SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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PROCEDURAL HISTORY

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November 19, 2003 Court of Appeal for Ontario (Weiler, Abella and Simmons JJ.A.)	Appeal dismissed; cross-appeal of City withdrawn
January 19, 2004 Supreme Court of Canada	Application for leave to appeal filed

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Le 6 février 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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PROCEDURAL HISTORY

June 11, 2002 Ontario Superior Court of Justice (Boissonneault J.)	Respondent's application for equalization of net family property granted; Applicant's claims rejected
December 5, 2003 Court of Appeal for Ontario (Laskin, Armstrong and Blair JJ.A.)	Appeal dismissed
February 2, 2004 Supreme Court of Canada	Application for leave to appeal filed

Gaston Roch

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Her Majesty the Queen

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Criminal law (Non Charter) - Evidence - Expert evidence - Admissibility - *Mohan* criteria - Relevance - Reliability - Forensic science - Barefoot impression - Expert testifying that Respondent accused "likely" wore winter boots found at crime scene - Whether the Court of Appeal erred in law in excluding the expert evidence of barefoot impression analysis by establishing too high a threshold for its admissibility

PROCEDURAL HISTORY

December 2nd, 1999 Ontario Superior Court of Justice (Kealey J.)	Respondent convicted of second degree murder contrary to s. 235 of the *Criminal Code*
December 24, 2003 Court of Appeal for Ontario (Weiler, Gillese and Armstrong JJ.A.)	Appeal from conviction allowed; verdict of guilt set aside; new trial ordered
February 13, 2004 Supreme Court of Canada	Application for leave to appeal filed

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Mervat S.A. Rashwan and Magdy A. Rashwan

v.(30173)

Joseph S. Farkas (Ont.)

NATURE OF THE CASE

Procedural Law - Costs - Interpretation - Rules of Civil Procedure - Appeal against an assessment of costs - Whether the Court of Appeal erred in affirming the assessment officer's assessment of costs.

PROCEDURAL HISTORY

March 19, 2003 Ontario Superior Court of Justice (Miller, Assessment Officer)	Certificate of Assessment of Costs fixed at $7, 624.06
November 24, 2003 Court of Appeal for Ontario (Cronk J.A.)	Applicants' appeal for an order setting aside the Certificate of Assessment of Costs and for an order reducing the costs to a reasonable amount, dismissed
January 22, 2004 Supreme Court of Canada	Application for leave to appeal filed

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Isidore Garon Ltée

c. (30171)

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

et

Jean-Pierre Tremblay ès qualités d'arbitre de griefs (Qc)

NATURE DE LA CAUSE

Droit du travail - Arbitrage - Droit administratif - Compétence - Les art. 2091 et 2092 du *Code civil du Québec*, L.Q. 1991, ch. 64, qui consacrent, entre autres, le droit du salarié de réclamer un délai de congé raisonnable ou une indemnité en tenant lieu, sont-ils applicables à des salariés régis par une convention collective de travail conclue sous l'égide du *Code du travail*, L.R.Q., ch. C-27 ? - L'arrêt *Parry Sound (district), Conseil d'administration des services sociaux c. S.E.E.F.P.O., section locale 324*, [2003] 2 R.C.S. 157, a-t-il pour effet d'incorporer les art. 2091 et 2092 dans toute convention collective et de conférer ainsi à l'arbitre la compétence pour se saisir d'une réclamation fondée sur ces articles?

HISTORIQUE DES PROCÉDURES

Le 31 octobre 2000 Tribunal d'arbitrage (Tremblay, arbitre)	Objection soulevée par la demanderesse quant à la juridiction du tribunal d'arbitrage pour entendre le grief rejetée
Le 6 février 2001 Cour supérieure du Québec (Le juge Martin)	Requête de la demanderesse en révision judiciaire rejetée

Le 9 décembre 2003 Cour d'appel du Québec (Les juges Rothman, Rousseau-Houle et Biron [*ad hoc*])	Appel de la demanderesse rejeté et dossier retourné devant l'arbitre afin que celui-ci tranche le grief au fond
Le 6 février 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Fillion et Frères (1976) Inc.

c. (30172)

Syndicat national des employés de garage du Québec Inc. (C.S.D.) (Qc)

NATURE DE LA CAUSE

Droit du travail - Arbitrage - Droit administratif - Compétence - La Cour d'appel a-t-elle erré en appliquant l'arrêt *Parry Sound (district), Conseil d'administration des services sociaux c. S.E.E.F.P.O., section locale 324,* [2003] 2 R.C.S. 157, au présent dossier ? - La Cour d'appel a-t-elle erré en appliquant les art. 2091 et 2092 du *Code civil du Québec*, L.Q. 1991, ch. 64, alors que le droit des parties est régi par une convention collective de travail ? - La Cour d'appel a-t-elle erré en ne distinguant pas le corpus législatif examiné à l'arrêt *Parry Sound*, du contexte législatif prévalant dans la province de Québec ?

