

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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**APPLICATIONS FOR LEAVE TO
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Gou Din Ho

Andrew I. Nathanson
Fasken, Martineau, DuMoulin

v. (30167)

Her Majesty the Queen (B.C.)

Martha M. Devlin
A.G. of Canada

FILING DATE: 2.2.2004

Jean Guy Bellegarde

Jean Guy Bellegarde

c. (30182)

Ville Île Perrot (Qc)

Bernard Synnott
Fasken, Martineau, DuMoulin

DATE DE PRODUCTION : 6.2.2004

Her Majesty the Queen

Karen Shai
Attorney General of Ontario

v. (30181)

Dimitre Dimitrov (Ont.)

Frank Addario
Sack, Goldblatt, Mitchell

FILING DATE: 13.2.2004

Timothy Seiler, et al.

Merle Campbell
Merle Campbell Law Corporation

v. (30183)

**Brouwer Claims Canada & Company Ltd., et al.
(B.C.)**

Mark L. Tweedy
Harper, Grey, Easton

FILING DATE: 17.2.2004

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

Mervat S. A. Rashwan, et al.

Mervat S. A. And Magdy A. Rashwan

v. (30173)

Joseph S. Farkas (Ont.)

H.J.B.A. Dickie Q.C.
Borden, Ladner, Gervais

FILING DATE: 22.1.2004

James Thomas Johnston

James Thomas Johnston

v. (30142)

**College of Physicians and Surgeons of New
Brunswick (N.B.)**

Deirdre L. Wade
Barrie, Spalding

FILING DATE: 11.2.2004

Issam Al Yamani

Barbara L. Jackman

v. (30184)

**The Minister of Citizenship & Immigration
(F.C.)**

Donald MacIntosh
Attorney General of Canada

FILING DATE: 19.2.2004

Ring Contracting Ltd.

Henry S. Brown, Q.C.
Gowling, Lafleur, Henderson

v. (30186)

PCL Constructors Inc. (B.C.)

Brian Samuels
Samuels & Co.

FILING DATE: 19.2.2004

FEBRUARY 23, 2004 / LE 23 FÉVRIER 2004

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

Rofia Aghabeigi

v. (30016)

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

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 <i>Controlled Drugs and Substances Act</i>
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

David Alexander Holmes

v. (30040)

University of Calgary (Alta.)

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
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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

Celestica Inc.

v. (29984)

ACE INA Insurance formerly known as Cigna Insurance Company of Canada (Ont.)

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

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

Confédération des syndicats nationaux et Fédération de la santé et des services sociaux

c. (30069)

Commission de la santé et de la sécurité du travail et Procureur général du Québec (Qc)

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Discrimination basée sur le sexe - Réseau de la santé et des services sociaux - Les questions que soulève la présente demande sont-elles importantes au sens de l'article 40(1) de la *Loi sur la Cour suprême du Canada*? - La Cour supérieure et la Cour d'appel du Québec ont-elles erré en statuant que l'exclusion des travailleurs du réseau de la santé et des services sociaux, composé en majorité de femmes, du champ d'application des règlements adoptés par la CSST et approuvés par le Gouvernement du Québec à l'égard d'autres catégories d'emploi ne constituait pas une discrimination interdite basée sur le sexe en vertu de l'article 15(1) de la *Charte canadienne*?

HISTORIQUE DES PROCÉDURES

Le 4 avril 2001
Cour supérieure du Québec
(Le juge Wery)

Requête pour jugement déclaratoire des demandereses visant à faire déclarer que les travailleurs du réseau de la santé et des services sociaux sont l'objet de discrimination au sens du paragraphe 15(1) de la *Charte canadienne des droits et libertés*, rejetée

Le 29 septembre 2003
Cour d'appel du Québec
(Les juges Baudouin, Forget et Biron [*ad hoc*])

Appel rejeté avec dépens

Le 28 novembre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Brent Francis, Regal Pacific Mortgage Corporation and Cynthia Ewanus

v. (30001)

The Owners: Condominium Plan No. 8222909 (Alta.)

NATURE OF THE CASE

Property law - Commercial law - Contracts - Real property - Remedies - Estoppel - Equity - Sale of condominiums - *Ultra vires* contract - The indoor management *Rule in Turquand's Case* [*Royal British Bank v. Turquand* (1855), 5 E. & B. 248 (C.A.)] - *Condominium Property Act*, R.S.A. 1980, c. C-22 - Whether there is a need for guiding principles relating to the law of condominiums in Canada - Whether the laws of contracts and real property apply to the sale of condominiums under the *Act* - Whether the principles of equity and estoppel apply to the sale of condominiums - Whether courts can relieve a party from the consequences of an *ultra vires* contract - Whether the doctrine of estoppel applies to the buying and selling of real estate - Whether the *Rule in Turquand's Case* applies when a large rental complex is legally transformed into a mixed-use, multi-ownership condominium.

