

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

This Bulletin is published at the direction of the Registrar and is for general information only. It is not to be used as evidence of its content, which, if required, should be proved by Certificate of the Registrar under the Seal of the Court. While every effort is made to ensure accuracy, no responsibility is assumed for errors or omissions.

Ce Bulletin, publié sous l'autorité de la registraire, ne vise qu'à fournir des renseignements d'ordre général. Il ne peut servir de preuve de son contenu. Celle-ci s'établit par un certificat du registraire donné sous le sceau de la Cour. Rien n'est négligé pour assurer l'exactitude du contenu, mais la Cour décline toute responsabilité pour les erreurs ou omissions.

Subscriptions may be had at \$200 per year, payable in advance, in accordance with the Court tariff. During Court sessions it is usually issued weekly.

Le prix de l'abonnement, fixé dans le tarif de la Cour, est de 200 \$ l'an, payable d'avance. Le Bulletin paraît en principe toutes les semaines pendant les sessions de la Cour.

The Bulletin, being a factual report of recorded proceedings, is produced in the language of record. Where a judgment has been rendered, requests for copies should be made to the Registrar, with a remittance of \$10 for each set of reasons. All remittances should be made payable to the Receiver General for Canada.

Le Bulletin rassemble les procédures devant la Cour dans la langue du dossier. Quand un arrêt est rendu, on peut se procurer les motifs de jugement en adressant sa demande au registraire, accompagnée de 10 \$ par exemplaire. Le paiement doit être fait à l'ordre du Receveur général du Canada.

CONTENTS

TABLE DES MATIÈRES

Applications for leave to appeal filed	1231	Demandes d'autorisation d'appel déposées
Applications for leave submitted to Court since last issue	1232-1244	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	-	Jugements rendus sur les demandes d'autorisation
Judgment on motion	-	Jugement sur requête
Motions	1245-1252	Requêtes
Notice of reference	-	Avis de renvoi
Notices of appeal filed since last issue	1253	Avis d'appel déposés depuis la dernière parution
Notices of intervention filed since last issue	1254	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	-	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	-	Jugements rendus sur les appels en délibéré
Rehearing	-	Nouvelle audition
Headnotes of recent judgments	-	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	1255	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**

James Henderson

James Henderson

v. (30150)

Allstate Insurance Company of Canada (Ont.)

Ian Kirby

Gilbert, Wright and Kirby

FILING DATE: 29.7.2004

Kurton Edwards, et al.

Timothy E. Breen

Fleming, Breen

v. (30441)

Her Majesty the Queen (Ont.)

Carol A.R. Brewer

Attorney General of Ontario

FILING DATE: 28.7.2004

Robert Nadir

Michael Davies

v. (30442)

Her Majesty the Queen (Ont.)

Crown Law Office Criminal

FILING DATE: 29.7.2004

Greenpeace Canada, et al.

A. Cameron Ward

A. Cameron Ward & Company

v. (30443)

Clint Verchere, et al. (B.C.)

J. Miriam Gropper, Q.C.

Black, Gropper & Company

FILING DATE: 30.7.2004

Dynatec Corporation, et al.

Norman A. Keith

Gowling Lafleur Henderson LLP

v. (30444)

Her Majesty the Queen (Ont.)

Victoria A. Kondo

Attorney General of Ontario

FILING DATE: 03.8.2004

AUGUST 3, 2004 / LE 3 AOÛT 2004

CORAM: Major, Binnie and Fish JJ.
Les juges Major, Binnie et Fish

Matthew Benjamin Barsoum a.k.a. Michael Paul Barsoum

v. (30358)

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

NATURE OF THE CASE

Criminal Law - Procedural Law - Appeal - Barristers and Solicitors - To what extent must actual conflict be demonstrated when a conflict of interest is asserted for the first time on appeal, and when the alleged conflict relates to a lawyer prosecuting his or her former client?

PROCEDURAL HISTORY

September 21, 2001 Ontario Superior Court of Justice (Kent J.)	Applicant convicted by judge and jury of fraud and theft
November 20, 2001 Ontario Superior Court of Justice (Kent J.)	Applicant sentenced to 15 months of imprisonment
March 17, 2004 Court of Appeal for Ontario (Laskin, Rosenberg JJ.A and Aitken J. [<i>ad hoc</i>])	Appeals against conviction and sentence dismissed
May 19, 2004 Supreme Court of Canada	Application for leave to appeal filed

Shane Tyrone Ferras

v. (30211)

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

NATURE OF THE CASE

Canadian Charter - Criminal - Criminal Law - Extradition - Whether ss. 32(1)(a) and 33 of the *Extradition Act*, S.C. 1999, c. 18, constituted reasonable limits on the right under s. 6 of the *Charter* of a Canadian citizen to remain in Canada - Whether ss. 32(1)(a) and 33 of the *Extradition Act* violate s. 7 of the *Charter* by permitting extradition of a Canadian citizen on the basis of otherwise inadmissible evidence while precluding any assessment of the reliability of the evidence.

