

**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	993-995	Demandes d'autorisation d'appel déposées
Applications for leave submitted to Court since last issue	996-1001	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	1002-1008	Requêtes
Notice of reference	-	Avis de renvoi
Notices of appeal filed since last issue	1009	Avis d'appel déposés depuis la dernière parution
Notices of intervention filed since last issue	-	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	1010-1013	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	1014	Délais: Appels
Judgments reported in S.C.R.	-	Jugements publiés au R.C.S.

**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Viet Hoan Nguyen

Simon Renouf, Q.C.
Simon Renouf Professional Corporation

v. (30373)

Her Majesty the Queen (Alta.)

David C. Marriott
Attorney General of Alberta

FILING DATE: 28.5.2004

Ernst Zundel

Peter Lindsay

v. (30360)

**Minister of Citizenship and Immigration, et al.
(F.C.)**

Donald A. MacIntosh
Attorney General of Canada

FILING DATE: 28.5.2004

Marie-Claude Boucher

Marie-Claude Boucher

c. (30370)

Her Majesty the Queen (F.C.)

Lisa McDonnell
Attorney General of Canada

DATE DE PRODUCTION : 3.6.2004

Ryan Eichmanis, by his Litigation Guardian, et al.

Kristopher H. Knutsen, Q.C.
Carrell & Partners

v. (30372)

**Ryan Prystay, by his Litigation Guardian, et al.
(Ont.)**

Douglas C. Shaw
Atwood, Shaw, Labine

FILING DATE: 3.6.2004

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

Deborah Louise Point

Alias Sanders

v. (30367)

Her Majesty the Queen (Alta.)

Joshua B. Hawkes
Attorney General of Alberta

FILING DATE: 3.6.2004

Canadian Pacific Railway Company

Peter Kenward
McCarthy, Tétrault

v. (30374)

The City of Vancouver (B.C.)

George K. MacIntosh, Q.C.
Farris, Vaughan, Wills & Murphy

FILING DATE: 7.6.2004

Daniel I. Carroll

Gerald D. Chipeur
Chipeur Advocates

v. (30379)

Jean Marie Hildinger (Ont.)

Ian C. Vallance
Kimmel, Victor, Ages

FILING DATE: 7.6.2004

Eric Young, et al.

Eric Young

v. (30377)

The Saanich Police Department, et al. (B.C.)

Anthoni R. Borzoni
Jones, Emery, Hargreaves, Swan

FILING DATE: 9.6.2004

Arlene Rak, also known as Orlean Rak
Orest Rak

v. (30356)

Royal Bank of Canada (Sask.)
Rani L. Grewall
Hunter, Miller

FILING DATE: 11.05.2004

**Communauté Oir Hachaim as successor of Collège
Rabbinique de Montréal Oir Hachaim D'Tash**
Denis A. Lapierre
Sweibel, Novek

v. (30388)

**The Minister of the Canadian Customs and
Revenue Agency (F.C.)**
Roger LeClaire
Attorney General of Canada

FILING DATE: 10.5.2004

Sa Majesté la Reine
Yvan Poulin
Procureur général du Canada

c. (30384)

Jean-Paul Larche (Qc)
Thomas P. Walsh
Procureur général du Québec

- et entre -

Sa Majesté la Reine
Yvan Poulin
Procureur général du Canada

c. (30384)

**L'Honorable Robert Sanfaçon, ès qualités de juge
de la Cour du Québec, et autre (Qc)**
Katia Léontieff

DATE DE PRODUCTION : 28.5.2004

Xtra Canada, a Division of Extra, Inc.
Malcolm N. Ruby
Gowling, Lafleur, Henderson

v. (30390)

**KPMG in its capacity as Interim Receiver and
Trustee of the Estate of the TCT Group of
Companies, bankrupts, et al. (Ont.)**
Nando De Luca
Goodmans

FILING DATE: 1.6.2004

Steven Carson
Michael J. Neville
Neville & Selkirk

v. (30378)

Her Majesty the Queen (Ont.)
Roger A. Pinnock
Attorney General of Ontario

FILING DATE: 10.6.2004

Sous-Ministre du Revenu du Québec
Jean Lepage
Veillette, Larivière

c. (30382)