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Le 25 août 2000 (Tremblay, arbitre)	Moyens préliminaires soulevés par la demanderesse sur la compétence de l'arbitre rejetés
Le 9 mars 2001 Cour supérieure du Québec (Le juge Alain)	Requête de la demanderesse en révision judiciaire accueillie, sentence arbitrale intérimaire annulée, recours de l'intimé réservé
Le 9 décembre 2003 Cour d'appel du Québec (Les juges Rothman, Rousseau-Houle et Biron [*ad hoc*])	Appel accueilli, jugement infirmé, sentence arbitrale rétablie, dossier retourné devant l'arbitre pour trancher le grief au fond
Le 6 février 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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APRIL 2, 2004 / LE 2 AVRIL 2004

30045 **Christiano Daniel Justin Paice v. Her Majesty the Queen** (Sask.) (Criminal) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

An oral hearing is ordered to decide whether this application for leave to appeal from the judgment of the Court of Appeal for Saskatchewan, Numer 583, dated September 15, 2003, should be granted.

Une audition est ordonnée pour décider si cette demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Saskatchewan, numéro 582, daté du 15 septembre 2003, doit être accordée.

NATURE OF THE CASE

Criminal Law - Defence - Statutes - Interpretation - Whether there is a consent fight at all when the deceased as in this case, and contrary to the situation in *Jobidon* was the aggressor throughout and delivered the first blow - Whether the Saskatchewan Court of Appeal was in error when it held that because the Applicant consented to fight it was not open to him to say that he did not provoke the assault on him, a required element of the self defence provision of section 34(1) of the *Criminal Code* - Whether the Saskatchewan Court of Appeal was in error when it equated the trial judge's finding that when the Applicant delivered his blows he intended to cause serious bodily harm of more than a transient or trifling nature to an intention to cause grievous bodily harm, contrary to the express finding of the trial judge, such as to negate the self defence provision found in section 34(1) of the *Criminal Code*.

PROCEDURAL HISTORY

November 18, 2002 Court of Queen's Bench of Saskatchewan (Kovach J.)	Applicant acquitted of a charge of manslaughter contrary to Section 236(b) of the *Criminal Code*
September 15, 2003 Court of Appeal for Saskatchewan (Gerwing, Sherstobitoff and Jackson JJ.A.)	Respondent's appeal allowed, acquittal set aside and a new trial ordered
November 14, 2003 Supreme Court of Canada	Application for leave to appeal filed
February 2, 2004 Supreme Court of Canada	Notice of oral hearing filed

APRIL 8, 2004 / LE 8 AVRIL 2004

29914 **T & R Auto Service Centre Inc. and Naseem Jamil v. The Director of Vehicle Inspection Standards** (Ont.) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgments of the Court of Appeal for Ontario, Numbers M29903 and M29907, dated July 10, 2003, is dismissed with costs.

La demande d'autorisation d'appel des arrêts de la Cour d'appel de l'Ontario, numéros M29903 et M29907, datés du 10 juillet 2003, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Natural Justice - Reasons for decision - Whether the Licence Appeal Tribunal failed to give adequate reasons for its decision and failed to resolve substantially all of the issues before it - Whether the Licence Appeal Tribunal violated the principles of natural justice by determining the Respondent's proposals by reference to a theory of its own creation and that was not the subject of evidence or argument from the parties - Whether the Divisional Court erred in law by applying the reasonableness simpliciter standard of review and by failing to remedy the Tribunal's inadequate reasons for decision and breach of the rules of natural justice.

PROCEDURAL HISTORY

November 6, 2002 Licence Appeal Tribunal (Ort, Member)	Applicants' appeal under section 95 of the *Highway Traffic Act* respecting a Notice by the Respondent regarding safety standards certificates, dismissed
May 12, 2003 Ontario Superior Court of Justice, Divisional Court (O'Driscoll, Lane and Kozak JJ.)	Appeal dismissed
July 10, 2003 Court of Appeal for Ontario (Catzman, Feldman and Gillese JJ.A.)	Appeal dismissed
September 29, 2003 Supreme Court of Canada	Application for leave to appeal filed

29918 **Her Majesty the Queen in Right of the Province of British Columbia v. Rock Resources Inc.** (B.C.) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA028721, dated June 3, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA028721, daté du 3 juin 2002, est rejetée avec dépens.

NATURE OF THE CASE

Property law - Mining - Mineral claims - Mineral claim located inside a newly created park - Park use permit not available for mining - Whether the common law expropriation rule presuming that compensation will be paid upon expropriation obliged the Applicant to pay compensation absent a specific legislative provision granting compensation - Whether the British Columbia Court of Appeal treated the presumption as a source of positive legal obligation rather than a canon of statutory construction - Whether the British Columbia Court of Appeal erred in finding that regulation of the Respondent's contingent statutory right constituted a compensable "taking" - Whether and to what extent governments are presumptively required to compensate where regulation impacts private economic interests.