PROCEDURAL HISTORY

August 15, 2002 Ontario Superior Court of Justice (Reilly J.)	Applicant's challenge of the constitutionality of ss. 32(1)(a) and 33(1) of the <i>Extradition Act</i> dismissed; Applicant committed for extradition
---	---

March 16, 2004
Court of Appeal for Ontario
(Feldman, Sharpe JJ.A. and McCombs [*ad hoc*] J.)

Appeal dismissed

May 31, 2004
Supreme Court of Canada

Application for leave to appeal filed

Leroy Latty and Lynval Wright

v. (30295)

The United States of America and The Minister of Justice and the Attorney General of Canada (Crim.) (Ont.)

NATURE OF THE CASE

Canadian Charter - Criminal - Criminal Law - Extradition - Whether ss. 32 and 33 of the *Extradition Act*, S.C. 1999, c. 18 violate s. 7 of the *Charter* - Whether Minister of Justice properly exercised his discretion in ordering surrender to United States of America.

PROCEDURAL HISTORY

October 4, 2002
Ontario Superior Court of Justice
(Sachs J.)

Applicants' application for a declaration that ss. 32 and 33 of the *Extradition Act* violate the *Charter* dismissed; Respondents' application for an order of committal for extradition granted

March 16, 2004
Court of Appeal for Ontario
(Feldman, Sharpe and McCombs JJ.A.)

Appeal from order of committal dismissed; Application for judicial review of Minister's order surrendering applicants dismissed

April 16, 2004
Supreme Court of Canada

Application for leave to appeal filed

Jeffrey David Booth, Daniel Roderick Booth

v. (30325)

British Columbia Life and Casualty Company (B.C.)

NATURE OF THE CASE

Commercial law - Insurance - Policy of insurance - Accidental death and dismemberment policy - Exclusion clause - Interpretation - Whether Court of Appeal erred in its interpretation of "self-inflicted injury" contained in an exclusion clause.

PROCEDURAL HISTORY

April 30, 2003
Supreme Court of British Columbia
(Williamson J.)

Applicants' claim for payment in the amount of \$140,059.46 under an insurance policy granted; death ruled accidental

March 9, 2004
Court of Appeal for British Columbia
(Finch C.J.B.C., Hall and Smith JJ.A.)

Appeal allowed; Applicants' claim dismissed

May 7, 2004
Supreme Court of Canada

Application for leave to appeal filed

Esam Iskandar and Pinnacle Developments Limited

v. (30303)

United Gulf Developments Limited and Navid Saberi (N.S.)

NATURE OF THE CASE

Property Law - Real property - Specific performance - Whether there are conflicting lower court decisions regarding the test for specific performance in land actions - Whether the burden of proof for summary judgment in a specific performance context is unsettled - Whether a plea of specific performance may lead to a *de facto* injunction, tying up commercially valuable lands indefinitely

PROCEDURAL HISTORY

August 11, 2003
Supreme Court of Nova Scotia, Trial Division
(Moir J.)

Summary judgment granted disallowing the Respondents' claim for specific performance

August 12, 2003
Nova Scotia Court of Appeal
(Saunders J.A.)

Respondents' application for a stay of execution, dismissed

February 26, 2004
Nova Scotia Court of Appeal
(Glube C.J.N.S., Roscoe and Cromwell, JJ.A.)

Appeal allowed; order disallowing and dismissing claim for specific performance is set aside

April 26, 2004
Supreme Court of Canada

Application for leave to appeal filed

City of Toronto

v. (30270)

Zari K. Banihashem-Bakhtiari, Pedrum Sodouri and Pejman Sodouri, Axes Investments Inc., Alfredo De Gasperis, Tandem Group International Inc., Tandem Group Management Inc., Tandem International Inc., Tandem International Investment Co., Tandem Investments Ltd., Paul Reid, Van Forbell, Merv Doctorow, John Broderick, Robert Macht, John Naughton and Intertec Security & Investigation Limited (Ont.)

