

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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McDougall, Gauley

FILING DATE 10.11.2004

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FILING DATE 12.11.2004

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FILING DATE 15.11.2004

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Alexander, Holburn, Beaudin & Lang

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FILING DATE 15.11.2004

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Luc Fournier

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FILING DATE 16.11.2004

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FILING DATE 19.11.2004

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Bissonnet, Mercadante

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Luc De La Sablonnière  
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DATE DE PRODUCTION 19.11.2004

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DATE DE PRODUCTION 22.11.2004

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A.G. of Canada

FILING DATE 22.11.2004

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v. (30632)

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Paul R. Bennett

Hordo & Bennett

FILING DATE 23.11.2004

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**NOVEMBER 29, 2004 / LE 29 NOVEMBRE 2004**

**CORAM: Chief Justice McLachlin and Binnie and Charron JJ.  
La juge en chef McLachlin et les juges Binnie et Charron**

**Daniel Martin Younger**

**v. (30483)**

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

**NATURE OF THE CASE**

Criminal law - Evidence - Procedural law - Trial - Effect of jury member contravening instruction by the trial judge not to attend the crime scene or personally investigate the case by doing both and sharing her findings with other jurors - Whether trial judge erred by not discharging the juror who accidentally encountered the Applicant in handcuffs and shackles - Whether trial judge erred in his instructions to the jury on the issue of post-offence conduct - Whether demeanour evidence and silence in response to police questioning was wrongly admitted into evidence at the trial - Whether cold weather exposure constitutes bodily harm under section 229(a)(ii) of the *Criminal Code* - Whether trial judge misdirected the jury by instructing it that it could convict of first degree murder if it was satisfied that the Applicant intended to kill or intended to cause bodily harm with the knowledge that death was likely at some point during the kidnapping or unlawful confinement - Whether the Court of Appeal erred in law by failing to find reversible error in the trial judge's instruction on reasonable doubt - Whether reversible error in the trial judge's refusal to issue a *Vetrovec* warning to the jury respecting Diane Grisdale's evidence - Whether reversible error in the trial judge's decision to prohibit defence counsel from cross-examining Ericka Grisdale as to whether she worked as a prostitute - Whether the verdict was reasonable.

**PROCEDURAL HISTORY**

September 1, 1999  
Court of Queen's Bench of Manitoba  
(MacInnes, J.)

Conviction: first-degree murder

June 29, 2004  
Court of Appeal of Manitoba  
(Huband, Twaddle and Steel JJ.A.)

Appeal dismissed

August 26, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Wilfred Dwayne Johnson**

**v. (30556)**

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

**NATURE OF THE CASE**

Criminal law (Non Charter) - Offences - Murder - Evidence - Sentencing - Out-of-court statements - Whether the Court of Appeal erred in law in holding that the statements of the deceased relating to prior incidents between the Applicant and the deceased were properly admissible at trial - whether the Court of Appeal erred in law in allowing a conviction to be

sustained regarding the infant deceased where not supported by the evidence - whether the Court of Appeal erred in law in sustaining a sentence that was excessively harsh.

**PROCEDURAL HISTORY**

August 31, 2001  
Supreme Court of Nova Scotia  
(Wright J.)

Applicant convicted of two counts of second degree murder; Court ordered that the Applicant serve a sentence of life imprisonment and be ineligible for parole for 21 years

July 14, 2004  
Nova Scotia Court of Appeal  
(Bateman, Oland and Fichaud JJ.A.)

Appeal from conviction and sentence dismissed

September 29, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Jodi Edell, Cara Edell, Hayden Edell, Samantha Edell, Marek Edell and Mayson Edell  
by their Litigation Guardian, Jodi Edell**

**v. (30485)**

**Paul Sitzer in all of his capacities, Michael Sitzer, Paul Sitzer Holdings Limited,  
and Geraldine Sitzer Holdings Ltd. (Ont.)**

**NATURE OF THE CASE**

Property Law - Estates - Mutual wills - Constructive trusts - Whether the Court of Appeal erred in not addressing the legal issues involved in this case which are of significant national importance as a result of the evolution of laws dealing with matrimonial, dependants' support, and trust matters - Whether the Court of Appeal erred in not adopting the approach taken by decisions of the Supreme Court of Canada and other decisions of the Ontario Court of Appeal dealing with similar issues that are of great impact on the continuing evolution of the laws in the aforementioned areas - Whether the Court of Appeal erred in basing its decision exclusively on the findings of fact made by the trial judge.

**PROCEDURAL HISTORY**

November 5, 2001  
Ontario Superior Court of Justice  
(Cullity J.)

Applicants' claim to have Paul Sitzer pass his accounts granted; all other claims dismissed

June 3, 2004  
Court of Appeal for Ontario  
(Labrosse, MacPherson, and Juriansz JJ.A.)