Richard Moufarrège (Qc)
Nicolas Cloutier
Davies, Ward, Phillips & Vineberg

DATE DE PRODUCTION : 10.6.2004

David Sternthal, et al.
Leon J. Greenberg
Sternthal, Katznelson, Montigny

v. (30387)

Boreal Insurance Inc. (Que.)
Jean-Charles René
Ogilvy, Renault

FILING DATE: 11.6.2004

Ville de Lévis

Martin Bouffard
Pothier, Delisle

c. (30380)

Louis Tétreault (Qc)

Louis Tétreault

DATE DE PRODUCTION : 11.6.2004

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

**DEMANDES SOUMISES À LA COUR
DEPUIS LA DERNIÈRE PARUTION**

JUNE 14, 2004 / LE 14 JUIN 2004

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

Christopher J. Harrington

v. (30268)

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

NATURE OF THE CASE

Criminal law (non-*Charter*) - Preliminary inquiry - Natural justice - Accused being committed on charge of attempted murder - In *certiorari*, preliminary inquiry judge held to have denied accused natural justice - Whether the Court of Appeal erred in holding that the denial of natural justice was a “procedural irregularity” and hence amenable to the curative proviso in s. 686(1)(b)(iv) of the *Criminal Code* - Whether the Court of Appeal erred in exercising its discretion to dismiss the appeal where justice was not seen to be done.

PROCEDURAL HISTORY

April 17, 2003 Ontario Superior Court of Justice (Earle-Renton J.)	Committal of the Applicant for trial on five charges ordered
August 11, 2003 Ontario Superior Court of Justice (Stong J.)	Applicant’s application for <i>certiorari</i> to set aside the committal order dismissed
February 2, 2004 Court of Appeal for Ontario (Sharpe, Armstrong and Blair JJ.A.)	Appeal dismissed
April 5, 2004 Supreme Court of Canada	Application for leave to appeal filed
June 9, 2004 Supreme Court of Canada (Arbour J.)	Application for an extension of time granted

Walter Ricky Filewich, J.J.H. Enterprises Ltd. doing business as Rent-A-Reck

v. (30277)

Debra Batchelder, Philip Batchelder, Jarrod Batchelder, an infant by his guardian *Ad Litem* Philip Batchelder and Jackson Batchelder, an infant by his guardian *Ad Litem* Philip Batchelder (B.C.)

NATURE OF THE CASE

Commercial law - Insurance - Contracts - Statutes - Interpretation - Whether the appellate court erred in law in finding the power of attorney and undertaking filed by the insurer does not require it to pay no-fault accident benefits to the Respondents to the limits set out in Part 7 of the Revised Regulation (1984) under the *Insurance (Motor Vehicle) Act*, B.C.

Reg. 447/83 - Whether the appellate court erred in law in finding the Out of State Coverage clause in the insurance policy did not require the insurer to pay no-fault accident benefits to the Respondents to the limits set out in Part 7 of the Revised Regulation - Whether the learned chambers judge erred in the application of section 25 of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, c. 231.

PROCEDURAL HISTORY

November 28, 2002 Supreme Court of British Columbia (Holmes J.)	Respondents' application for compensation for medical expenses arising from injuries suffered in a motor vehicle accident, granted in part
February 2, 2004 Court of Appeal for British Columbia (Hall, Low and Lowry JJ.A.)	Appeal dismissed
April 2, 2004 Supreme Court of Canada	Application for leave to appeal filed

Roger Andrew Hebert, Joan Marie Hebert, John Joseph Hebert

v. (30251)

**The Queen in Right of the Government of Canada, The Department of National Revenue
(as they once were), the Minister of the Department of National Revenue, R. Dressler,
A. Neilsen, Cheryl Ritchie, John Doe and Richard Roe (Alta.)**

NATURE OF THE CASE

Procedural Law - Statutes - Civil procedure - Appeal - Prescription - Whether the Court of Appeal should have made a ruling on all remaining issues before them which were previously before the trial judge? - Whether the Court of Appeal should have used its own free and unfettered discretion to do what justice requires, between the parties to the circumstances of each particular case, by making a final decision based on the facts and not just shuffle the responsibility back to the lower courts?