NATURE OF THE CASE

Procedural law - Civil procedure - Standard of review - Re-apportionment of liability by Court of Appeal - Costs - Counsel agreed to a contingency fee - Counsel incurred carrying costs - A premium was awarded over the award of costs to compensate for the carrying costs - Did this Court's decision in *Housen v. Nikolaisen* supercede its decisions in *Ingles*

v. Tutkalus Construction and in Sparks v. Thompson - If not, what is the appropriate test for appellate review of the apportionment of liability among tortfeasors - Can an appellate court advert to a test for appellate review and then effectively retry apportionment of liability - Can premium be included in an order for party and party costs?

PROCEDURAL HISTORY

July 23, 2003 Ontario Superior Court of Justice (Lane J.)	Respondents Zari K. Banihashem-Bakhtiari and Pedrum Sodouri's action for negligence, granted; damages of \$3,232,009.20 awarded
February 6, 2004 Court of Appeal for Ontario (Weiler, Moldaver and Armstrong JJ.A.)	Appeal allowed in part; liability re-apportioned
April 6, 2004 Supreme Court of Canada	Application for leave to appeal filed

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

Eli Stewart Nicholas

v. (30337)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal Law - Right to Counsel - Detention - Exclusion of Evidence - Discoverability - *R. v. Stillman* - Whether the Court of Appeal erred in law in concluding that the Applicant was not detained and therefore not entitled to be advised of his right to counsel - Whether the Court of Appeal erred in law in concluding that the Crown had discharged its burden under s. 24(2) to establish that the evidence obtained as a result of a *Charter* violation would otherwise have been discoverable.

PROCEDURAL HISTORY

March 23, 2001 Ontario Superior Court of Justice (Jarvis J.)	Applicant convicted of sexual assault, breaking and entering and possession of firearm and sentenced to 2 years imprisonment less a day followed by 3 years of probation along with a lifetime weapons ban
February 27, 2004 Court of Appeal for Ontario (Abella, Feldman and Armstrong JJ.A.)	Appeal against conviction dismissed; Respondent's appeal against acquittals allowed: acquittals set aside and new trial directed
May 14, 2004 Supreme Court of Canada	Application for leave to appeal filed

Régie de l'assurance maladie du Québec

c. (30355)

Philippe Robaey (Qc)

NATURE DE LA CAUSE

Droit administratif - Compétence - Requête en irrecevabilité - *Loi sur l'assurance-maladie*, L.R.Q. chap. A-29 - Qui de la Cour supérieure ou du Conseil d'arbitrage, institué en vertu de l'art. 54 de la *Loi sur l'assurance-maladie*, a compétence pour entendre le litige opposant les parties? - Si la Cour confirme la compétence du Conseil d'arbitrage, est-ce que l'arbitre peut, pour fin de rémunération, interpréter les dispositions pertinentes de la *Loi sur l'assurance-maladie* et de la *Loi médicale*, L.R.Q. c. M-9, pour appliquer l'art. 3.2 de la règle 3 du préambule général et les articles 1.2 et 1.3 de l'annexe 38 de l'entente intervenue entre le ministre de la Santé et des Services sociaux et la Fédération des médecins spécialistes du Québec, considérant le permis restrictif de l'intimé? - Si la Cour confirme la compétence de la Cour supérieure, est-ce que la Cour a compétence, pour appliquer aux fins de rémunération d'un professionnel de la santé, l'entente intervenue entre le ministre de la Santé et des Services sociaux et la Fédération des médecins spécialistes du Québec?

HISTORIQUE DES PROCÉDURES

Le 15 octobre 2003
Cour supérieure du Québec
(La juge Picard)

Requête de la demanderesse en irrecevabilité pour absence de compétence d'attribution de la Cour supérieure, rejetée

Le 30 mars 2004
Cour d'appel du Québec
(Les juges Rothman, Morin et, Beauregard [*dissident*])

Appel rejeté

Le 26 mai 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

XTRA CANADA, a Division of Extra, Inc.

v. (30390)

KPMG in its capacity as Interim Receiver and Trustee of the Estate of the TCT Group of Companies, bankrupts, GMAC Commercial Credit Corporation (Ont.)

NATURE OF THE CASE

Commercial Law - Statutes - Property Law - Bankruptcy - Security interest - Receivership - Creditor and debtor - Conflict of laws - Interpretation - Personal property - *Personal Property Security Act*, R.S.O. 1990, c. P.10 - Whether the provisions found in s. 7(1) of the *Personal Property Security Act* apply in circumstances where the instrument in question is not a financing lease? - Whether there must be a security interest under Ontario law before the choice of law provisions apply?

PROCEDURAL HISTORY

August 13, 2002
Ontario Superior Court of Justice
(Ground J.)