Appeal dismissed

August 27, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Via Rail Canada Inc.**

**v. (30436)**

**George Cairns, Brotherhood of Locomotive Engineers, Canadian National Railway Company,  
United Transportation Union**

**- and between -**

**Brotherhood of Locomotive Engineers**

**v. (30436)**

**George Cairns, Via Rail Canada Inc., United Transportation Union and  
Canadian National Railway Company (F.C.)**

**NATURE OF THE CASE**

Administrative law - Labour law - Judicial review - Labour relations - Collective agreement - Remedies - What is the authority and jurisdiction of a labour relations board to dictate the terms of a collective agreement over the objections of both the employer and the certified bargaining agent, and to substitute a board-ordered collective agreement for the agreement reached between the bargaining parties and to impose onerous and intrusive remedies against an employer that has not breached any obligation owed under labour relations legislation, and where the remedy is imposed solely in respect of the bargaining agent's breach of the duty of fair representation of its members? - Paramountcy of the right to free, bi-lateral collective bargaining within Canada's Labour relations regime, and the authority and jurisdiction of a labour relations board to order a tri-partite bargaining process - What is the applicable standard of review and whether provincial appellate courts and the Federal Court of Appeal can apply a standard of review different than that held by the Supreme Court of Canada.

**PROCEDURAL HISTORY**

October 22, 1999  
Canadian Industrial Relations Board  
(Pineau, Vice-Chairperson)

Applicant's application under section 18 of the *Canada Labour Code* for the collective bargaining certificate to be amended by consolidating the two bargaining units of the running trades, granted

May 15, 2003  
Canadian Industrial Relations Board  
(Pineau, Vice-Chairperson)

Application for judicial review dismissed; Alternate form of compensation imposed by Board

May 17, 2003  
Federal Court of Appeal  
(Rothstein, Evans and Pelletier [*dissenting*] JJ.A.)

Application for judicial review dismissed

August 16, 2004  
Supreme Court of Canada

First and second applications for leave to appeal filed

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**David James Sneddon, Kirpal Singh Bains, Balbir Singh Bhate and Douglas Wallace Platt,  
suing on their own behalf and in a representative capacity on behalf of all persons who were  
members of the British Columbia Hydro and Power Authority Pension Plan in 1980 and received  
a refund of pension contributions when transferred to the Metro Transit Operating Company**

**v. (30487)**

**British Columbia Hydro and Power Authority, Her Majesty the Queen in Right of  
the Province of British Columbia (Minister of Finance, Corporate Relations),  
Superannuation Commissioner, Trustees of the Public Service Pension Plan, also known as  
Public Service Pension Board of Trustees, British Columbia Pension Corporation (B.C.)**

**NATURE OF THE CASE**

Labour law - Pensions - Termination of employment - Refund of contributions - Public transit employees being transferred to new corporation - Certain employees opting to receive refunds of their pension contributions instead of transferring their pensions - Whether s. 7 of *Metro Transit Operating Company Act*, S.B.C. 1979, c. 257, should be interpreted as prohibition against refund of contributions.

**PROCEDURAL HISTORY**

July 30, 2003 Supreme Court of British Columbia (Warren J.)	Applicants' claims of breach of trust and entitlement to pension contributions dismissed
May 26, 2004 Court of Appeal for British Columbia (Prowse, Low and Thackray JJ.A.)	Appeal dismissed
August 24, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**CORAM: Major, Fish and Abella JJ.  
Les juges Major, Fish et Abella**

**Her Majesty the Queen**

**v. (30459)**

**James Coultice and Scott Tarpey (Crim.) (Ont.)**

**NATURE OF THE CASE**

Criminal law - Trial - Whether lower courts erred in law by excluding certain proposed Crown evidence- Whether Court of Appeal should have directed a new trial.

**PROCEDURAL HISTORY**

October 31, 2001 Ontario Superior Court of Justice (Glass J.)	Acquittals: criminal negligence causing death
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May 13, 2004  
Court of Appeal for Ontario  
(Doherty, Laskin and Rosenberg JJ.A)

Appeal dismissed

August 12, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**C.B.M.**

**v. (30500)**

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

**NATURE OF THE CASE**

Criminal Law (Non Charter) - Procedural law - Evidence - Jury Charge - Bolstering credibility of a witness - Testimony of a complainant under 14 years of age given under oath - Whether the Court of Appeal erred in finding that the trial judge acted judicially in exercising his discretion to swear the child complainant - Whether the Court of Appeal erred in finding that the trial judge's repeated emphasis to the jury of the importance of his decision to swear the complainant did not render the trial unfair - *Canada Evidence Act*, R.S.C.1985, c. C-5, s. 16.