PROCEDURAL HISTORY

December 24, 2002 Court of Queen's Bench of Alberta (Waller, Master)	Applicants' application to amend Statement of Claim, dismissed
March 11, 2003 Court of Queen's Bench of Alberta (Rowbotham J.)	Applicants' request for extension of time for leave to appeal denied
February 3, 2004 Court of Appeal of Alberta (O'Leary, Picard and Wittmann JJ.A.)	Appeal allowed; new hearing on whether time extension to appeal should be ordered
March 22, 2004 Supreme Court of Canada	Application for leave to appeal filed

CORAM: Iacobucci, Binnie and Arbour JJ.
Les juges Iacobucci, Binnie et Arbour

Lee Edward Fingold

v. (30239)

The Law Society of Upper Canada (Ont.)

NATURE OF THE CASE

Statutes - Interpretation - Professions - Barristers and Solicitors - Did lower courts err in finding that Applicant was engaged in practice of law?

PROCEDURAL HISTORY

March 1, 2002
Ontario Superior Court of Justice
(Scott J.)

Applicant found in contempt of a consent court order prohibiting him from contravening s.50 of the *Law Society Act* by acting, holding himself out as, representing himself or practising as a barrister or solicitor

January 21, 2004
Court of Appeal for Ontario
(Labrosse, Moldaver and Gillese JJ.A.)

Appeal dismissed

March 23, 2004
Supreme Court of Canada

Application for leave to appeal filed

May 14, 2004
Supreme Court of Canada
(Bastarache J.)

Extension of time granted

Her Majesty the Queen in right of the Province of Ontario, as represented by the Minister of Health and Long-Term Care

v. (30168)

S. Joyce Attis, A. Tesluk, The Attorney General of Canada, Dow Corning Corporation, Dow Corning Wright and Dow Corning Canada Inc.

- and between -

The Attorney General of Canada

v. (30168)

S. Joyce Attis, A. Tesluk, Dow Corning Corporation, Dow Corning Wright and Dow Corning Canada Inc., Her Majesty the Queen in right of the Province of Ontario, as represented by the Minister of Health and Long-Term Care (Ont.)

NATURE OF THE CASE

Procedural law - Civil procedure - Actions - Class actions - Torts - Contracts - Settlement agreements - Whether the settlement agreement in a previous class action prevented the plaintiffs' from pursuing a second class action - Whether

the Court of Appeal erred in interpreting the settlement agreement as extinguishing OHIP's subrogated claim - Whether the institution of a second class action constitutes an abuse of process - Whether allowing the class action to go forward precludes the Attorney General from raising the issues again in this action and effectively exposes the Crown to a class action it cannot defend - Whether the Court of Appeal was required to give indicate its views with regard to the application of the principle of judicial economy to the instant case - Whether the Court of Appeal gave due consideration to whether permitting the second class proceeding results in a re-litigation of the same issues.

PROCEDURAL HISTORY

January 27, 2003 Ontario Superior Court of Justice (Winkler J.)	Motion to strike class action for damages, dismissed
December 5, 2003 Court of Appeal for Ontario (Catzman, Simmons and Gillese JJ.A.)	Appeal dismissed
February 3, 2004 Supreme Court of Canada	First application for leave to appeal
February 3, 2004 Supreme Court of Canada	Second application for leave to appeal filed

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

Jean Deschênes

c. (30305)

Sa Majesté la Reine (Crim.) (Qc)

NATURE DE LA CAUSE

Droit criminel - Procédure - Prorogation de délai - Juge de paix à pouvoirs restreints - Le demandeur était-il virtuellement forclos de présenter une demande de prorogation des délais d'appel? - Dans l'éventualité où la Cour répondrait négativement à la première question, le demandeur pouvait-il profiter des conclusions de la Cour d'appel dans l'arrêt *Pomerleau* en se fondant sur les enseignements de la cause *R. c. Wigman*, [1987] 1 R.C.S. 246, pour contester les déclarations de culpabilité prononcées le 30 juillet 2003? - Dans l'éventualité où la Cour répondrait affirmativement à la question précédente, le libellé du par. 34 de l'arrêt *Pomerleau* constitue-t-il une fin de non-recevoir à profiter des enseignements de la cause *R. c. Wigman*? - Enfin, le manquement à une condition de remise en liberté fixée par un fonctionnaire responsable, un juge de paix à pouvoirs restreints ou par un juge suite à l'émission d'un mandat d'arrestation émis par des juges de paix ne jouissant pas des garanties minimales d'indépendance pour décerner des mandats d'arrestation constitue-t-elle, en droit criminel canadien, une infraction?