PROCEDURAL HISTORY

July 10, 2001 Supreme Court of British Columbia (Chamberlist J.)	Respondent's application for an order and declaration of its entitlement to compensation for taking mineral claims dismissed
June 3, 2003 Court of Appeal for British Columbia (Finch C.J.B.C., Lambert, Huddart [*dissenting*], Mackenzie and Thackray JJ.A.)	Respondent entitled to compensation for mineral claims taken by *Park Amendment Act*, value to be set by Expropriation Compensation Board
September 2, 2003 Supreme Court of Canada	Application for leave to appeal filed

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29942 **Robert Klewchuk, Arkay Financial Holdings Ltd., Arkay Casino Management and Equipment (1985) Ltd. and Kathy Klewchuk v. Samuel Switzer, Switzer's Investments Ltd.** (Alta.) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 01-00224, dated June 17, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 01-00224, daté du 17 juin 2003, est rejetée avec dépens.

NATURE OF THE CASE

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June 17, 2003 Court of Appeal of Alberta (McFadyen, Russell and Hunt JJ.A.)	Appeal allowed in part; Order for punitive damages quashed
September 16, 2003 Supreme Court of Canada	Application for leave to appeal filed

29950 **Christopher Morgis, Joanne Morgis and CM Holdings Inc. v. Investment Dealers Association of Canada, Terrence K. Salman, G.F. Kym Anthony and Joseph J. Oliver** (Ont.) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C38864, dated June 24, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38864, daté du 24 juin 2003, est rejetée avec dépens.

NATURE OF THE CASE

Torts - Negligence - Procedural law - Actions - Duty of Care - Statutory regulators - Whether the analysis of this Court in *Cooper* v. *Hobart*, [2001] 3 S.C.R. 537 and *Edwards* v. *Law Society of Upper Canada*, [2001] 3 S.C.R. 562 applies to voluntary self regulatory associations who are not protected by statutory immunity.

PROCEDURAL HISTORY

September 26, 2002 Ontario Superior Court of Justice (Mesbur J.)	Applicants' motion to add the Respondents as defendants to the action, refused
June 24, 2003 Court of Appeal for Ontario (Carthy, Rosenberg and Cronk JJ.A.)	Appeal dismissed
September 19, 2003 Supreme Court of Canada	Application for leave to appeal filed

29962 **Doreen Fischer v. Silas Halyk** (Sask.) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Saskatchewan, Number 644, dated July 23, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Saskatchewan, numéro 644, daté du 23 juillet 2003, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Actions - Evidence - Negligence - Is the fact of a criminal conviction an absolute bar to an enquiry into the misconduct of the lawyer who conducted the criminal trial? - Did the Saskatchewan Court of Appeal err in applying

the test of "egregious error" and not "ordinary error" in a case of legal malpractice? - *Hagblom* v. *Henderson* (2003), 232 Sask. R. 81 (C.A.) - What is the correct standard for appellate courts in their review of decisions made by civil juries? - Whether reasons for judgment in a criminal trial are admissible for the truth of their contents in a civil trial - Whether a trial judge errs by bifurcating a jury charge and by failing to instruct the jury causation or damages.

PROCEDURAL HISTORY

November 6, 2002 Court of Queen's Bench for Saskatchewan (Dawson J.)	Applicant's action dismissed
July 23, 2003 Court of Appeal for Saskatchewan (Jackson, Tallis and Lane JJ.A.)	Applicant's appeal dismissed; Respondent's cross-appeal allowed in part - Applicant's action struck out and jury decision set aside
September 25, 2003 Supreme Court of Canada	Application for leave to appeal filed

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29984 **Celestica Inc. v. ACE INA Insurance formerly known as Cigna Insurance Company of Canada**
(Ont.) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C38213, dated July 11, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38213, daté du 11 juillet 2003, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law - Insurance - Comprehensive general liability policy - Defective components being installed by insured in power modules of photocopiers - Insured taking corrective action - Definition of "occurrence" - Whether the manufacture and sale of a defective item by the insured, where the insured does not know that the item is defective, may be an occurrence within the definition of occurrence in the policy - Whether the Court of Appeal erred in finding that the loss sustained by the Applicant was not caused by an occurrence, as defined in the insurance policy issued to the Applicant by the Respondent.

PROCEDURAL HISTORY

December 10, 2001 Ontario Superior Court of Justice (Gans J.)	Declaration that the loss suffered by the Applicant was caused by an occurrence as that term is defined in the insurance policy issued to the Applicant by the Respondent, and the policy's insuring agreement applies to the claim advanced by the Applicant
July 11, 2003 Court of Appeal for Ontario (Weiler, Goudge and Armstrong JJ.A.)	Cross-appeal allowed and motion judge's declaration varied to read "that the loss suffered by the [Applicant] was not caused by an occurrence as that term is defined in the insurance policy issued to the [Applicant] by the [Respondent], and the policy's insuring agreement does not apply to the claim advanced by the Applicant"

September 29, 2003
Supreme Court of Canada

Application for leave to appeal filed

30016 **Rofia Aghabeigi v. Her Majesty the Queen** (B.C.) (Criminal) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA029964, dated October 24, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029964, daté du 24 octobre 2003, est rejetée.