Respondent GMAC's motion brought in the receivership and subsequent bankruptcy of TCT Logistics Inc. and its affiliated companies, granted; the choice of law provisions in s. 7 of the *Personal Property Security Act* deemed inapplicable

April 2, 2004
Court of Appeal for Ontario
(Abella, Blair JJ.A. and Benotto J. [*ad hoc*])

Appeal dismissed

June 1, 2004
Supreme Court of Canada

Application for leave to appeal filed

Turret Realities Inc.

v. (30321)

Kirk Bartosek, by his Litigation Guardian, Janet Williams, Janet Williams, Anne Busk, also known as Anne McFadden, and Paul Busk (Ont.)

NATURE OF THE CASE

Torts - Insurance - Negligence - Damages - Motor vehicles - In what circumstances should a Trial Judge recuse himself or herself one learning of the terms of the Mary Carter agreement and the insurance limits of the three Respondents? - What is the extent of a Trial Judge's discretion to exercise its *parens patriae* power to allow a Defendant to provide a structured settlement proposal for future care costs, when the Trial Judge concludes that it is in the best interest of the Plaintiff to receive a structured annuity? - Should the Trial Judge have awarded a lump sum for future care costs and an amount for tax gross-up if it results in an over-payment and if no taxes are likely to be paid because of the result of divided liability, when the Trial Judge concluded that a structured settlement would be in the best interests of the Plaintiff and when the Trial Judge had the ability to exercise his *parens patriae* jurisdiction pursuant to s. 116(1) of the *Court of Justice Act*, R.S.O. c. C.43 to award periodic payments and a structured settlement for future care costs? - What is the law in relation to an award for a management fee, where the income earned on a substantial award will be sufficient enough such that the award will not be encroached upon?

PROCEDURAL HISTORY

April 19, 2002
Ontario Superior Court of Justice
(Kent J.)

Respondent Bartosek's action for negligence under s. 3 of the *Occupiers' Liability Act*, granted against Applicant; Bartosek found 50% contributorily negligent. Bartosek awarded \$275,598 in non-pecuniary damages and \$750,000 for future income loss

March 17, 2004
Court of Appeal for Ontario
(Weiler, Sharpe and Blair JJ.A.)

Appeal dismissed

May 11, 2004
Supreme Court of Canada

Application for leave to appeal filed

Monique Boulet

c. (30304)

Centre hospitalier Pierre Le Gardeur et Marie-Josée Marceau (Qc)

NATURE DE LA CAUSE

Législation – Interprétation – Aptitude à consentir aux soins requis par l'état de santé d'un majeur – Refus – Les tribunaux inférieurs ont-ils erré en jugeant que la demanderesse n'était pas apte à donner son consentement à l'égard des soins d'hébergement requis par son état de santé?

HISTORIQUE DES PROCÉDURES

Le 6 novembre 2003

Cour supérieure du Québec
(Le juge Trudel)

Requête des intimés accueillie; demanderesse déclarée inapte à consentir aux soins requis par son état de santé; intimés autorisés à décider d'un lieu d'hébergement et à administrer certains médicaments pendant une période de trois ans

Le 14 novembre 2003

Cour d'appel du Québec
(Les juges Chamberland, Pelletier et Hilton)

Appel accueilli en partie; conditions concernant la thérapie médicamenteuse et physique soustraites

Le 26 avril 2004

Cour suprême du Canada

Demande d'autorisation d'appel déposée

AUGUST 9, 2004 / LE 9 AOÛT 2004

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

Allen Brian Fehr

v. (30192)

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

NATURE OF THE CASE

Criminal Law (Non Charter) - Evidence - Successive wiretaps - Standing - Four successive authorizations granted to intercept private communications as part of a narcotics investigation - Applicant a named target in last two authorizations - Applicant denied disclosure of materials supporting first two authorizations - Evidence gathered under last two authorizations admitted at trial - Whether Court of Appeal erred in failing to decide issue of the applicant's standing to seek disclosure - Whether disclosure issue was discretionary or one of constitutional entitlement - Whether test for disclosure is a materiality test or one of clear irrelevance - Whether Court of Appeal mis-characterized the importance of the disclosure sought?

PROCEDURAL HISTORY

February 9, 2000
Supreme Court of British Columbia
(Collver J.)