**PROCEDURAL HISTORY**

February 27, 2003  
Court of Queen's Bench of Alberta  
(Lefsrud E.)

Applicant convicted of sexual touching; invitation to touch; unlawful exposure to a child; and, sexual assault, contrary to ss. 27,151, 152 and 173(2) of the *Criminal Code of Canada*

February 25, 2004  
Court of Appeal of Alberta  
(Conrad, Russell and Acton [*ad hoc*] JJ.A.)

Appeal dismissed

September 1, 2004  
Supreme Court of Canada

Application for leave to appeal and motion for time extension filed

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**David Baugh**

**v. (30474)**

**Faculty Association of Red Deer College, Jim Scott, Peter Slade, Lorinda Myers also known as Lorinda Stuber, Pliny Hayes and Glynis Wilson-Boulton (Alta.)**

**NATURE OF THE CASE**

Administrative law - Colleges & universities - Labour law - Collective agreement - Whether the common law duty of fair representation applies in a disciplinary inquiry where there is no grievance - If the duty of fair representation applies in a disciplinary inquiry where there is no grievance, how it differs from the duty as delineated by this Court for grievances - Whether the common law duty of fair representation applies in a disciplinary inquiry conducted by a faculty association - Whether the right of a faculty member to due process in a disciplinary inquiry conducted by a faculty association reside in contract - Whether abuse of process and bias by an association entitles a member to independent legal counsel of his choosing by the association - Whether rules of evidence governing summary judgment permit a court to parse several statements in documentary evidence, articulate a position not verbatim and contrary to at least one of them, when granting

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summary judgment, without the fact finding of a trial to determine truth - Whether an action can be brought against individual members of an association for breach of duty and bad faith.

**PROCEDURAL HISTORY**

April 10, 2003 Court of Queen's Bench of Alberta (Lutz J.)	Respondent's motion for summary judgment granted; Applicant's allegation of defamation dismissed
June 16, 2004 Court of Appeal of Alberta (Calgary) (Conrad, McFadyen and Russell JJ.A.)	Appeal dismissed
October 7, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Gerald M. Streisfield, Lillian Streisfield, Craig Streisfield, Jeffrey Streisfield, Stephen Streisfield,  
Sheryl Streisfield and Marla Streisfield Borenstein**

**v. (30471)**

**Marvin Goodman, Carol Goodman, Joyce Lawee, David Lawee and Jean Karnovsky (Ont.)**

**NATURE OF THE CASE**

Property law - Wills - Whether the Respondents had status to sue the Applicant for the relief granted below - Whether the courts below committed palpable and overriding error in fixing the Applicant with liability for damages when there was no causal connection between any act of the Applicant and the loss sustained by the deceased

**PROCEDURAL HISTORY**

January 17, 2002 Ontario Superior Court of Justice (Carnwath J.)	Applicants' action to declare will dated 1990 valid, dismissed; Applicants held jointly and severally liable for the monies wrongfully obtained from deceased
May 14, 2004 Court of Appeal for Ontario (Labrosse, Weiler, and Charron JJ.A.)	Appeal and cross-appeal dismissed
August 13, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Kodiak Construction Ltd.**

**v. (30446)**

**Sharon Mugford, Ross Mugford and Myron Weber (Alta.)**

**NATURE OF THE CASE**

Statutes - Interpretation - Torts - Negligence - Vicarious liability - When a person has possession of a motor vehicle with consent of the owner, but has neither express nor implied consent to possess or drive the vehicle on a highway at the time

of an accident and/or is in breach of conditions attached to possession, does s.181(b) of the *Highway Traffic Act*, R.S.A. 1980, c. H-7 apply to make the owner vicariously liable for the driver's negligence - If s.181(b) does apply, how could the owner ever withdraw consent to possession or impose prohibitions, conditions or limitations on when, where and by whom the vehicle could be driven short of retaking physical possession of the vehicle?

**PROCEDURAL HISTORY**

June 18, 2003  
Court of Queen's Bench of Alberta  
(Topolniski J.)

Applicant not held vicariously liable under s.181(b) of the *Highway Traffic Act* for the negligent operation of a motor vehicle by its employee

May 5, 2004  
Court of Appeal of Alberta  
(Russell, Picard and Wittmann JJ.A)

Appeal allowed

August 4, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**CORAM: Bastarache, LeBel and Deschamps JJ.  
Les juges Bastarache, LeBel et Deschamps**

**Adrien Paquet, Céline Paquet, Odette Paquet, Julie Paquet, Marie-Josée Paquet**

**c. (30457)**

**Alain Tardif, Marcel Camire, Gaetan Houde, Pierre Denault (Qc)**

**NATURE DE LA CAUSE**

Procédure – Procédure civile – Procédure préalable au procès – Interrogatoire avant défense en vertu de l'art. 397 du *Code de procédure civile*, L.R.Q., ch. C-25 – Les instances inférieures ont-elles erré en autorisant la communication de documents contenant le nom des médecins consultés par le demandeur ainsi que les médicaments qui lui ont été prescrits?