HISTORIQUE DES PROCÉDURES

Le 27 janvier 2004 Cour d'appel du Québec (Le juge Pelletier)	Requête pour proroger les délais, pour permission d'en appeler ou appel du verdict et pour être autorisé à retirer un plaidoyer de culpabilité; rejetée
Le 25 février 2004 Cour d'appel du Québec (Les juges Rousseau-Houle, Delisle et Nuss)	Requête en révision rejetée

Le 23 avril 2004
Cour suprême du Canada

Demandes d'autorisation d'appel et de prorogation de
délai déposées

Le 10 mai 2004
Cour suprême du Canada

Requête en nomination de procureur

**Canadian Union of Public Employees Locals 1712, 3009, 2225-05, 2225-06 and 2225-12, Service Employees
International Union Locals 204 and 532**

v. (30233)

**Ernst & Young Inc., in its capacity as trustee in bankruptcy of Royalcrest Lifecare Group, The National Life
Assurance Company of Canada, Confederation Life Insurance Company in Liquidation and Attorney General
of Ontario (Ont.)**

NATURE OF THE CASE

Labour law - Labour relations - Collective agreement - Successor employer - Commercial law - Bankruptcy - Successor employer - Motion to pursue an application before the Ontario Labour Relations Board pursuant to s. 215 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 - Whether trustees in bankruptcy who carry on the business of a bankrupt are exempt from the ordinary operation of labour relations statutes? - Whether a bankruptcy judge hearing a motion under s. 215 of the *Bankruptcy and Insolvency Act* for leave to remit a question to an expert labour relations board should exercise his discretion, given that the Legislature has vested exclusive jurisdiction for the superintendent of labour relations in these specialized tribunals - Whether there is a legal basis for holding that collective agreements and bargaining rights are put into a state of "suspended animation" by the bankruptcy of an employer.

PROCEDURAL HISTORY

January 16, 2003
Ontario Superior Court of Justice
(Farley J.)

Applicants' motion for leave to commence and pursue proceedings before the Ontario Labour Relations Board to designate the trustee as a successor employer, denied

January 21, 2004
Court of Appeal for Ontario
(Borins [*dissenting*], MacPherson and Cronk JJ.A.)

Appeal dismissed

March 18, 2004
Supreme Court of Canada

Application for leave to appeal filed

Autobus Jean Bélanger Inc., Berchmans Bouchard et Régis Bélanger

c. (30280)

Syndicat du transport de la région du Grand-Portage (CSN) (Qc)

NATURE DE LA CAUSE

Droit du travail - Droit administratif - Accréditation - Contrôle judiciaire - Aliénation et concession d'entreprise - Le Tribunal du travail a-t-il commis une erreur manifestement déraisonnable en interprétant la notion de « nouvel employeur » à l'art. 45 du *Code du travail*, L.R.Q., ch. C-27? - La théorie de l'« employeur potentiel » développée dans l'affaire *Ivanhoé Inc. c. TUAC, section locale 500*, [2001] 2 R.C.S. 565, pour une concession temporaire d'entreprise est-elle applicable dans la présente affaire?

HISTORIQUE DES PROCÉDURES

Le 2 octobre 2002
Tribunal du travail
(Le juge Plante)

Appel accueilli et décision du commissaire du travail
rejetant la requête du syndicat en vertu de l'art. 45 *C.t.*
infirmée

Le 21 février 2003
Cour supérieure du Québec
(Le juge Corriveau)

Requête des demandeurs en révision judiciaire rejetée

Le 19 janvier 2004
Cour d'appel du Québec
(Les juges Rochette, Pelletier et Morin [dissident])

Appel rejeté

Le 17 mars 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

7.6.2004

Before / Devant : THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'intervenant le Procureur général de la Saskatchewan

Jacques Chaoulli, et autre

c. (29272)

Procureur général du Québec, et autre (Qc)

GRANTED / ACCORDÉE Time extended to May 27, 2004.