Applicant's application for disclosure of information given in support of applications for authorizations to intercept private communications dismissed

May 2, 2000 Supreme Court of British Columbia (Collver J.)	Authorizations to intercept private communications held lawful and evidence derived from wiretaps held admissible
November 10, 2000 Supreme Court of British Columbia (Collver J.)	Applicant found guilty of conspiracy to traffic cocaine and marihuana and of possession for the purpose of trafficking of cocaine, marihuana, methamphetamine, psilocybin and hashish
January 3, 2001 Supreme Court of British Columbia (Collver J.)	Applicant sentenced to eight years imprisonment
February 9, 2004 Court of Appeal for British Columbia (Donald, Saunders and Lowry JJ.A.)	Appeal from conviction dismissed
April 13, 2004 Supreme Court of Canada	Application for leave to appeal filed

Eugenio Pugliese

v. (30200)

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

NATURE OF THE CASE

Canadian Charter - Criminal Law - Right to trial within a reasonable time - Criminal Law (Non Charter) - Evidence - Successive wiretaps - Whether Court of Appeal erred in application of test to determine investigative necessity for authorization to intercept private communications - Whether Court of Appeal erred in characterizing disclosure issue as one vesting a discretion on the trial judge and involving the task of keeping the case within legal limits - Whether Court of Appeal misapplied standard for disclosure - Whether an accused's right to be tried within a reasonable period of time extends only to the commencement of trial and not to the conclusion of trial.

PROCEDURAL HISTORY

February 9, 2000 Supreme Court of British Columbia (Collver J.)	Applicant's application for disclosure of information given in support of applications for authorizations to intercept private communications dismissed
May 2, 2000 Supreme Court of British Columbia (Collver J.)	Authorizations to intercept private communications held lawful and evidence derived from wiretaps held admissible
May 2, 2000 Supreme Court of British Columbia (Collver J.)	Applicant's application to stay proceedings against him for breach of right to be tried in a reasonable time under s. 8 of the <i>Charter</i> dismissed
November 10, 2000 Supreme Court of British Columbia (Collver J.)	Applicant found guilty of conspiracy to traffic cocaine and possession for the purpose of trafficking of cocaine

February 9, 2004
Court of Appeal for British Columbia
(Donald, Saunders and Lowry JJ.A.)

Appeal from conviction dismissed

April 13, 2004
Supreme Court of Canada

Application for leave to appeal filed

Deborah Louise Point

v. (30367)

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

NATURE OF THE CASE

Criminal Law - Murder - Manslaughter - Intoxication - *Mens Rea* - Whether the burden on the accused to adduce sufficient evidence to raise a defence such as intoxication to refute intent might displace the onus on the Crown to prove intent for murder.

PROCEDURAL HISTORY

November 17, 2000
Court of Queen's Bench of Alberta
(Bensler J.)

Applicant convicted of second degree murder contrary to s. 235(1) of the *Criminal Code*

March 7, 2003
Court of Appeal of Alberta
(Fraser C.J.A., Picard and Paperny JJ.A.)

Appeal dismissed

June 3, 2004
Supreme Court of Canada

Application for extension of time and leave to appeal filed

Dwane Park

v. (30273)

Zealandia B.P.O. Elks Inc., Duane Kidd, Kirk Kidd, Jordan Brown, Don Sparks, Grant Demers, Frank Belanger, Steve Hanley and Don Hanley (Sask.)

NATURE OF THE CASE

Torts - Negligence - Liability of host - Whether the liability of hosts of a recreational or sporting activity is an exception to the general rules of negligence, and as such, are they entitled to special status - Under what circumstances is a plaintiff a rescuer of property and owed a duty of care by a defendant?

PROCEDURAL HISTORY

June 18, 2001
Court of Queen's Bench of Saskatchewan
(Baynton J.)

Applicant's action in damages for negligence dismissed

February 9, 2004
Court of Appeal for Saskatchewan
(Vancise, Gerwing and Lane JJ.A.)

Applicant's appeal dismissed

April 7, 2004
Supreme Court of Canada

Application for leave to appeal filed

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

Carlo Montemurro

v. (30341)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Unreasonable search and seizure - Exclusion of evidence - Interception of private communications - Wiretap Authorization - Whether the Court of Appeal erred in overturning the trial judge's conclusion that there was an absence of reasonable and probable grounds to support the granting of the authorization to intercept private communications - Whether the Court of Appeal erred in overturning the trial judge's conclusion that the high standard of investigative necessity had not been satisfied - Whether the Court of Appeal erred in concluding that, if the Applicant's rights under section 8 of the *Charter* had been breached, the evidence was nonetheless admissible - *Criminal Code*, R.S.C. 1985, c. C-46, s. 186

PROCEDURAL HISTORY

January 27, 2003
Ontario Superior Court of Justice
(Borkovich J.)

Applicant's application to exclude evidence pursuant to ss. 8 and 24(2) of the *Charter*, allowed

January 31, 2003
Ontario Superior Court of Justice
(Borkovich J.)