**HISTORIQUE DES PROCÉDURES**

Le 9 janvier 2003  
Cour supérieure du Québec  
(Le juge Godbout)

Requête des intimés pour obtenir la communication de documents médicaux accueillie

Le 14 mai 2004  
Cour d'appel du Québec  
(Les juges Rochette, Hilton et Pelletier [*dissident*])

Appel rejeté

Le 11 août 2004  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Vivian Assaf**

**v. (30579)**

**Estate of Edward Assaf, deceased, by its Executor, Robert Bosada, Barbara LeCoq  
(also known as Barbara Assaf and also known as Barbara Evans) (Ont.)**

**NATURE OF THE CASE**

Procedural Law - Security for costs - Estates - Whether the learned justice erred in not accepting as security for costs the assets pledged by the Applicant - Whether the assets pledged were sufficient and iron-clad security to cover the \$15,000.00 required to be posted before the Court of Appeal would hear the Applicant's appeal of the order of the Honourable Madam Justice Greer - Whether the learned justice placed too much weight on the pronouncements of Bernard Burton, counsel for Robert Bosada, who disputed the security proffered by the Applicant - Whether it would be unreasonable to allow the Applicant's appeal of Greer J.'s order to be dismissed without a hearing on the merits and based on the unsupported and undocumented representations of Mr. Burton, who *inter alia*, described the Applicant's claims regarding her parents estates as "innocuous" "dubious at best" and "murky" - Whether the *Victims' Bill of Rights*, 1995 S.O. 1995 c.6, related to the requirement of victims of crime to provide security, applies to this case.

**PROCEDURAL HISTORY**

October 20, 2003 Ontario Superior Court of Justice (Greer J.)	Applicant's motion for an order removing executor and setting aside all orders of Greer J. made after June 12, 1997 dismissed
February 10, 2004 Court of Appeal for Ontario (Blair J.A)	Respondent's motion for an order that Applicant post \$15,000.00 as security for costs granted
June 3, 2004 Court of Appeal for Ontario (Laskin, Charron and Lang J.J.A.)	Applicant's motion for review of Blair J.A.'s order dismissed.
June 29, 2004 Court of Appeal for Ontario (MacPherson J.A)	Appeal of Greer J.'s order dismissed
September 28, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Projets Lauphi Inc.**

**c. (30397)**

**Procureur général du Québec (Qc)**

**NATURE DE LA CAUSE**

Droit commercial - Contrats - Dommages-intérêts - La Cour d'appel a-t-elle erré quant au rôle et à la crédibilité des experts relativement aux calculs des quantités de roc excavées et des déblais, et à ses conséquences sur les délais, pénalités de retard et frais de chantier? - La Cour d'appel a-t-elle erré en n'accordant pas la réclamation pour traitement de roc et remboursement de pénalités prélevées à l'entrepreneur? - La Cour d'appel a-t-elle erré en concluant que l'appel à la caution était justifié? - La Cour d'appel a-t-elle erré en refusant les réclamations pour frais de carrière, pour

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nivellement du roc, pour paiement de roc hors profil, pour location de tracteur, pour le transport aux rebuts et pour le sable? - La Cour d'appel a-t-elle erré en ne calculant pas l'indexation prévue? - La Cour d'appel a-t-elle erré en refusant les intérêts à compter de 1990 au lieu de 1992?

**HISTORIQUE DES PROCÉDURES**

Le 30 août 2001 Cour supérieure du Québec (Le juge Normand)	Action partiellement accueillie : intimé condamné à payer 107 875,42 \$ avec intérêts, depuis la date de l'assignation majorés de l'indemnité additionnelle
Le 19 avril 2004 Cour d'appel du Québec (Le juge en chef Robert, les juges Mailhot et Morin)	Appel accueilli et appel incident rejeté : dommages octroyés par le premier juge réduits à 13 690,74 \$
Le 18 juin 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**John Susin**

**v. (30565)**

**Ronald G. Chapman (Ont.)**

**NATURE OF THE CASE**

Procedural law – Rules of Civil Procedure – Costs – Whether Court of Appeal erred in affirming orders dismissing action on basis of unpaid costs and refusing admission of fresh evidence.