9.6.2004

Before / Devant : LEBEL J.

Further order on motions for leave to intervene

Autre ordonnance sur des requêtes en autorisation d'intervention

BY / PAR : Advocacy Centre for the Elderly
Canadian Association for Community
Living and People First of Canada

IN / DANS : J.J.

v. (29717)

Nova Scotia (Minister of Health)
(N.S.)

UPON APPLICATIONS by the Advocacy Centre for the Elderly and the Canadian Association for Community Living and People First 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 Advocacy Centre for the Elderly, is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

The motion for leave to intervene of the applicant, the Canadian Association for Community Living and People First of Canada, is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

The interveners 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 interveners shall pay to the appellant and respondent any additional disbursements occasioned to the appellant and respondent by their intervention.

IT IS HEREBY FURTHER ORDERED THAT the said interveners are each granted permission to present oral argument not exceeding fifteen (15) minutes at the hearing of the appeal.

9.6.2004

Before / Devant : ARBOUR J.

Motions for leave to intervene

Requêtes en autorisation d'intervention

BY / PAR : Canadian Generic Pharmaceutical
Association
Pfizer Canada Inc

IN / DANS : Biolyse Pharma Corporation

v. (29823)

Bristol-Myers Squibb Company, et al.
(F.C.)

GRANTED / ACCORDÉES

UPON APPLICATIONS by the Canadian Generic Pharmaceutical Association and the Pfizer Canada Inc., for leave to intervene in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

- 1) The motion for leave to intervene of the applicant, the Canadian Generic Pharmaceutical Association, is granted and the applicant shall be entitled to adduce evidence in the form of the affidavit of James Keon similar to that filed in support of this motion, excluding the portions relevant only to this motion.

The applicant, the Canadian Generic Pharmaceutical Association, shall be entitled to serve and file a factum not to exceed 20 pages in length.

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

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

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

The requests 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 respondents any additional disbursements occasioned to the appellant and respondents by their intervention.

9.6.2004

Before / Devant : THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de sources de l'appelante

Her Majesty the Queen

v. (29865)

Krystopher Krymowski, et al. (Ont.) (Crim.)

GRANTED / ACCORDÉE Time to serve and file the appellant's factum extended to April 30, 2004 and time to serve and file the appellant book of authorities extended to June 4, 2004.

9.6.2004

Before / Devant : THE REGISTRAR

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

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

Placements Mane Ltée

c. (30288)

Ville de Beaupré (Qc)

GRANTED / ACCORDÉE Délai prorogé au 17 mai 2004.

9.6.2004

Before / Devant : ARBOUR J.

Motions to extend the time in which to serve and file the application for leave and to file the applicant's reply

Requêtes en prorogation du délai imparti pour signifier et déposer la demande d'autorisation et pour déposer la réplique du demandeur

Christopher J. Harrington

v. (30268)

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

GRANTED / ACCORDÉES

UPON APPLICATION by the applicant for an order extending the time to serve and file an application for leave to appeal to April 5, 2004 and to file the applicant's reply to May 4, 2004;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

- 1) The application for an order extending the time to serve and file an application for leave to appeal to April 5, 2004, is granted;
 - 2) The application for an order extending the time to file the applicant's reply to May 4, 2004, is granted.
-

10.6.2004

Before / Devant : ARBOUR 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

Gerry Joseph Leiding

v. (30329)

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

GRANTED / ACCORDÉE Time extended to May 19, 2004.

9.6.2004

Before / Devant : ARBOUR 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

Zdzislaw Wojtowicz

v. (30285)

Maria Wojtowicz (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 May 25, 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 May 25, 2004, is granted;

9.6.2004

Before / Devant : ARBOUR 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

Charles Ferenczi

v. (30352)

Bank of Montreal (Ont.)

DISMISSED / REJETÉE

UPON APPLICATION by the applicant for an order extending the time to serve and file an application for leave to appeal from the decision of the Court of Appeal of Ontario dated April 16, 1997;

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 from the decision of the Court of Appeal of Ontario dated April 16, 1997, is dismissed. The motion fails to state any valid ground for an extension of time.