Applicant acquitted of unlawfully possessing a Schedule II controlled substance contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, and of conspiring to unlawfully traffic, import, and produce, a Schedule II controlled substance, contrary to s. 465(1)(c) of the *Criminal Code*

March 18, 2004
Court of Appeal for Ontario
(Laskin and Feldman JJ.A. and Benotto J. [*ad hoc*])

Appeal allowed; acquittals set aside and new trial ordered

May 19, 2004
Supreme Court of Canada

Application for leave to appeal filed

June 16, 2004
Supreme Court of Canada
(LeBel J.)

Motion to extend time to file and/or serve application for leave to appeal granted

Phillip Ofume and Maureen Ofume

v. (30289)

CIBC Mortgage Corporation, a body corporate (N.S.)

NATURE OF THE CASE

Procedural Law - Civil procedure - Appeal - Extension of time - Whether Court of Appeal erred in dismissing motion for extension of time to file appeal.

PROCEDURAL HISTORY

August 12, 2003 Supreme Court of Nova Scotia (Goodfellow J.)	Respondent's application for leave to amend the statement of claim in foreclosure action, granted
October 23, 2003 Nova Scotia Court of Appeal (Bateman J.A.)	Applicants' application for extension of time, dismissed; appeal dismissed
April 26, 2004 Supreme Court of Canada	Motion to extend time and Application for leave to appeal filed

Phillip Ofume and Maureen Ofume

v. (30300)

CIBC Mortgage Corporation, a body corporate (N.S.)

NATURE OF THE CASE

Procedural Law - Civil procedure - Summary judgment - Whether the Court of Appeal erred in dismissing appeal.

PROCEDURAL HISTORY

October 23, 2003 Supreme Court of Nova Scotia (MacDonald A.C.J.)	Respondent's application for summary judgment, granted; Applicants ordered to pay the sum of \$135,506.72 with interest
February 20, 2004 Nova Scotia Court of Appeal (Roscoe, Bateman and Fichaud JJ.A.)	Appeal dismissed
April 26, 2004 Supreme Court of Canada	Motion to extend time and Application for leave to appeal filed

Ernst & Young, Nicolas Beaudin, Alain Roberge, Richard Epstein, Daniel Garant, Jean-Pierre Huard and Patrice Beaudin

v. 30237

Fraser Milner Casgrain, s.e.n.c. and Fraser Milner Casgrain, LLP (Que.)

NATURE OF THE CASE

Procedural law – Pre-trial procedure – Examination on discovery – Implied undertaking – Whether the Superior Court erred in determining that the respondents did not breach their implied undertaking of confidentiality – Whether the Court of Appeal erred in determining that the judgment appealed from did not fulfil the criteria set out by art. 29 and 511 C.C.P.

PROCEDURAL HISTORY

January 5, 2004 Superior Court of Quebec (Downs J.S.C.)	Applicants' motion to dismiss respondents' action on the basis of a breach of the implied undertaking rule dismissed
February 16, 2004 Court of Appeal of Quebec (Chamberland J.C.A.)	Applicants' application for leave to appeal dismissed
March 22, 2004 Supreme Court of Canada	Application for leave to appeal filed
June 11, 2004 Supreme Court of Canada	Motion to stay proceedings filed

Franco Maistri

c. (30361)

Jean-Marc Trottier et Corporation professionnelle des notaires du Québec (Qc)

NATURE DE LA CAUSE

Procédure - Requête introductive d'instance - Prescription - Impossibilité d'agir - Articles 2904 et 2925 du *Code civil du Québec* - Article 75.1 du *Code de procédure civile* - La Cour d'appel du Québec a-t-elle erré en droit dans son interprétation des dispositions de l'article 2904 du *Code civil du Québec* en matière d'impossibilité d'agir? - Est-ce que le demandeur était, en l'espèce, effectivement dans l'impossibilité d'agir? - La Cour d'appel du Québec a-t-elle erré en droit dans son interprétation des dispositions de l'article 75.1 du *Code de procédure civile*?

HISTORIQUE DES PROCÉDURES

Le 26 novembre 2003 Cour supérieure du Québec (Le juge Crêteau)	Requête des intimés en rejet, accueillie; action du demandeur en responsabilité professionnelle, rejetée
Le 6 mai 2004 Cour d'appel du Québec (Les juges Proulx, Lemelin [<i>ad hoc</i>], et Chamberland [<i>dissident</i>])	Appel rejeté

Le 31 mai 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

27.7.2004

Before / Devant : THE REGISTRAR

Motion for exemption from the Rules

Requête pour être exempté des règles

Le ministre de la Citoyenneté et de l'Immigration

c. (30025)

Léon Mugesera, et autres (CF)

GRANTED WITHOUT COSTS / ACCORDÉE SANS DÉPENS

Vu la requête de l'appelant, le ministre de la Citoyenneté et de l'Immigration, en vertu du par. 8(1) des *Règles de la Cour suprême du Canada*, pour qu'elle accepte, tel quel, le mémoire de l'appelant, déposé au greffe, le 14 juin 2004;

Vu les observations écrites déposées par les parties;

La requête est accueillie, sans frais.

