans les polices d'assurance des dispositions en matière de prescription plus restrictives que celles par ailleurs applicables en vertu de la loi? - Les cours d'appel des provinces de common law sont-elles liées par la règle du *stare decisis* et, dans l'affirmative, jusqu'à quel point le sont-elles? Les intimés ont-ils, par leur conduite, renoncé à invoquer la condition 14 prévue dans la Loi ou sont-ils préclus de l'invoquer?

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18.2.2203

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

**Gore Mutual Insurance Company**

Eric A. Dolden and Barbara Murray for the appellant  
Gore Mutual Insurance Company.

v. (28821)

Barbara Cornish for the respondents.

**Jim Christopher Churchland, et al** (B.C.)(Civil)(By  
Leave)

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

**Nature de la cause:**

Commercial law - Estoppel - Insurance - *Insurance Act*, R.S.B.C. 1979, c. 200 - Whether the Court of Appeal erred in concluding that as a matter of law a multi-peril property policy is not a policy of "Fire Insurance" for the purpose of Part 5 of the *Insurance Act* - Whether the Court of Appeal erred in concluding that a multi-peril policy of property insurance is a policy of "theft insurance" for the purpose of the *Insurance Act* - Whether section 3 in Part 2 of the *Insurance Act* bars the application of any Statutory Condition, including Statutory Condition #14, if the Statutory Condition entails a subject matter which is "the same or similar to" any provision in Part 2 of the *Insurance Act*.

Droit commercial - Préclusion - Assurance - *Insurance Act*, R.S.B.C. 1979, ch. 200 - La Cour d'appel a-t-elle commis une erreur en concluant que, en droit, une police d'assurance multirisque de biens n'est pas une police « d'assurance contre l'incendie » pour l'application de la partie 5 de l'*Insurance Act*? - La Cour d'appel a-t-elle commis une erreur en concluant qu'une police d'assurance multirisque de biens est une police d'« assurance contre le vol » pour l'application de l'*Insurance Act*? - L'article 3 de la partie 2 de l'*Insurance Act* empêche-t-il l'application d'une condition prévue par la loi, y compris la condition 14, si cette condition porte sur un sujet [TRADUCTION] « identique ou semblable à » une disposition de la partie 2 de l'*Insurance Act*?

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19.2.2203

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

**Canadian Cable Television Association**

v. (28826)

**Barrie Public Utilities, et al** (FC) (Civil) (By Leave)

Neil Finkelstein and Catherine Beagan Flood for the appellant.

Alan Mark and Peter Ruby for the respondents.

Brian J. Saunders and Peter Southey for the intervener Attorney General of Canada.

No one appearing for the intervener GT Group Telecom (written submission only by Seumas Woods and Charlotte Kanya-Forstner).

No one appearing for the intervener Telecom Carriers (written submission only by Thomas G. Heintzman, Q.C., Susan L. Gratton and Genevieve Currie).

Michel Y. Hélie for the intervener Attorney General of Ontario.

Alain Gingras pour l'intervenant Procureur général du Québec.

Gaétan Migneault for the intervener Attorney General of New Brunswick.

Cynthia Devine for the intervener Attorney General of Manitoba.

Nancy E. Brown for the intervener Attorney General of British Columbia.

Roderick S. Wiltshire for the intervener Attorney General of Alberta.

Robert G. Richards, Q.C. for the intervener Attorney General for Saskatchewan.

Christian S. Tacit for the intervener Federation of Canadian Municipalities (written submission only).

No one appearing for the intervener Saskatchewan Power Corporation (written submission only by Robert G. Richard, Q.C.).

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Constitutional law - Division of powers - Statutes - Interpretation - Administrative law - Judicial review -

CRTC order granting television cable companies access to poles owned by provincial utility companies at fixed rate - Does ss. 43(5) of the *Telecommunications Act*, S.C. 1993, c. 38, confer authority on the CRTC to

regulate access by cable companies and telecommunications carriers to power utility support structures - Does Parliament have constitutional authority to regulate access by federal communications undertakings to electric power utility support structures - Appropriate standard of review of CRTC decision.