9.6.2004

Before / Devant : ARBOUR 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

Lynne Patricia Scott a.k.a. Lynne Patricia Schaefer

v. (30106)

United States of America (Ont.) (Crim.)

GRANTED / ACCORDÉE

UPON APPLICATION by the applicant for an order extending the time to serve and file an application for leave to appeal to May 31, 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 May 31, 2004, is granted;

10.6.2004

Before / Devant : THE REGISTRAR

Motion to file a reply of over 5 pages and to file additional material

Requête pour permission de déposer une réplique de plus de 5 pages et de documents additionnels

Kingsley M. Lughas

v. (30274)

The Manitoba Public Insurance Corporation (Man.)

DISMISSED / REJETÉE

UPON APPLICATION by the applicant for an order permitting the filing of a lengthy reply and for an order permitting the filing of additional material;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion permitting the filing of a lengthy reply and for an order permitting the filing of additional material, is dismissed.

The applicant shall be entitled to serve and file a 5 page reply on or before June 21, 2004.

11.6.2004

Before / Devant : ARBOUR J.

Motion for a stay of execution

Requête en vue de surseoir à l'exécution

Janssen-Ortho Inc.

v. (30202)

Minister of Health, et al. (F.C.)

DISMISSED / REJETÉE

UPON APPLICATION by the applicant for a stay of execution of the judgment of the Federal Court of Appeal dated February 9, 2004;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

This is an application for a stay of execution of a judgment of the Federal Court of Appeal pending disposition of an application for leave to appeal from that judgment. A stay application has already been denied by the Federal Court of Appeal (Rothstein J.A.), on the basis that the applicant had not shown irreparable harm should the stay not be granted.

Absent special circumstances, this Court will not entertain a subsequent stay application (*Esmail v. Petro-Canada*, [1997] 2 S.C.R. 3, Sopinka J.; *Pharmascience Inc. and Morris S. Goodman v. Jocelyn Binet and Attorney General of Quebec*, S.C.C., No. 30188, Arbour J.; *Titus Nguigan v. Her Majesty the Queen*, S.C.C. No. 30203, LeBel J.).

No special circumstances have been shown here that would justify revisiting the denial of a stay by the Federal Court of Appeal. The motion is therefore dismissed without prejudice to the applicant seeking a stay before the panel seized of the application for leave to appeal.

4.6.2004

Isidore Garon Ltée

c. (30171)

**Syndicat du bois ouvré de la région de Québec inc.
(C.S.D.)**

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

11.6.2004

Coram: Chief Justice McLachlin and Major, Binnie, LeBel and Deschamps JJ.

Nova Scotia Power Inc.

v. (29649)

Her Majesty the Queen (F.C.) (Civil) (By Leave)

Warren J. A. Mitchell, Q.C. and Douglas H. Mathew for the appellant.

Urszula Kaczmarczyk and Michael J. Lema for the respondent.

DISMISSED, REASONS TO FOLLOW / REJETÉE MOTIFS À SUIVRE

The appeal from the judgment of the Federal Court of Appeal, Number A-108-02, dated January 23, 2003, was heard this day and the following judgment was rendered:

L'appel interjeté contre l'arrêt de la Cour d'appel fédérale, numéro A-108-02, en date du 23 janvier 2003, a été entendu aujourd'hui et le jugement suivant a été rendu:

[TRADUCTION]

THE CHIEF JUSTICE (orally) – We are all of the view that this appeal should be dismissed. Reasons to follow.

LA JUGE EN CHEF (oralement) – Nous sommes tous d'avis que le présent pourvoi doit être rejeté. Motifs à suivre.

Nature of the case:

Crown Law - Taxation - Crown immunity - Whether and to what extent a Crown corporation benefits from Crown immunity when its enabling statute designates it a Crown agent - Whether the Appellant's conduct of its principal income-earning activities and ownership of the assets used in those activities was such that the Appellant was afforded the Province's immunity from the application of the *Income Tax Act*.