**PROCEDURAL HISTORY**

November 18, 2002 Ontario Superior Court of Justice (Bain J.)	Respondent's motion to dismiss Applicant's action, granted; Applicant's cross-motion for summary judgment dismissed; Applicant ordered to pay costs to the Respondent in the amount of \$15,872.99
February 6, 2003 Ontario Superior Court of Justice (Bain J.)	Applicant's motion for order re-opening the motion heard September 27, 2002, and for order setting aside reasons for judgment dated November 18, 2002, and for order varying reasons for judgment dated November 18, 2002, dismissed with costs in amount of \$1000.00
January 19, 2004 Court of Appeal for Ontario (Rosenberg, Goudge and Cronk JJ.A.)	Applicant's appeal and motion to adduce fresh evidence, dismissed; Applicant ordered to pay costs to the Respondent in the amount of \$5,000.00
July 6, 2004 Court of Appeal for Ontario (Rosenberg, Goudge and Cronk JJ.A.)	Applicant's motion for order amending, setting aside or varying order of January 19, 2004, dismissed; Applicant ordered to pay costs to the Respondent in the amount of \$3,000.00

September 30, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Eryn Fitzgerald, Christine Jairamsingh, by their next friend Mark Cherrington**

**v. (30453)**

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

**NATURE OF THE CASE**

Canadian *Charter* - Civil - Civil rights - Right to vote - Right to equality - *Election Act*, R.S.A. 2000, c. E-1, s. 16(b), and *Local Authorities Election Act*, R.S.A. 2000, c. L-21, s. 47(1)(a), require that otherwise eligible be at least 18 years of age - Whether the *Election Act*, s. 16(b), is contrary to s. 3 of the *Charter* - Whether the *Election Act*, s. 16(b), and *Local Authorities Election Act*, s. 47(1)(a), are contrary to s. 15(1) of the *Charter* - Whether the Court of Appeal followed the appropriate approach to situations of “youth based” age discrimination - Whether the Court of Appeal made any reviewable error in assessing the “rational connection” and the “overall proportionality” aspects of the *Oakes* test.

**PROCEDURAL HISTORY**

December 12, 2002  
Court of Queen’s Bench of Alberta  
(Lefsrud J.)

*Election Act*, R.S.A. 2000, c. E-1, s. 16(b), and *Local Authorities Election Act*, R.S.A. 2000, c. L-21, s. 47(1)(a), justified under s. 1 of the *Charter*; action dismissed

May 13, 2004  
Court of Appeal of Alberta  
(Costigan, Picard and Sirrs JJ.A.)

Appeal dismissed

August 10, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**DECEMBER 2, 2004 / LE 2 DÉCEMBRE 2004**

**30439**                    **Clifford Barry Howdle v. Her Majesty the Queen** (Sask.) (Criminal) (By Leave)

Coram:                    Major, Fish and Abella JJ.

The application for an extension of time regarding the appeal from the 1995 convictions is dismissed. The application for an extension of time from the judgment of the Court of Appeal for Saskatchewan, Number 624, dated March 16, 2004, is granted and the application for leave to appeal is dismissed.

La demande de prorogation du délai pour interjeter appel des déclarations de culpabilité de 1995 est rejetée. La demande de prorogation de délai de l'arrêt de la Cour d'appel de la Saskatchewan, numéro 624, daté du 16 mars 2004, est accordée et la demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal Law (Non Charter) - Sentencing - Dangerous Offender - Whether Court of Appeal erred in determining that the trial judge did not err in declaring the Applicant as a dangerous offender

**PROCEDURAL HISTORY**

June 21, 2002  
Court of Queen's Bench for Saskatchewan  
(Laing J.)

Applicant convicted of seventeen *Criminal Code* offences, including five counts of sexual assault, four counts of unlawful confinement and three counts of assault with a weapon contrary to ss. 271, 279(2) and 267 of the *Criminal Code*, respectively

November 5, 2002  
Court of Queen's Bench for Saskatchewan  
(Laing J.)

Applicant's application for nullification of dangerous offender proceedings, denied; Applicant remanded for a further 30-day period pursuant to s. 752.1 of the *Criminal Code*, to allow for psychiatric assessment

July 9, 2003  
Court of Queen's Bench for Saskatchewan  
(Laing J.)

Applicant declared a dangerous offender pursuant to s. 753 of the *Criminal Code*; Applicant sentenced to an indeterminate period of detention pursuant to s. 753(4) of the *Criminal Code*

March 16, 2004  
Court of Appeal for Saskatchewan  
(Vancise, Sherstobitoff and Jackson, JJ.A.)

Appeal against conviction and dangerous offender status dismissed

July 26, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**30445**                    **CIT Financial Ltd. v. Her Majesty the Queen** (FC) (Civil) (By Leave)

Coram:                    Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-455-03, dated May 20, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-455-03, daté du 20 mai 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Taxation - Assessment - Whether the rental income the asset purchased would produce could be ignored in valuing the asset - Whether a finding made by a trial judge is reviewable as a question of law where the trial judge has ignored the proper principles in arriving at his determination.