NATURE OF THE CASE

Criminal law - Evidence - Food and drugs - *Controlled Drugs and Substances Act*, 1996, c. 19 - Conviction for importation and possession of a controlled substance - "Fresh evidence" rule - Whether the Court of Appeal erred in rejecting the "fresh evidence" rule, preferring finality of the legal proceeding over the Applicant's allegation that she was wrongfully convicted - Whether the Court of Appeal erred in failing to ensure that the Applicant, who alleges a miscarriage of justice, was given a fair trial according to law.

PROCEDURAL HISTORY

April 30, 2002
Supreme Court of British Columbia
(Shaw J.)

Applicant convicted of unlawful importation and possession of a controlled substance, contrary to ss. 5(2) and 6(1) of the *Controlled Drugs and Substances Act*

October 24, 2003
Court of Appeal for British Columbia
(Lambert, Rowles and Lowry JJ.A.)

Appeal from conviction dismissed

December 23, 2003
Supreme Court of Canada

Application for leave to appeal filed

30040 **David Alexander Holmes v. University of Calgary** (Alta.) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Numbers 02-0379AC and 03-0147AC, dated September 11, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéros 02-0379AC et 03-0147AC, daté du 11 septembre 2003, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Judgments and orders - Summary judgment - Whether the Court of Appeal erred in allowing the Respondent to trample the Applicant's fundamental rights and civil liberties - Whether the Court of Appeal erred in not allowing the Applicant to represent himself - Whether the trial judge erred in ignoring the evidence contained in the Applicant's affidavit and in dismissing the action - Whether the Court of Appeal erred in allowing an increase in costs

PROCEDURAL HISTORY

December 13, 2002 Court of Queen's Bench of Alberta (Sullivan J.)	Respondent's application for a summary judgment to dismiss the Applicant's claim allowed: Applicant's action dismissed
September 11, 2003 Court of Appeal of Alberta (Fraser, McFadyen and Fruman JJ.A.)	Applicant's appeal dismissed; Respondent's appeal allowed
November 3, 2003 Supreme Court of Canada	Application for leave to appeal filed

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30055 **Hardeep Singh Bajwa v. Her Majesty the Queen** (F.C.) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-89-02, dated September 17, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-89-02, daté du 17 septembre 2003, est rejetée.

NATURE OF THE CASE

Labour law - Unemployment insurance - Disqualification from receiving Employment Insurance benefits - Whether the Court of Appeal erred in determining the Applicant left his employment without just cause pursuant to ss. 29 and 30 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the "*Act*")

PROCEDURAL HISTORY

September 1, 2000 Regional Insurance Services of the Department of Human Resources Development Canada ("The Commission")	Penalty of $242.00 pursuant to s.38 of the *Act* imposed on the Applicant for false statements; Notice of violation pursuant to s.7.1 of the *Act* issued to the Applicant
September 21, 2000 Board of Referees - Employment Insurance (Philip, Chairperson, Weaver, Member, and Eliason [*dissenting*], Member)	Applicant's appeal from the decisions of the Commission, dismissed
January 21, 2002 Office of the Umpire (Marin, Umpire)	Appeal dismissed
September 17, 2003 Federal Court of Appeal (Linden, Rothstein and Sexton JJ.A.)	Appeal on the issues of disqualification and Notice of Violation, dismissed; appeal on the issue of penalty for false statements, allowed; matter remitted to Chief Umpire to set aside penalty

October 14, 2003 Federal Court of Appeal (Linden, Rothstein and Sexton JJ.A.)	Order amended : appeal on the issue of disqualification, dismissed; appeal on the issues of Notice of Violation and penalty for false statements, allowed; matter remitted to Chief Umpire to set aside penalty and Notice of Violation
November 17, 2003 Supreme Court of Canada	Application for leave to appeal and motion for an extension of time filed

30112 **Barbara Haight-Smith v. Attorney General of Canada** (FC) (Civil) (By Leave)

Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number 03-A-43, dated October 28, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro 03-A-43, daté du 28 octobre 2003, est rejetée avec dépens.

NATURE OF THE CASE

Taxation - Administrative Law - Assessment - Appeal - Judicial review - Whether the Federal Court of Appeal erred in dismissing application for an extension of time to commence an application for judicial review - Whether the Tax Court of Canada erred in not addressing the 1999 taxation year in the appeal - Whether the Tax Court of Canada erred in the assessment of total expenses to be allowed pursuant to ss. 18(12) of the *Income Tax Act*.

PROCEDURAL HISTORY

September 6, 2002 Tax Court of Canada (Little J.)	Applicant's appeals from assessments for 1997, 1998 and 1999 taxation years, allowed; assessments referred back to Minister of National Revenue for reconsideration and reassessment
October 28, 2003 Federal Court of Appeal (Linden J.A.)	Motion for extension of time to file application for judicial review, dismissed
December 29, 2003 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed
January 27, 2004 Supreme Court of Canada (Major J.)	Motion for extension of time, granted

26.3.2004

Before / Devant : THE REGISTRAR

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

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

A. N., et al.

v. (30126)

Minister of Family and Community Services (N.B.)