**Nature de la cause:**

Droit constitutionnel - Partage des compétences - Lois - Interprétation - Droit administratif - Contrôle judiciaire - Ordonnance du CRTC accordant aux câblodistributeurs l'accès, moyennant un tarif fixe, aux poteaux appartenant à des services publics provinciaux - Le paragraphe 43(5) de la *Loi sur les télécommunications*, L.C. 1993, ch. 38, confère-t-il au CRTC le pouvoir de réglementer l'accès des câblodistributeurs et des entreprises de télécommunications aux ouvrages de soutènement des services publics d'électricité? - La Constitution habilite-t-elle le législateur à réglementer l'accès des entreprises de communications fédérales aux ouvrages de soutènement des services publics d'électricité? - Norme de contrôle applicable à une décision du CRTC.

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20.2.2203

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

**Geoffrey Saldanha, et al**

**v. (28829)**

**Frederick H. Beals III, et al** (Ont.) (Civil) (By Leave)

J. Brian Casey, Janet E. Mills and Matthew J. Latella for the appellants Geoffrey Saldanha, et al.

Neal H. Roth for the appellant Dominic Thivy (relies upon G. Saldanha's material and submission)..

Larry J. Levine, Q.C., Messod Boussidan and Kevin D. Sherkin for the respondents.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

*Canadian Charter of Rights and Freedoms* - International law - Conflict of laws - Commercial law - Fraud - Procedural law - Default judgment - Whether the Appellants received adequate notice regarding the case they had to meet respecting damages - Was evidence of intrinsic fraud in the obtaining of judgment admissible - Was there sufficient proof of fraud so as to refuse recognition of the judgment - Whether Canadian courts should, under consideration of public policy, refuse recognition of a foreign judgment where on the facts, the judgment does not conform to Canadian views of fundamental justice - Whether s. 7 of the *Charter* applies in situations in which enforcement of the foreign

judgment could result in bankruptcy of a Canadian resident.

**Nature de la cause:**

*Charte canadienne des droits et libertés* - Droit international - Droit international privé - Droit commercial - Fraude - Procédure - Jugement par défaut - Est-ce que les appelants ont reçu un avis adéquat des faits mis en preuve concernant les dommages-intérêts? - Est-ce que la preuve de fraude intrinsèque dans l'obtention du jugement était admissible? - Est-ce que les éléments de preuve relatifs à la fraude étaient suffisants pour refuser la reconnaissance du jugement? - Est-ce que les cours canadiennes devraient, pour des considérations d'ordre public, refuser de reconnaître un jugement étranger lorsque, dans les faits, celui-ci ne respecte pas la vision canadienne des principes de

justice fondamentale? - Est-ce que l'art. 7 de la *Charte* s'applique dans les situations où l'exécution du



jugement étranger peut entraîner la faillite d'un résident  
canadien?

20.2.2203

CORAM: Chief Justice McLachlin and Bastarache, Binnie, Arbour and Deschamps JJ.

**Robert William Feeley**

**v. (29271)**

**Her Majesty the Queen** (Ont.) (Criminal) (As of Right)  
**2003 SCC 7 / 2003 CSC 7**

**DISMISSED / REJETÉ**

**Nature of the case:**

Criminal law - Second degree murder - Charge to the jury - Reasonable doubt - Pre-*Lifchus* charge - Whether the majority of the Court of Appeal was correct in deciding that, despite the misdirection and non-direction of the trial judge, his charge adequately instructed the jury on the meaning of proof beyond a reasonable doubt - *R. v. Lifchus* [1997] 3 S.C.R. 320.

Todd Ducharme and Joseph Di Luca for the appellant.