27.7.2004

Before / Devant : THE REGISTRAR

Motion for exemption from the Rules

Requête pour être exempté des règles

Le ministre de la Citoyenneté et de l'Immigration

c. (30025)

Léon Mugesera, et autres (CF)

GRANTED IN PART / ACCORDÉE EN PARTIE

À LA SUITE DE LA DEMANDE des intimés visant à obtenir une dispense d'observation des règles en vertu du paragraphe 8(1) des *Règles de la Cour suprême du Canada*;

ET APRÈS AVOIR LU la documentation déposée;

L'ORDONNANCE SUIVANTE EST RENDUE:

1. La requête est accueillie en partie;
 2. Les intimés pourront utiliser la police Times New Roman 12 points, utiliser le simple interlignage dans l'élaboration d'un sommaire ou compte rendu de conclusions des instances inférieures ou dans toute autre énumération, et utiliser, dans la citation de sources, un retrait de 0,2 cm par la droite seulement;
 3. La demande pour être exempté des frais de production de la présente requête est refusée.
-

27.7.2004

Before / Devant : THE REGISTRAR

Motion pursuant to Rule 32(2) to file additional material

Requête pour déposer des documents supplémentaires conformément au règle 32(2)

Kingsley M. Lughas

v. (30274)

The Manitoba Public Insurance Corporation (Man.)

GRANTED / ACCORDÉE

27.7.2004

Before / Devant : BASTARACHE J.

Motion for a stay of proceedings

Requête en suspension des procédures

Ernst Zundel

v. (30360)

Minister of Citizenship and Immigration, et al. (FC)

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

UPON APPLICATION by the applicant for a stay of proceedings and for an order consolidating this application for leave with the application for leave from the Court of Appeal of Ontario in file number 30427;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The application is dismissed with costs. There is no valid reason in this case for departing from the practice of this Court to require that a motion for stay be filed in the Court of Appeal appealed from (*Esmail v. Petro-Canada*, [1997] 2 S.C.R. 3).

The motion for consolidating the appeal from a decision of the Federal Court with the appeal of a decision of the Ontario Court of Appeal is denied. The choice made by the applicant to institute parallel proceedings should not be reversed at this point by way of recourse to rule 47 of the *Rules of the Supreme Court of Canada*.

28.7.2004

Before / Devant : BASTARACHE 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

David John Sharpe

v. (30406)

Yvette Jacqueline Kirk (formerly Yvette Jacqueline Sharpe) (Man.)

GRANTED / ACCORDÉE

UPON APPLICATION by the applicant for an order extending the time to serve and file an application for leave to appeal to June 22, 2004;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The application for an order extending the time to serve and file an application for leave to appeal to June 22, 2004, is granted.

The respondent has 30 days from this order to serve and file her response to the application for leave to appeal.

4.8.2004

Before / Devant : THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'intimée

Daryl Milland Clark

v. (29976)

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

GRANTED / ACCORDÉE Time extended to September 17, 2004.

04.8.2004

Before / Devant : LEBEL J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY / PAR : Attorney General of Ontario

IN / DANS : Daryl Milland Clark

v. (29976)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the Attorney General of Ontario for leave to intervene in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

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

The request to present oral argument is deferred to a date following receipt and consideration of the written arguments of the parties and the intervener.

The intervener shall not be entitled to raise new issues or adduce further evidence or otherwise to supplement the record of the parties.

Pursuant to Rule 59(1)(a) the intervener shall pay to the appellant and respondent any additional disbursements occasioned to the appellant and respondent by the intervention.

4.8.2004

Before / Devant : THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de sources de l'intervenant le Procureur général du Québec

Provincial Court Judges' Association of New Brunswick, et al.

v. (30006)

Her Majesty the Queen in Right of the Province of New Brunswick as represented by the Minister of Justice (N.B.)

GRANTED / ACCORDÉE Délai prorogé au 30 septembre 2004. La requête relative à la plaidoirie orale est prématurée.

8.7.2004 (REVISED / RÉVISÉ 5.8.2004)

Before / Devant : DESCHAMPS J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY / PAR : Attorney General of Canada

IN / DANS: E.B.

v. (29890)

Order of the Oblates of Mary
Immaculate in the Province of British
Columbia (B.C.)