GRANTED / ACCORDÉE Time extended to March 5, 2004.

26.3.2004

Before / Devant : FISH J.

Motion to strike

Requête en radiation

Her Majesty the Queen

v. (29670)

Walter Tessling (Crim.) (Ont.)

DISMISSED / REJETÉE

UPON APPLICATION by the respondent for an order striking certain paragraphs from the appellant's factum;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion is dismissed.

29.3.2004

Before / Devant : LEBEL J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY / PAR : Superintendent of Financial Services of Ontario

IN / DANS : ING Canada Inc.

v. (30170)

Aegon Canada Inc., et al. (Ont.)

DISMISSED / REJETÉE

UPON APPLICATION by the Superintendent of Financial Services of Ontario for leave to intervene in the above mentioned application for leave to appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

Interventions in support of a leave application are exceptional and should not be encouraged (Crane and Brown, *Supreme Court of Canada Practice*, Carswell 2002, p. 308; *Monsanto Canada Inc. v. Superintendent of Financial Services, et al.* (29586) (March 28, 2003); *Dutch Industries Ltd. v. Barton No-Till Disk Inc., et al.* (29738) (June 24, 2003) and *R. v. Krystopher Krymowski, et al.* (29865) (September 23, 2003)). There is no need for interventions which purport to draw the attention of the Court to the importance of the application for leave to appeal. The application for leave to appeal should itself include material relevant to the general importance of the case.

The motion is dismissed. If the Court grants leave to appeal, the applicant may reapply for leave to intervene in the appeal, in the usual manner.

30.3.2004

Before / Devant : LEBEL 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

Patrick Groulx

v. (30208)

Her Majesty the Queen (F.C.)

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

UPON APPLICATION by the applicant for an order extending the time to serve and file an application for leave to appeal to May 3, 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 3, 2004, is dismissed with costs. The motion fails to state any valid ground for an extension of time.

1.4.2004

Before / Devant : LEBEL J.

Motion for a stay of execution **Requête en vue de surseoir à l'exécution**

Titus Nhuiagain

v. (30203)

Her Majesty the Queen (Crim.) (Qc)

DISMISSED / REJETÉE

À LA SUITE DE LA DEMANDE du demandeur visant à obtenir un sursis d'exécution;

ET APRÈS AVOIR LU la documentation déposée;

L'ORDONNANCE SUIVANTE EST RENDUE:

Le demandeur présente une requête pour sursis de l'exécution d'un arrêt de la Cour d'appel de Québec rejetant une requête pour autorisation de pourvoi d'un jugement de la Cour supérieure qui confirme sa culpabilité à une accusation de voies de fait. Il appert que le juge François Pelletier de la Cour d'appel a déjà rejeté une demande de sursis présentée en vertu de l'article 65.1 de la *Loi sur la Cour suprême*.

Depuis l'ajout de cette disposition à la *Loi sur la Cour suprême*, la jurisprudence a conclu qu'en l'absence de circonstances spéciales, la personne dont la demande de sursis a été rejetée par la Cour d'appel ne peut réitérer cette demande devant notre Cour. (*Esmail c. Petro-Canada*, [1997] 2 R.C.S. 3, le juge Sopinka; *Pharmascience Inc. et Morris S. Goodman c. Jocelyn Binet et le Procureur général du Québec*, CSC n^{o} 30188, le 17 mars 2004, la juge Arbour.) La requête ne fait valoir aucune de ces circonstances spéciales et la Cour ne saurait accorder le sursis qu'en présence de motifs suffisants. De toute façon, l'examen du dossier et des jugements rendus par la Cour d'appel et la Cour supérieure dans cette affaire n'est pas de nature à convaincre de l'existence de tels motifs.

Pour ces raisons, la requête est rejetée.

1.4.2004

Before / Devant : LEBEL J.

Motion to add parties **Requête en adjonction de parties**

ING Canada Inc.

v. (30170)

Aegon Canada Inc., et al. (Ont.)

GRANTED / ACCORDÉE

UPON APPLICATION by Pyar Dossal and Jane Benn, as representatives of the Halifax Plan Group, to be added as parties in the above mentioned application for leave to appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The applicants, Pyar Dossal and Jane Benn, seek leave to be added or confirmed as parties. They were granted leave to intervene as added parties in the Ontario Superior Court and participated fully as parties in the courts below. Furthermore, their interest is adverse to that of the applicant. As such, pursuant to 22(2) of the *Rules of the Supreme Court of Canada*, they are entitled to be added as respondents in the leave application and to file a response to the application for leave to appeal. The motion is granted.

2.4.2004

Before / Devant : ARBOUR J.

Further order on motion for leave to intervene

Autre ordonnance sur une requête en autorisation d'intervention

BY / PAR : Freehold Petroleum & Natural Gas Owners Association

IN / DANS : Carl Anderson, et al.

v. (29370)

Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., et al. (Alta.)

UPON APPLICATION by the Freehold Petroleum & Natural Gas Owners Association for leave to intervene and for leave to intervene in the above appeal and pursuant to the order of March 9, 2004;

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

29.3.2004

Francisco Batista Pires

v. (30151)

Her Majesty the Queen (B.C.)