**PROCEDURAL HISTORY**

October 2, 2003 Tax Court of Canada (Bowman J.)	Appeal from assessment under the <i>Income Tax Act</i> allowed; reassessment referred back to the Minister of National Revenue for reconsideration
May 20, 2004 Federal Court of Appeal (Décary, Sexton and Malone JJ.A.)	Appeal dismissed
August 4, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**30506**      **Sheldon Taylor v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram:      Bastarache, LeBel and Deschamps 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 C32369, dated February 20, 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 C32369, daté du 20 février 2002, est rejetée.

**NATURE OF THE CASE**

Criminal Law - Defence - Statutes - Interpretation - Whether section 231(5)(e) of the *Criminal Code*, R.S.C. 1985, c. C-46 requires more than the restraint incidental to a robbery to classify a murder as first degree murder?

**PROCEDURAL HISTORY**

March 7, 1999 Superior Court of Justice (Marchand J. and jury)	Applicant convicted of first degree murder
February 20, 2002 Court of Appeal for Ontario (Abella, Labrosse and Charron JJ.A.)	Appeal dismissed
September 10, 2004 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

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**30365**            **Sylvio Belmonte, Giovanni Dipeco, Jean Langlois, Stéphane Boutin, Nancy Bélanger, Jessica Laroque, Louis Roy, Marc Bessette et Judith Côté c. Syndicat des débardeurs, Association des employeurs maritimes** (CF) (Civile) (Autorisation)

Coram:            Les juges Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-470-03, daté du 2 avril 2004, est rejetée avec dépens en faveur de l'intimé, Syndicat des débardeurs.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-470-03, dated April 2, 2004, is dismissed with costs to the Respondent, Syndicat des débardeurs.

#### **NATURE DE LA CAUSE**

Procédure - Procédure civile - La Cour fédérale a-t-elle erré en rejetant la requête en prorogation de délai au motif que la demande n'avait pas de chance de succès? - Le Conseil canadien des relations industrielles a-t-il erré en concluant au rejet préliminaire de la plainte sans tenir d'audition? - Le syndicat intimé a-t-il l'obligation d'agir en conformité avec le *Code canadien du travail*, L.R.C. (1985), ch. L-2, envers les salariés membres et non-membres de son unité d'accréditation? - Les demandeurs peuvent-ils alléguer que le syndicat n'applique pas des règles justes et non discriminatoires dans l'embauche au terme de l'art. 69 *C.c.t.*? - L'exclusion des demandeurs de l'unité d'accréditation syndicale est-elle justifiée au terme de la *Charte*?

#### **HISTORIQUE DES PROCÉDURES**

Le 4 septembre 2003 Conseil canadien des relations industrielles (Pineau, Charbonneau et Fecteau)	Plainte de pratique déloyale déposée par les demandeurs alléguant la violation de l'art. 37 et des par. 69(1) et (2) <i>C.c.t.</i> rejetée
Le 2 avril 2004 Cour d'appel fédérale (Le juge Pelletier)	Requête en prorogation de délai des demandeurs rejetée
Le 2 avril 2004 Cour d'appel fédérale (Le juge en chef Richard, les juges Décary et Pelletier)	Requête en radiation du Syndicat des débardeurs accordée
Le 1 juin 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**30425**            **Mélanie Alix c. Procureur général du Québec** (Qc) (Civile) (Autorisation)

Coram:            Les juges Bastarache, LeBel et Deschamps

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour supérieure du Québec, numéro 755-36-000114-044, daté du 31 mars 2004, est rejetée sans dépens.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Superior Court of Quebec, Number 755-36-000114-044, dated March 31, 2004, is dismissed without costs.

**NATURE DE LA CAUSE**

Procédure – Saisie – Secret professionnel – Documents saisis dans un bureau de notaire – Le privilège de confidentialité entre le notaire et son client survit-il à la mort du client et est-il transmissible à ses héritiers? – La Cour supérieure a-t-elle imposé à la demanderesse un fardeau de preuve incompatible avec la procédure prise en vertu de l’art. 488.1 (3) C.cr.?

**HISTORIQUE DES PROCÉDURES**

Le 31 mars 2004  
Cour supérieure du Québec  
(Le juge Hébert)

Ordonnance rendue sur une requête pour déterminer le caractère privilégié de documents saisis (art. 488.1 (3) C.cr.); Documents déclarés ne pas être protégés par le secret professionnel

Le 2 juillet 2004  
Cour suprême du Canada

Demande d’autorisation d’appel et de prorogation de délai déposées

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**30150**            **James Henderson v. Allstate Insurance Company of Canada** (Ont.) (Civil) (By Leave)

Coram:            Bastarache, LeBel and Deschamps JJ.