PROCEDURAL HISTORY

November 1, 2001 Court of Queen’s Bench of Alberta (Moore J.)	Applicants’ rebate contracts with Respondent found to be valid and enforceable
July 28, 2003 Court of Appeal of Alberta (Ritter, McFadyen and Picard JJ.A.)	Appeal allowed; rebates found to be <i>ultra vires</i>
September 29, 2003 Supreme Court of Canada	Application for leave to appeal filed

Joseph Douglas Bellerose

v. (29954)

Bradley Gerald Bob (B.C.)

NATURE OF THE CASE

Torts - Damages - Aggravated damages - Personal injury - Whether aggravated damages should be available as an “add-on” to non-pecuniary loss in personal injury cases and, if so, whether “indignation” respecting a defendant’s conduct should play any role in their availability or assessment - If aggravated damages are to be available separately in personal injury cases, whether they should be exempted from the trilogy “cap” for non-pecuniary damages - Whether aggravated damages principles developed in the defamation context should apply without modification to claims for personal injury in tort

PROCEDURAL HISTORY

December 21, 2001 Supreme Court of British Columbia (Lamperson J.)	Applicant to pay the Respondent \$281,000 for non-pecuniary damages for pain, injury, suffering and loss of enjoyment of life; and \$590,283 for pecuniary damages
February 15, 2002 Supreme Court of British Columbia (Lamperson J.)	Applicant to pay the Respondent \$75,000 for aggravated damages
June 24, 2003 Court of Appeal for British Columbia (Newbury [<i>dissenting in part</i>], Huddart and Mackenzie JJ.A.)	Appeal allowed in part reducing the award for pain and suffering to \$200,000; appeal of the award of \$75,000 in aggravated damages, dismissed
September 23, 2003 Supreme Court of Canada	Application for leave to appeal filed

Peter Deeb and Hampton Securities Limited

v. (29925)

Fred Metrick and Cecile Metrick (Ont.)

NATURE OF THE CASE

Torts - Constituent elements of tort of abuse of process - Procedural law - Civil procedure - Summary judgment - Whether the Court of Appeal applied the correct test in determining whether the tort of abuse of process had been made out - Whether liability for abuse of process requires a definite act or threat in furtherance of the improper purpose outside of the steps taken in the conduct of the legal process - Whether the requirement of a "legal process" encompasses processes governed by self-regulated professions - Whether this is a proper case for summary judgment

PROCEDURAL HISTORY

August 13, 2002 Ontario Superior Court of Justice (Cork, Master)	Applicants granted leave to amend Statement of Defence and add Counterclaim for damages for abuse of process
September 18, 2002 Ontario Superior Court of Justice (Somers J.)	Appeal allowed; Applicants' motion to amend Statement of Defence dismissed
June 4, 2003 Court of Appeal for Ontario (Moldaver, Goudge and Cronk JJ.A.)	Appeal dismissed
September 2, 2003 Supreme Court of Canada	Application for leave to appeal filed

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

Sa Majesté la Reine

c. (30108)

G.R. (Crim.) (Qc)

NATURE DE LA CAUSE

Droit criminel - Infractions - Appel - Compétence - Inceste - Infractions incluses - La Cour d'appel a-t-elle erré en droit en refusant de reconnaître l'existence d'infractions incluses à une accusation d'inceste? - La Cour d'appel a-t-elle erré en droit en omettant d'exercer son pouvoir de substitution de verdict lui permettant de condamner l'intimé pour avoir commis ces infractions incluses?

HISTORIQUE DES PROCÉDURES

Le 18 décembre 2001 Cour du Québec (Le juge Dubé)	Intimé déclaré coupable de tentative d'inceste en vertu de l'art. 660 du <i>Code criminel</i>
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Le 23 octobre 2003
Cour d'appel du Québec
(Les juges Rothman, Rousseau-Houle et Biron [*ad hoc*])

Appel accueilli, verdict cassé et intimé acquitté

Le 23 décembre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Le 23 janvier 2004
Cour suprême du Canada
(Le juge Major)

Requête en prorogation de délai de la demanderesse
accordée

Canada Safeway Limited

v. (29930)

Her Majesty the Queen in Right of the Province of Manitoba (Man.)

NATURE OF THE CASE

Taxation - Statutes - Assessment - Interpretation - Do bankers' acceptances fall within the meaning of "sums or credits advanced or loaned" within s. 8(1)(d) of *The Corporation Capital Tax Act* C.C.S.M. c. C226?

PROCEDURAL HISTORY

February 11, 2002
Court of Queen's Bench of Manitoba
(Schwartz J.)