(As of right)

29.3.2004

Ronaldo Lising

v. (30240)

Her Majesty the Queen (B.C.)

(As of right)

APRIL 8, 2004 / LE 8 AVRIL 2004

29547 **Construction & General Workers' Union, Local 92 v. Voice Construction Ltd.** (Alta.)
2004 SCC 23 / 2004 CSC 23

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

The appeal from the judgment of the Court of Appeal of Alberta (Edmonton), Number 0103-02318-AC, dated November 19, 2002, was heard on January 23, 2004 and on that day the following judgment was rendered:

THE CHIEF JUSTICE (orally) – The appeal is allowed and the arbitration award is restored. Reasons to follow.

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

The appeal should be allowed, the arbitrator's award restored and the costs granted to the appellant throughout.

L'appel interjeté contre l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 0103-02318-AC, en date du 19 novembre 2002, a été entendu le 23 janvier 2004 et le même jour le jugement suivant a été rendu:

[TRADUCTION]

LA JUGE EN CHEF (oralement) – Le pourvoi est accueilli et la décision de l'arbitre est rétablie. Motifs à suivre.

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

Le pourvoi est accueilli, la décision de l'arbitre est rétablie et les dépens sont adjugés à l'appelant dans toutes les cours.

Construction & General Workers' Union, Local 92 v. Voice Construction Ltd. (Alta.) (29547)
Indexed as: Voice Construction Ltd. *v.* Construction & General Workers' Union, Local 92 /
Répertorié : Voice Construction Ltd. *c.* Construction & General Workers' Union, Local 92
Neutral citation: 2004 SCC 23. / Référence neutre : 2004 CSC 23.
Reasons of judgment delivered April 8, 2004 / Motifs de jugement déposés le 8 avril 2004

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

Labour relations -- Collective agreement – Interpretation by labour arbitrator -- Employer's obligation to hire dispatched workers -- Appropriate standard of review of arbitrator's award.

Judicial review -- Labour relations – Interpretation of collective agreement – Arbitrator's award -- Appropriate standard of review.

The appellant, a trade union representing labourers in the construction industry, dispatched a union member from its hiring hall to the respondent, a construction company, notwithstanding the respondent's request that she not be sent to its job sites. The appellant claimed that the respondent's refusal to put her to work constituted a violation of the collective agreement and grieved the matter, stating that the respondent was required to hire the labourers dispatched by the union providing they were qualified and had not been previously terminated for cause. The arbitrator found that the collective agreement's "name hire" and "dispatch" provisions constituted an express restriction on the respondent's broad right to "hire and select workers" and accordingly held that the respondent was required to hire qualified workers properly dispatched by the union. On an application for judicial review under s. 143(2) of the Alberta *Labour Relations Code*, the reviewing judge found that the arbitrator had exceeded her jurisdiction by finding an express restriction on management's rights to hire and select. He applied a standard of correctness and quashed the award. A majority of the Court of Appeal upheld the decision.

Held: The appeal should be allowed and the arbitrator's award restored.

Per McLachlin C.J. and Iacobucci, **Major**, Bastarache, Binnie, Arbour and Fish JJ.: In assessing an arbitrator's ruling, a reviewing judge should adopt a pragmatic and functional analysis to determine the appropriate standard of review. Only after the standard of review is determined can the administrative tribunal's decision be scrutinized. An application for *certiorari* under s. 143(2) of the *Labour Relations Code* does not put the review beyond the reach of the pragmatic and functional approach but rather is a factor to be considered when conducting that analysis. Here, when the relevant factors of the pragmatic and functional approach are considered, the result mandates the less deferential standard of reasonableness. Neither the reviewing judge nor the Court of Appeal conducted the analysis mandated by the pragmatic and functional approach.

In applying the reasonableness standard, every element of the arbitrator's reasoning need not pass the reasonableness test; only the reasons as a whole need support the decision. The arbitrator's conclusion that the dispatch provisions in art. 6.01 and the name hire provisions in art. 6.02 of the collective agreement qualified the respondent's unfettered right to hire and select workers under art. 7.01 is reasonable given the terms of the agreement. The reviewing judge should not have interfered.

Per **LeBel** and Deschamps JJ.: The appropriate standard of review was reasonableness. The arbitrator's interpretation of the hiring provisions in the collective agreement was rational globally. It fell within the range of reasonable interpretations and therefore should not be disturbed by a reviewing court.

[2] The appropriateness of using the patent unreasonableness and reasonableness *simpliciter* standards needs to be re-evaluated. Patent unreasonableness is an inadequate standard that provides too little guidance to reviewing courts, and has proven difficult to distinguish in practice from reasonableness *simpliciter* despite the many permutations it has gone through. The approach that a decision will not stand if it cannot be rationally supported by the relevant legislation should apply to judicial review on any reasonableness standard.