Eric Siebenmorgen and Laura Hodgson for the respondent.

**Nature de la cause:**

Droit criminel - Meurtre au deuxième degré - Exposé au jury - Doute raisonnable - Exposé antérieur à l'arrêt *Lifchus* - La Cour d'appel à la majorité a-t-elle décidé à bon droit que, malgré les omissions et les erreurs du juge du procès dans ses directives, son exposé au jury était suffisant quant au sens de l'expression « preuve hors de tout doute raisonnable »? - *R. c. Lifchus* [1997] 3 R.C.S. 320.

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**PRONOUNCEMENTS OF APPEALS  
RESERVED**

**JUGEMENTS RENDUS SUR LES  
APPELS EN DÉLIBÉRÉ**

Reasons for judgment are available

Les motifs de jugement sont disponibles

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**FEBRUARY 20, 2003 / LE 20 FÉVRIER 2003**

**28367**      **Thomas Robert Zinck - v. - Her Majesty the Queen - and - Attorney General for Ontario** (N.B.)  
(Crim.) **2003 SCC 6 / 2003 CSC 6**

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 New Brunswick, Number 4/98/CA, dated February 22, 1999, heard on October 7, 2002 is dismissed.

L'appel contre l'arrêt de la Cour d'appel du Nouveau-Brunswick, numéro 4/98/CA, en date du 22 février 1999, entendu le 7 octobre 2002 est rejeté.

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*Thomas Robert Zinck - v. - Her Majesty the Queen - and - Attorney General for Ontario (N.B.) (Crim.) (28367)*

**Indexed as: R. v. Zinck / Répertoire : R. c. Zinck**

**Neutral citation: 2003 SCC 6. / Référence neutre : 2003 CSC 6.**

**Judgment rendered February 20, 2003 / Jugement rendu le 20 février 2003**

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

*Criminal law — Sentencing — Delayed parole eligibility — Interpretation and application of s. 743.6 of Criminal Code — Whether sentencing judge erred in his application of s. 743.6 — Whether application of s. 743.6 required evidence of special or exceptional circumstances — Criminal Code, R.S.C. 1985, c. C-46, s. 743.6.*

*Criminal law — Sentencing — Sentencing hearing — Procedural fairness — Delayed parole eligibility — Whether Crown should give offender advance notice of its intention to apply for delayed parole — Whether sentencing judge's reasons must clearly state why delayed parole order is made — Criminal Code, R.S.C. 1985, c. C-46, s. 743.6.*

Having shot and killed his neighbour, the accused pleaded guilty to manslaughter. The trial judge sentenced him to a 12-year term of imprisonment and ordered that his parole eligibility be delayed for six years under s. 743.6 of the *Criminal Code*. The Court of Appeal upheld the sentence. The accused appealed to this Court on the issue of delayed parole.

*Held:* The appeal should be dismissed.

In the case of criminal offences falling within the scope of s. 743.6 of the *Criminal Code*, delaying parole can be a significant component of a sentence. The extent of conflict in the interpretation and application of s. 743.6 in the case law has been overplayed. Generally speaking, delayed parole is a decision that remains out of the ordinary and must be used in a manner that is fair to the offender. The sentencing judge must first determine the appropriate punishment for the crime, taking into account and weighing all relevant factors. The analysis then may shift to the exercise of the power to delay parole. Section 743.6 should not be applied in a routine manner. The judge must once again apply the sentencing factors. In the course of the second balancing, priority is given to the factors of general and specific deterrence as well as denunciation. The prosecution has the burden of establishing that additional punishment is required. Delayed parole should not be ordered without necessity; it should be invoked only on the basis of demonstrated need.