Nature de la cause:

Droit de la Couronne - Droit fiscal - Immunité de la Couronne - Si et dans quelle mesure une société d'État jouit de l'immunité de la Couronne lorsqu'elle est, selon sa loi habilitante, un mandataire de la Couronne ? La façon dont l'appelante menait ses principales activités productrices de revenus et sa propriété des éléments d'actifs y utilisés étaient-ils de nature à lui conférer l'immunité dont bénéficie la Province quant à l'application de la *Loi de l'impôt sur le revenu* ?

11.6.2004

Coram: Chief Justice McLachlin and Binnie, LeBel, Deschamps and Fish JJ.

Rita Côté, et al.

c. (29939)

**Jean-Pierre Rancourt, et autre (Qc) (Civil)
(Autorisation)**

Martin Gauthier pour les appelantes.

Bernard Faribault et Patricia Timmons pour les intimés.

DISMISSED, REASONS TO FOLLOW / REJETÉE, MOTIFS À SUIVRE

L'appel interjeté contre l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-009074-998, en date du 4 juillet 2003, a été entendu aujourd'hui et le jugement suivant a été rendu:

LA JUGE EN CHEF (oralement) – Malgré les plaidoiries éloquentes de Me Gauthier, la Cour n'a pas besoin d'entendre les avocats des intimés. La Cour rejette l'appel, motifs à suivre.

Nature de la cause:

Responsabilité civile - Droit du travail - Droit des professions - Dommages intérêts - Avocats - Représentation en justice - Conflit d'intérêts - Défaut de conseil - L'avocat qui est en conflit d'intérêts dans l'exécution de son contrat de services professionnels est-il en droit de réclamer des honoraires à son client ? - Quelle est l'étendue du devoir de conseil d'un avocat dans une question connexe à celle pour laquelle il agit?

15.6.2004

Coram: Chief Justice McLachlin and Major, Bastarache, Binnie, LeBel, Deschamps and Fish JJ.

Pacific National Investments Ltd.

v. (29759)

**The Corporation of the City of Victoria (B.C.) (Civil)
(By Leave)**

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Commercial law - Contracts - Unjust enrichment - Respondent down-zoning water lots owned by Appellant subsequent to improvements being carried out by Appellant in accordance with terms of agreements - Trial judge finding that Respondent had been enriched by the improvements made by Appellant on the basis of a mistake - Whether the Court of Appeal erred in failing to deal with whether or not the statutory prohibition against compensation for down-zoning provided a juristic reason for enrichment - Whether the Court of Appeal erred in considering that the claim of the Appellant for unjust enrichment arises out of the 1993 down-zoning of the Appellant's lots, to which compensation ban would apply.

The appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-009074-998, dated July 4, 2003, was heard this day and the following judgment was rendered:

[TRANSLATION]

THE CHIEF JUSTICE (orally) – Despite the eloquent arguments of Mr. Gauthier, the Court does not need to hear from counsel for the respondents. The Court dismisses the appeal, with reasons to follow.

Nature of the case:

Torts - Labour law - Law of professions - Damages - Lawyers - Legal representation - Conflict of interest - Breach of the duty to advise - Whether a lawyer may claim fees for professional services rendered to a client for whom he was acting while in conflict of interest - What is the scope of a lawyer's duty to advise a client with respect to a matter related to the one for which he is retained?

L. John Alexander for the appellant.

Guy McDannold for the respondent.

Nature de la cause:

Droit commercial - Contrats - Enrichissement injuste - L'intimée a modifié le zonage de plans d'eau appartenant à l'appelante, sur lesquels l'intimée avait effectué des améliorations en conformité avec les conditions de l'accord-cadre - Le juge de première instance a conclu que l'intimée s'est enrichie du fait des améliorations que l'appelante, induite en erreur, avait effectuées sur les plans d'eau - La Cour d'appel a-t-elle commis une erreur en n'examinant pas la question de savoir si l'interdiction, prévue par la loi, de compensation relativement aux dommages résultant d'un changement de zonage pouvait constituer le fondement juridique d'un enrichissement injuste? - La Cour d'appel a-t-elle commis une erreur en déterminant

que les dommages réclamés par l'appelante en

restitution pour enrichissement injuste résultaient du changement de zonage des lots de 1993, auquel cas l'interdiction, prévue par la loi, de compensation s'appliquerait?

16.6.2004

Coram: Chief Justice McLachlin and Major, Bastarache, Binnie, LeBel, Deschamps and Fish JJ.