APPEAL from a judgment of the Alberta Court of Appeal (2002), 317 A.R. 214, [2002] A.J. No. 1413 (QL), 2002 ABCA 255, affirming a judgment of the Court of Queen's Bench (2001), 287 A.R. 273, [2001] A.J. No. 488 (QL), 2001 ABQB 310, quashing a labour arbitration, [2000] A.G.A.A. No. 88 (QL). Appeal allowed.

Lyle S. R. Kanee and *Jo-Ann R. Kolmes*, for the appellant.

Thomas W. R. Ross and *Vicki L. Giles*, for the respondent.

Solicitors for the appellant: Chivers Kanee Carpenter, Edmonton.

Solicitors for the respondent: McLennan Ross, Calgary.

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

Relations de travail -- Convention collective – Interprétation par l'arbitre du travail -- Obligation de l'employeur d'embaucher les travailleurs assignés -- Norme de contrôle applicable à la sentence arbitrale.

Contrôle judiciaire -- Relations de travail – Interprétation de la convention collective – Sentence arbitrale -- Norme de contrôle appropriée.

L'appelant est un syndicat qui représente des travailleurs du secteur de la construction. Par l'entremise de son bureau de placement, il a assigné une syndiquée à l'intimée, une entreprise de construction, même si cette dernière avait demandé que la travailleuse en question ne soit pas assignée à ses chantiers. L'appelant a fait valoir que le refus de l'intimée d'embaucher cette travailleuse constituait une violation de la convention collective et a déposé un grief, affirmant que l'intimée était tenue d'engager les travailleurs assignés par le syndicat, pourvu qu'ils soient qualifiés et n'aient pas déjà fait l'objet d'un renvoi motivé. L'arbitre a estimé que les dispositions de la convention collective relatives à l'« assignation » et à l'« embauchage nominal » ont pour effet de restreindre expressément le droit général de l'intimée « d'embaucher les ouvriers de son choix », et a conclu que l'intimée était tenue d'embaucher les travailleurs qualifiés régulièrement assignés par le syndicat. Statuant sur une demande de contrôle judiciaire présentée en vertu du par. 143(2) du *Labour Relations Code* de l'Alberta, le juge de révision a estimé que l'arbitre avait outrepassé sa compétence en concluant à l'existence d'une limitation expresse du droit de l'employeur d'embaucher les ouvriers de son choix. Il a appliqué la norme de la décision correcte et il a infirmé la décision. Les juges majoritaires de la Cour d'appel ont confirmé cette décision.

Arrêt : Le pourvoi est accueilli et la décision de l'arbitre est rétablie.

La juge en chef McLachlin et les juges Iacobucci, **Major**, Bastarache, Binnie, Arbour et Fish : Le juge chargé de contrôler la décision d'un arbitre doit procéder à une analyse pragmatique et fonctionnelle pour déterminer la norme de contrôle applicable. Ce n'est qu'une fois qu'a été déterminée la norme de contrôle applicable que la décision du tribunal administratif peut être contrôlée. Le recours en *certiorari* prévu au par. 143(2) du *Labour Relations Code* ne fait pas obstacle à l'application de la méthode pragmatique et fonctionnelle, mais constitue plutôt un facteur qui doit être pris en compte dans cette analyse. En l'espèce, la prise en compte des facteurs pertinents de l'analyse pragmatique et fonctionnelle commande le recours à la norme de la décision raisonnable impliquant la moins grande déférence. Ni le juge de révision ni la Cour d'appel n'ont effectué l'analyse prescrite par la méthode pragmatique et fonctionnelle.

Pour l'application de la norme de la décision raisonnable, il n'est pas nécessaire que chaque élément du raisonnement de l'arbitre satisfasse au critère du caractère raisonnable; il suffit que les motifs considérés dans leur ensemble étayent la décision. La conclusion de l'arbitre selon laquelle les clauses relatives à l'assignation de l'art. 6.01 et celles relatives à l'embauchage nominal de l'art. 6.02 de la convention collective avaient pour effet de restreindre le droit absolu de l'intimée d'embaucher les travailleurs de son choix en vertu de l'art. 7.01 est raisonnable compte tenu des autres clauses de la convention. Le juge de révision n'aurait pas dû intervenir.

Les juges **LeBel** et Deschamps : La norme de contrôle appropriée était celle de la décision raisonnable. L'interprétation par l'arbitre des clauses de la convention collective portant sur les conditions d'engagement des employés

était globalement rationnelle. Elle se situait dans la gamme des interprétations raisonnables et ne devrait en conséquence pas être modifiée par le tribunal saisi de la demande de contrôle judiciaire.

Il faut réexaminer la pertinence du recours à la norme du manifestement déraisonnable et à celle de la décision raisonnable *simpliciter*. Peu adéquate, la norme du manifestement déraisonnable ne semble guère capable de donner des orientations valables aux tribunaux et s'avère difficile à distinguer en pratique de la norme du raisonnable *simpliciter*, malgré les nombreuses formulations qui en ont été données. L'approche selon laquelle une décision irrationnelle ne saurait être confirmée devrait être suivi en cas de contrôle judiciaire fondé sur toute norme de la décision raisonnable.