Section 743.6 does not require the creation of a special and distinct hearing on the issue of delayed parole. The issue should be raised in a fair and timely manner so as to allow the offender to respond effectively. A breach of this basic obligation would justify quashing the order. There is no obligation on the Crown, however, to give the offender written notice that delayed parole will be applied for. Fairness requires only that the offender be informed clearly that a s. 743.6 application is being made. The offender must be allowed to make submissions and to introduce additional evidence, if needed. At the end of the process, the offender is entitled to reasons that must state with sufficient clarity why the delayed parole order is made. While the reasons need not be elaborate, the basis of the decision must be at least ascertainable from the record. Deficiencies in reasons may sometimes require quashing an order.

In this case, the trial judge did not err in his application of s. 743.6 and his order to delay parole was justified. Although not extensive, the trial judge's reasons, viewed as a whole and read in connection with the evidence and the submissions made at the hearing, permit an appellate court to ascertain and review the basis of his order. The trial judge carefully reviewed all relevant facts, particularly the gratuitousness of the crime and the need to protect the public. They confirm his conclusion that the objectives of deterrence and denunciation could not be justified without delaying parole eligibility. The sentencing hearing did not breach the rules of procedural fairness. In its submissions at the hearing, the Crown asked for delayed parole. The defence was given a sufficient opportunity to respond, but failed to use it.

APPEAL from a judgment of the New Brunswick Court of Appeal (1999), 209 N.B.R. (2d) 257, [1999] N.B.J. No. 84 (QL), affirming a judgment of the Court of Queen's Bench. Appeal dismissed.

*Eric J. Doiron*, for the appellant.

*Michel O. LeBlanc and Luc J. Labonté, for the respondent.*

*David Finley, for the intervener.*

*Solicitor for the appellant: Eric J. Doiron, Moncton.*

*Solicitor for the respondent: The Attorney General of New Brunswick, Moncton.*

*Solicitor for the intervener: The Attorney General for Ontario, Toronto.*

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

*Droit criminel — Détermination de la peine — Prolongation de la période d'inadmissibilité à la libération conditionnelle — Interprétation et application de l'art. 743.6 du Code criminel — Le juge qui a déterminé la peine a-t-il fait erreur dans l'application de cet article? — L'application de l'art. 743.6 est-elle subordonnée à l'existence de circonstances spéciales ou exceptionnelles? — Code criminel, L.R.C. 1985, ch. C-46, art. 743.6.*

*Droit criminel — Détermination de la peine — Audience de détermination de la peine — Équité procédurale — Prolongation de la période d'inadmissibilité à la libération conditionnelle — La Couronne est-elle tenue de donner au délinquant un préavis de son intention de demander l'augmentation du temps d'épreuve? — Les motifs du juge qui détermine la peine doivent-ils énoncer clairement les raisons justifiant l'ordonnance d'augmentation du temps d'épreuve? — Code criminel, L.R.C. 1985, ch. C-46, art. 743.6.*

Ayant tué son voisin en faisant feu sur lui, l'accusé a plaidé coupable à l'accusation d'homicide involontaire coupable. Le juge du procès l'a condamné à 12 ans d'emprisonnement et a ordonné, en vertu de l'art. 743.6 du *Code criminel*, qu'il purge six ans de cette peine avant d'être admissible à la libération conditionnelle. La Cour d'appel a confirmé la sentence. L'appelant se pourvoit devant notre Cour relativement à la question de l'augmentation du temps d'épreuve.

*Arrêt* : Le pourvoi est rejeté.

L'augmentation du temps d'épreuve peut constituer un élément important de la peine pour ce qui est des infractions criminelles visées à l'art. 743.6 du *Code criminel*. On a exagéré l'ampleur du conflit jurisprudentiel touchant l'interprétation et l'application de cet article. En règle générale, l'augmentation du temps d'épreuve est une mesure extraordinaire devant être utilisée d'une manière équitable pour le délinquant. Le juge doit d'abord déterminer la peine adaptée au crime, en considérant et en soupesant tous les facteurs pertinents. Il peut ensuite se demander s'il convient qu'il exerce son pouvoir d'augmentation du temps d'épreuve. L'article 743.6 ne doit pas être appliqué systématiquement. Le juge doit une fois de plus prendre en compte les facteurs de détermination de la peine, en donnant toutefois priorité, au cours de cette deuxième mise en balance, à l'effet dissuasif et à la réprobation. La poursuite a le fardeau d'établir qu'une sanction additionnelle s'impose. L'augmentation du temps d'épreuve ne devrait être ordonnée qu'en cas de nécessité démontrée.