The application for an extension of time to apply for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C37438, dated October 31, 2003, is dismissed. In any event, had such application been granted, the application for leave to appeal from the said judgment would have been dismissed with costs.

La demande de prorogation de délai pour le dépôt d’une demande d’autorisation d’appel contre l’arrêt de la Cour d’appel de l’Ontario, numéro C37438, daté du 31 octobre 2003, est rejetée. Quoiqu’il en soit, même si la demande de prorogation avait été accueillie, la demande d’autorisation d’appel aurait été rejetée avec dépens.

**NATURE OF THE CASE**

Labour Law - Insurance - Benefits - Whether an employed insured who declines an employer’s historical obligation to offer “regular work” further to the Ontario *Workers Compensation Act* is excluded from disability indemnity as an employed person under the Ontario *Insurance Act* of the statutory accident benefits regime? If an employed insured is excluded from consideration for “employed” statutory accident benefits is the insured treated equally before the law?

**PROCEDURAL HISTORY**

November 19, 2001  
Ontario Superior Court of Justice  
(Mossip J.)

Applicant’s claim for disability benefits pursuant to s.12 (1) of the *Insurance Act*, dismissed

October 31, 2003  
Court of Appeal for Ontario  
(O’Connor A.C.J.O., Moldaver and Gillese JJ.A.)

Appeal dismissed

July 29, 2004  
Supreme Court of Canada

Application for leave to appeal and motion to extend time filed

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**30499**            **R.V.M c. M.B.G.A., Procureur général du Québec, Directeur de la protection de la jeunesse** (Qc)  
(Civile) (Autorisation)

Coram:            Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-014099-048, daté du 8 juin 2004, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-014099-048, dated June 8, 2004, is dismissed with costs.

**NATURE DE LA CAUSE**

Droit de la famille - Garde - Enlèvement international d'enfants - Quel est le jour de départ pour fin de computation du délai d'un an prévu à l'art. 20 de la *Loi sur les aspects civils de l'enlèvement international et interprovincial d'enfants*, L.R.Q., ch. A-23.01, et à l'art. 12 de la *Convention sur les aspects civils de l'enlèvement international d'enfants*, R.T. Can. 1983 n° 35, et donnant ouverture à la défense d'intégration? - Quels sont les critères à retenir pour l'application de la notion d'intégration prévue à ces deux dispositions? - Est-ce que la correspondance et la documentation échangées pendant le délibéré d'une cour d'appel, entre les procureurs et les juges, peuvent être considérées comme éléments de preuve pour étayer le jugement de la Cour d'appel? - La Cour d'appel peut-elle substituer son opinion à celle de la Cour supérieure relativement à des questions de faits et ce, sans justification?

**HISTORIQUE DES PROCÉDURES**

Le 7 janvier 2004  
Cour supérieure du Québec  
(Le juge Marx)

Requête du demandeur pour retour immédiat de son enfant au Mexique accueillie; garde confiée au demandeur jusqu'au retour

Le 8 juin 2004  
Cour d'appel du Québec  
(Le juge en chef Robert et les juges Mailhot et Morin [dissident])

Appel accueilli et requête rejetée

Le 7 septembre 2004  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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24.11.2004

Before / Devant: DESCHAMPS J.

**Miscellaneous motion on appeal to file  
supplementary materials**

**Autre requête en appel pour déposer des documents  
supplémentaires**

Le ministre de la Citoyenneté et de l'Immigration

c. (30025)

Léon Mugesera, et autres (CF)

**GRANTED / ACCORDÉE**

Vu la requête de l'appelant, le ministre de la Citoyenneté et de l'Immigration, en vertu des règles 47 et 38 des *Règles* de cette Cour, pour qu'il lui soit permis d'ajouter à son dossier copie des mémoires ou notes de plaidoirie qu'il a déposés devant les instances inférieures, à savoir la Cour d'appel fédérale, la Section de première instance de la Cour fédérale et la Section d'appel de la Commission de l'immigration et du statut du réfugié.