GRANTED / ACCORDÉE

UPON APPLICATION by the Attorney General of Canada for leave to intervene in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

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

The request to present oral argument is deferred to a date following receipt and consideration of the written arguments of the parties and the intervener.

The intervener shall not be entitled to raise new issues or to adduce further evidence or otherwise to supplement the record of the parties.

Pursuant to Rule 59(1)(a) the intervener shall pay to the appellant and respondent any additional disbursements occasioned to the appellant and respondent by their intervention.

5.8.2004

Before / Devant : DESCHAMPS J.

Motion for extension of time and leave to intervene

Requête visant à obtenir une prorogation de délai et l'autorisation d'intervenir

BY / PAR : Attorney General of British Columbia

IN / DANS: E.B.

v. (29890)

Order of the Oblates of Mary
Immaculate in the Province of British
Columbia (B.C.)

GRANTED / ACCORDÉE

UPON APPLICATION by the Attorney General of British Columbia for an extension of time to apply for leave to intervene and for leave to intervene in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion for an extension of time to apply for leave to intervene and for leave to intervene of the applicant, the Attorney General of British Columbia, is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

The request to present oral argument is deferred to a date following receipt and consideration of the written arguments of the parties and the intervener.

The intervener shall not be entitled to raise new issues or to adduce further evidence or otherwise to supplement the record of the parties.

Pursuant to Rule 59(1)(a) the intervener shall pay to the appellant and respondent any additional disbursements occasioned to the appellant and respondent by the intervention.

5.8.2004

Before / Devant : THE CHIEF JUSTICE

Motion to state a constitutional question and to extend the time in which to serve and file the motion to state a constitutional question

Requête pour formulation d'une question constitutionnelle et pour prorogation du délai pour signifier et déposer une question constitutionnelle

The Ontario Judges' Association, et al.

v. (30148)

Her Majesty the Queen in Right of the Province of Ontario, as Represented by the Chair of Management Board (Ont.)

GRANTED IN PART / ACCORDÉE EN PARTIE

UPON APPLICATION by the appellants for an order extending the time to serve and file the motion to state constitutional questions and for an order stating constitutional questions in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The application for an extension of time is granted and the motion to state constitutional questions is dismissed.

5.8.2004

Before / Devant : THE REGISTRAR

Motion to extend the time in which to serve and file the respondents' record and factum and motion for exemption from filing fees

Requête en prorogation du délai imparti pour signifier et déposer les dossier et mémoire des intimés et requête pour obtenir une exemption des frais de production de la requête

Le ministre de la Citoyenneté et de l'Immigration

c. (30025)

Léon Mugesera, et autres (CF)

À LA SUITE DE LA DEMANDE des intimés visant à obtenir une prorogation de délai de 60 jours pour le dépôt de leur mémoire et de leur dossier d'appel et visant à obtenir une exemption des frais de production de la requête;

ET APRÈS AVOIR LU la documentation déposée;

L'ORDONNANCE SUIVANTE EST RENDUE:

1. La requête est accueillie en partie;
2. Le délai du dépôt du mémoire et du dossier d'appel des intimés est prorogé au 16 août 2004;

3. La demande pour être exempté des frais de production de la présente requête est refusée.
-

6.8.2004

Before / Devant : THE REGISTRAR

**Motion to extend the time in which to serve and file
the respondents' responses**

**Requête en prorogation du délai imparti pour
signifier et déposer les réponses des intimés**

Her Majesty the Queen

v. (30364)

James Sauv , et al. (Ont.) (Crim.)

GRANTED / ACCORD E Time extended to October 15, 2004.

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

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

10.8.2004

Jody James Gunning

v. (30161)

Her Majesty the Queen (B.C.)

10.8.2004

Ronaldo Lising

v. (30240)

Her Majesty the Queen (B.C.)

**NOTICES OF INTERVENTION FILED
SINCE LAST ISSUE**

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

29.7.2004

BY/PAR: Attorney General for Saskatchewan
Attorney General of Newfoundland and Labrador

IN/DANS: **Her Majesty the**

v. (30005)

Joshua Bernard (N.B.)

28.7.2004

BY/PAR: Attorney General for Saskatchewan
Attorney General of Newfoundland and Labrador

IN/DANS: **Her Majesty the Queen**

v. (30063)

Stephen Frederick Marshal, et al. (N.S.)

DEADLINES: APPEALS

The Fall Session of the Supreme Court of Canada will start 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 commencera 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.

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2004 -

10/06/04

OCTOBER - OCTOBRE						
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 31	25	26	27	28	29	30

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

- 2005 -

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

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

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

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

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

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

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

18
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