L'article 743.6 n'exige pas la création d'une audience distincte pour trancher la question de l'augmentation du temps d'épreuve. La question doit être soulevée en temps opportun, de façon à permettre au délinquant d'y répondre utilement. La violation de cette obligation fondamentale justifierait l'annulation de l'ordonnance. La poursuite n'a toutefois pas l'obligation d'aviser par écrit le délinquant qu'elle entend demander l'augmentation du temps d'épreuve. L'équité requiert seulement qu'on indique clairement au délinquant qu'une demande fondée sur l'art. 743.6 est présentée. Le délinquant doit être autorisé à présenter des observations et, au besoin, à soumettre d'autres éléments de preuve. À l'issue du processus, le délinquant a droit à une décision motivée, exposant de façon suffisamment claire les raisons qui justifient l'ordonnance d'augmentation du temps d'épreuve. Les motifs n'ont pas besoin d'être détaillés, mais le

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fondement de la décision doit à tout le moins ressortir du dossier. Le fait que les motifs comportent des lacunes exigera parfois l'annulation de l'ordonnance.

En l'espèce, le juge du procès n'a pas commis d'erreur dans l'application de l'art. 743.6 et il était justifié d'ordonner l'augmentation du temps d'épreuve. Les motifs du juge du procès n'étaient pas détaillés, mais, considérés globalement et lus en corrélation avec les observations et la preuve présentées à l'audience, ses motifs permettent à une cour d'appel de dégager les assises de son ordonnance et d'en contrôler le bien-fondé. Le juge du procès a examiné attentivement tous les faits pertinents, particulièrement le caractère gratuit du crime et la nécessité de protéger le public. Ces faits confirment sa conclusion selon laquelle il était impossible de satisfaire aux objectifs de dissuasion et de réprobation sans retarder l'admissibilité à la libération conditionnelle. Les principes de l'équité procédurale ont été respectés à l'audience de détermination de la peine. Dans les observations qu'elle a présentées à cette audience, la Couronne a demandé l'augmentation du temps d'épreuve. La défense a bénéficié de la possibilité de contester le bien-fondé de la demande de la Couronne, mais elle n'en a pas profité.

POURVOI contre un arrêt de la Cour d'appel du Nouveau-Brunswick (1999), 209 R.N.-B. (2<sup>e</sup>) 257, [1999] A.N.-B. n° 84 (QL), confirmant un jugement de la Cour du Banc de la Reine. Pourvoi rejeté.

*Eric J. Doiron*, pour l'appelant.

*Michel O. LeBlanc et Luc J. Labonté*, pour l'intimée.

*David Finley*, pour l'intervenant.

*Procureur de l'appelant : Eric J. Doiron, Moncton.*

*Procureur de l'intimée : Le procureur général du Nouveau-Brunswick, Moncton.*

*Procureur de l'intervenant : Le procureur général de l'Ontario, Toronto.*

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## DEADLINES: APPEALS

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.

## DÉLAIS : APPELS

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.

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
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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
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FEBRUARY - FÉVRIER						
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MARCH - MARS						
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APRIL - AVRIL						
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MAY - MAI						
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JUNE - JUIN						
S D	M L	T M	W M	T J	F V	S S
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Sittings of the court: 18 sitting weeks / semaines séances de la cour

Séances de la cour:

Motions: 80 sitting days / journées séances de la cour

Requêtes: 9 motion and conference days / journées requêtes, conférences

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

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