POURVOI contre un arrêt de la Cour d'appel de l'Alberta (2002), 317 A.R. 214, [2002] A.J. No. 1413 (QL), 2002 ABCA 255, qui a confirmé un jugement de la Cour du Banc de la Reine (2001), 287 A.R. 273, [2001] A.J. No. 488 (QL), 2001 ABQB 310, qui avait cassé une sentence arbitrale, [2000] A.G.A.A. No. 88 (QL). Pourvoi accueilli.

Lyle S. R. Kanee et *Jo-Ann R. Kolmes*, pour l'appelant.

Thomas W. R. Ross et *Vicki L. Giles*, pour l'intimée.

Procureurs de l'appelant : Chivers Kanee Carpenter, Edmonton.

Procureurs de l'intimée : McLennan Ross, Calgary.

AGENDA — Motion added to the list of April 19, 2004.
CALENDRIER — Requête ajoutée à la liste du 19 avril 2004.

Date of Hearing/ Date d'audition	Case Number and Name/ Numéro et nom de la cause
DATE OF HEARING / DATE D'AUDITION	NAME AND CASE NUMBER / NOM DE LA CAUSE & NUMÉRO
2004/04/19	Motion / Requête
	Christiano Daniel Justin Paice v. Her Majesty the Queen (Sask.) (Crim.) (30045) (Oral hearing on leave application / Audition orale sur demande d'autorisation d'appel) (Video-conference / Vidéoconférence - Regina, Saskatchewan)

NATURE OF THE CASE

Criminal Law - Defence - Statutes - Interpretation - Whether there is a consent fight at all when the deceased as in this case, and contrary to the situation in *Jobidon* was the aggressor throughout and delivered the first blow - Whether the Saskatchewan Court of Appeal was in error when it held that because the Applicant consented to fight it was not open to him to say that he did not provoke the assault on him, a required element of the self defence provision of section 34(1) of the *Criminal Code* - Whether the Saskatchewan Court of Appeal was in error when it equated the trial judge's finding that when the Applicant delivered his blows he intended to cause serious bodily harm of more than a transient or trifling nature to an intention to cause grievous bodily harm, contrary to the express finding of the trial judge, such as to negate the self defence provision found in section 34(1) of the *Criminal Code*.

NATURE DE LA CAUSE

Droit criminel - Défense - Lois - Interprétation - Y a-t-il une bagarre concertée lorsque, comme en l'espèce et contrairement aux circonstances de l'affaire *Jobidon*, la victime décédée était en tout temps l'agresseur et a porté le premier coup? - La Cour d'appel de la Saskatchewan a-t-elle conclu à tort que, parce que le requérant a consenti à la bagarre, il ne pouvait affirmer qu'il n'a pas provoqué l'agression à son endroit, un élément essentiel des dispositions sur la légitime défense du paragraphe 34(1) du *Code criminel*? - La Cour d'appel de la Saskatchewan a-t-elle commis une erreur en assimilant la conclusion du juge du procès, selon laquelle le requérant avait au moment de porter les coups l'intention de causer des blessures graves et non simplement passagères et insignifiantes, à une intention d'infliger des lésions corporelles graves, contrairement à la conclusion expresse du juge du procès, de façon à écarter la disposition relative à la légitime défense qui se trouve au paragraphe 34(1) du *Code criminel*?

NOTE

This agenda is subject to change. Hearings normally commence at 9:30 a.m. each day. Where there are two cases scheduled on a given day, the second case may be heard immediately after the first case, or at 2:00 p.m. Hearing dates and times should be confirmed with Registry staff at (613) 996-8666.

Ce calendrier est sujet à modification. Les audiences débutent normalement à 9h30 chaque jour. Lorsque deux affaires doivent être entendues le même jour, l'audition de la deuxième affaire peut avoir lieu immédiatement après celle de la première ou encore à 14h. La date et l'heure d'une audience doivent être confirmées auprès du personnel du greffe au (613) 996-8666.

DEADLINES: APPEALS

The Spring Session of the Supreme Court of Canada will start April 13, 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 du printemps de la Cour suprême du Canada commencera le 13 avril 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'appelant, son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les douze semaines du dépôt de l'avis d'appel ou douze semaines de la décision de la requête pour formulation d'une question constitutionnelle.

Le dossier de l'intimé (le cas échéant), son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les huit semaines suivant la signification des documents de l'appelant.

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

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

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

- 2003 -

04-07-2002

OCTOBER - OCTOBRE						
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	**H** 13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

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

DECEMBER - DECEMBRE						
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	11	**12**	13
14	15	16	17	18	19	20
21	22	23	24	**H** 25	**H** 26	27
28	29	30	31			

- 2004 -

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

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

APRIL - AVRIL						
S D	M L	T M	W M	T J	F V	S S
				1	2	3
	5	6	7	8	**H** 9	10
11	**H** 12	13	14	15	16	17
18	**M** 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
9	**M** 10	11	12	13	14	15
16	17	18	19	20	21	22
23	**H** 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
6	**M** 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: **M**

Holidays:
Jours fériés: **H**

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