Her Majesty the Queen

v. (29722)

Douglas Deschamplain

- and -

Her Majesty the Queen

v. (30079)

Marvin Sazant (Ont.) (Crim.) (By Leave)

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

29722

Criminal Law (Non Charter) - Pre-trial procedure - Preliminary hearings - Whether it is jurisdictional error to discharge an accused at a preliminary hearing after considering some of the evidence, but not the whole of the evidence.

30079

Criminal Law (Non Charter) - Pre-trial procedure - Preliminary Inquiry - Whether preliminary inquiry justice commits jurisdictional error by discharging an accused after failing to consider direct evidence on an essential element of the offence - Whether preliminary inquiry justice commits jurisdictional error by discharging an accused after preferring an inference unfavourable to the Crown over the available inference that supports the Crown's position.

Jennifer M. Woolcombe for the appellants. (29722 & 30079)

Michael W. Lacy for the respondent. (29722)

J. Douglas Crane, Q.C. and James C. Morton for the respondent. (30079)

Nature de la cause:

29722

Droit criminel (excluant la Charte) - Procédure préalable au procès - Enquête préliminaire - La libération d'un prévenu par un juge d'enquête préliminaire qui ne tient compte que d'une partie des éléments de la preuve constitue-t-elle une erreur de compétence?

30079

Droit criminel (excluant la Charte) - Procédure préalable au procès. - Enquête préliminaire - Le juge de l'enquête préliminaire a-t-il commis une erreur de compétence en libérant un prévenu sans tenir compte d'un élément de preuve directe portant sur un élément essentiel de l'infraction ? Le juge de l'enquête préliminaire a-t-il commis une erreur de compétence en libérant un prévenu si, des deux interprétations possibles dont un élément de preuve est susceptible, il choisit celle qui est la moins favorable à la thèse du ministère public?

17.6.2004

Coram: Chief Justice McLachlin and Bastarache, Binnie, LeBel and Fish JJ.

Georges Reid

c. (29394)

**Épiciers Unis Métro-Richelieu Inc., Division
“Éconogros” (Qc) (Civil) (Autorisation)**

RESERVED / EN DÉLIBÉRÉ

Nature de la cause:

Code civil du Québec - Interprétation - Cautionnement - Droit commercial - Contrats - Créancier et débiteur - Art. 2363 *Code civil du Québec* - Art. 1953, 1954 du *Code civil du Bas-Canada* - La Cour d’appel a-t-elle commis une erreur de droit en éludant le caractère supplétif de l’article 2363 *C.c.Q.* et en rendant plutôt son application tributaire de l’existence d’une entente confirmant la volonté de la caution et du créancier d’y être assujettis? - La Cour d’appel a-t-elle commis une erreur de droit en affirmant que l’article 2363 *C.c.Q.* devait être interprété de façon restrictive, niant ainsi le caractère protecteur de cette disposition et l’intention manifeste du législateur? - La Cour d’appel a-t-elle commis une erreur de droit en omettant de statuer sur deux questions fondamentales, relatives au devoir d’information et au bénéfice de subrogation?

Marc-André Gravel, Andrée-Claude Harvey et Hugo Lafrenière pour l’appelant.

Stéphane Davignon et Jean-Marc Clément pour l’intimée.

Nature of the case:

Civil Code of Québec - Interpretation - Suretyship - Commercial law- Contracts - Creditor and debtor - Art. 2363 of the *Civil Code of Québec* - Art. 1953 and 1954 of the *Civil Code of Lower Canada* - Whether the Court of Appeal has erred in law in taking no account of the suppletive character of article 2363 *C.C.Q.* and in making the application of this article dependent on the existence of an agreement by the surety and the creditor confirming their intention to be subject to it. - Whether the Court of Appeal has erred in law in holding that article 2363 *C.C.Q.* should be given a restrictive interpretation and thus negating the protection afforded by this article to sureties, which protection was clearly intended by the legislator. - Whether the Court of Appeal has erred in law in failing to rule on fundamental questions relating to the duty of the creditor to provide the surety with useful information and to the benefit of subrogation, even though these are matters of public order.

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 -

public

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				

10/06/04

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