Vu les observations écrites déposées par les parties;

L'appelant est, par la présente, autorisé à joindre les documents suivants à son dossier :

- Les notes de plaidoirie déposées par le ministre de la Citoyenneté et de l'Immigration à la Section d'appel de la Commission de l'immigration et du statut de réfugié, dans son dossier portant les n<sup>os</sup> M-96-10465 et M-96-10466;
- Le mémoire du défendeur, le ministre de la Citoyenneté et de l'Immigration, du 2 février 1999, déposé à la Cour fédérale – Section de première instance, dans son dossier n<sup>o</sup> IMM-5946-98;
- Le mémoire supplémentaire du défendeur, le ministre de la Citoyenneté et de l'Immigration, du 1<sup>er</sup> décembre 1999, déposé à la Cour fédérale – Section de première instance, dans son dossier n<sup>o</sup> IMM-5946-98;
- Le mémoire des faits et du droit de l'appelante, la ministre de la Citoyenneté et de l'Immigration, du 5 novembre 2001, déposé à la Cour d'appel fédérale, dans son dossier n<sup>o</sup> A-317-01;
- Le mémoire des faits et du droit de l'intimé, le ministre de la Citoyenneté et de l'Immigration, du 15 février 2002, déposé à la Cour d'appel fédérale, dans son dossier n<sup>o</sup> A-316-01;

L'appelant devra signifier et déposer ces nouveaux documents dans les dix (10) jours de la date de la présente ordonnance.

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24.11.2004

Before / Devant: THE CHIEF JUSTICE

**Miscellaneous motion**

**Autre requête**

Le ministre de la Citoyenneté et de l'Immigration

c. (30025)

Léon Mugesera, et autres (CF)

**À LA SUITE D'UNE DEMANDE** amendée des intimés visant à obtenir ce qui suit:

**ORDONNER** l'introduction du ministre de la Justice et procureur général du Canada au présent dossier comme mis en cause;

**ORDONNER** le transfert de la Requête en suspension définitive des procédures à la Cour;

**ORDONNER** que la présente requête fasse l'objet d'un débat oral devant la Cour;

**PERMETTRE** aux intimés de déroger aux Règles par le dépôt d'un mémoire de requête d'au plus 21 pages;

**ORDONNER** la suspension de l'audition de l'appel dans ce dossier prévue au rôle de la Cour pour le 8 décembre 2004;

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

**IL EST PAR LA PRÉSENTE ORDONNÉ CE QUI SUIT:**

La demande visant le report de l'audition de l'appel est rejetée.

La demande des intimés en vue de déroger aux Règles par le dépôt d'un mémoire de requête d'au plus 21 pages est accordée.

Les autres éléments de la requête sont renvoyés devant la Cour afin qu'elle rende une décision à leur égard lors de l'audition de l'appel le 8 décembre 2004.

La formation qui entendra l'appel se prononcera également sur l'adjudication des dépens relatifs à la requête.

**IL EST EN OUTRE ORDONNÉ** que, avant le début de l'audition de l'appel, chaque partie disposera d'au plus quinze (15) minutes pour présenter sa plaidoirie orale sur la requête, et les intimés disposeront d'une période additionnelle de cinq (5) minutes pour leur réplique.

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## DEADLINES: APPEALS

The Fall Session of the Supreme Court of Canada started October 4, 2004.

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

**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.

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'automne de la Cour suprême du Canada a commencé le 4 octobre 2004.

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:

**Le dossier de l'appellant, 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'appellant.

**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.

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.

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

**Judgments reported in [2004] 2 S.C.R. Part 2**

Application under s. 83.28 of the *Criminal Code* (Re),  
[2004] 2 S.C.R. 248, 2004 SCC 42

Quebec (Attorney General) v. Quebec (Human Rights Tribunal), [2004] 2 S.C.R. 223, 2004 SCC 40

Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General), [2004] 2 S.C.R. 185, 2004 SCC 39

R. v. Rémillard, [2004] 2 S.C.R. 246, 2004 SCC 41

Vancouver Sun (Re),  
[2004] 2 S.C.R. 332, 2004 SCC 43

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

**Jugements publiés dans [2004] 2 R.C.S. Partie 2**

Demande fondée sur l’art. 83.28 du *Code criminel* (Re),  
[2004] 2 R.C.S. 248, 2004 CSC 42

Québec (Commission des droits de la personne et des droits de la jeunesse) c. Québec (Procureur général), [2004] 2 R.C.S. 185, 2004 CSC 39

Québec (Procureur général) c. Québec (Tribunal des droits de la personne),  
[2004] 2 R.C.S. 223, 2004 CSC 40

R. c. Rémillard, [2004] 2 R.C.S. 246, 2004 CSC 41

Vancouver Sun (Re),  
[2004] 2 R.C.S. 332, 2004 CSC 43

SUPREME COURT OF CANADA SCHEDULE  
CALENDRIER DE LA COUR SUPREME

**- 2004 -**

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

NOVEMBER - NOVEMBRE						
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DECEMBER - DECEMBRE						
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**- 2005 -**

JANUARY - JANVIER						
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FEBRUARY - FÉVRIER						
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27	H 28	29	30	31		

APRIL - AVRIL						
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JUNE - JUIN						
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Sittings of the court:  
Séances de la cour:

Motions:  
Requêtes:

Holidays:  
Jours fériés:

M
H

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