Respondent's motion for summary judgment dismissed;
Minister of Finance's decision under *The Corporation
Capital Tax Act*, set aside; reassessment of tax payable by
the Applicant, ordered

June 6, 2003
Court of Appeal of Manitoba
(Twaddle, Monnin and Hamilton JJ.A.)

Appeal allowed; judgment set aside

September 5, 2003
Supreme Court of Canada

Application for leave to appeal filed

Vicbir Holdings Ltd.

v. (29975)

Lorna B. Sutherland and Susan B. Dwyer (Ont.)

NATURE OF THE CASE

Commercial Law - Oppression Remedy - Is judicial discretion under the oppression sections of the CBCA and its provincial counterparts unlimited or must it be based on identifiable legal and equitable principles? - Are there inherent time limits in relation to matters that a complaint may raise on an application under the oppression sections of the CBCA; subsidiarily, do provincial statutes of limitations or rules as to civil law prescription apply? - What is the proper approach to valuation in such cases? - What method should be used in valuing the interests of minority shareholders? - What principles apply in valuing contingent tax liabilities and assets - in particular, embedded taxes (payable on the sale of securities) and refundable dividend tax on hand (RDTOH)?

PROCEDURAL HISTORY

December 4, 2001
Ontario Superior Court of Justice
(Farley J.)

Respondents' application for relief under s.214, 241 and 242 of *The Canada Business Corporations Act* allowed in part

July 14, 2003
Court of Appeal for Ontario
(Feldman, Simmons and Gillese J.J.A.)

Applicant's appeal dismissed; Respondents' cross-appeal allowed in part

September 29, 2003
Supreme Court of Canada

Application for leave to appeal filed

MOTION FOR RECONSIDERATION / DEMANDE DE RÉEXAMEN

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

André Pomerleau c. Sa Majesté la Reine, et autre (Qc) (Civile) (Autorisation) (29520)

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

**JUGEMENTS RENDUS SUR LES
DEMANDES D'AUTORISATION**

FEBRUARY 26, 2004 / LE 26 FÉVRIER 2004

29799 **Paletta International Corporation v. Canada Life Assurance Company** (Ont.) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C38060, dated April 2, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38060, daté du 2 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law - Contracts - Interpretation - Jurisdiction of appellate court to substitute its definition of a word in a contractual term with that of the lower court.

PROCEDURAL HISTORY

March 18, 2002 Ontario Superior Court of Justice (Matlow J.)	Applicant's action against Respondent Canada Life Assurance Company allowed: judgement in the sum of \$242,293.97
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April 2, 2003 Court of Appeal for Ontario (MacPherson, Simmons and Armstrong JJ.A)	Appeal allowed; judgment set aside; action dismissed
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June 2, 2003 Supreme Court of Canada	Application for leave to appeal filed
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29818 **Darryl Williams v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C24685, dated June 3, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C24685, daté du 3 juin 2003, est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal Law - Fraud - Did the Court of Appeal err in failing to find that the destruction by the complainant of all the accused's records relevant to the charges before the court was fatal and that the continued prosecution of the accused was a breach of his rights guaranteed and protected by section 7 of the *Charter*? - Did the Court of Appeal err in ruling that in proving fraud, the Crown was under no duty or obligation to prove that the accused acted without authority in order to meet the burden of establishing a dishonest act? - In answering the aforesaid questions, did the Court of Appeal err in failing to determine whether the Crown was proceeding on the basis of "deceit", "falsehood" and "other fraudulent means" and further, did the Court of Appeal err in failing to make a legal distinction between "deceit", "falsehood" and "other fraudulent means"? - Did the Court of Appeal err in failing to find that the trial judge impermissibly reversed the onus by requiring the accused to prove he was authorized to do what he did? - Did the

Court of Appeal err in holding that there need not be a causal link between a dishonest act and the deprivation, thereby allowing the prosecutor to rely on an alleged dishonest representation made after the alleged deprivation or risk of deprivation had taken place? - Did the Court of Appeal err in failing to find that the Crown had a duty to establish what that industry practice was before convicting the accused for paying a head hunting fee purported for insufficient services rendered? - Did the Court of Appeal err in failing to find that s. 11(b) *Charter* waivers were rendered nugatory by virtue of the conduct of the Crown which thwarted the accused's efforts and by the conduct of the complainant for failing to advise that all fo the requested documents had been destroyed prior to criminal charges being laid and/or prior to the preliminary hearing?

PROCEDURAL HISTORY

November 6, 1995 Ontario Court of Justice (Goodearle J.)	Applicant found guilty of fraud contrary to s.380 of the <i>Criminal Code</i>
May 23, 1996 Ontario Court of Justice (Goodearle J.)	Applicant sentenced to 90 days in prison and a fine in the amount of \$20,000
June 3, 2003 Court of Appeal for Ontario (MacPherson , Cronk and Gillese JJ.A.)	Applicant's appeal against conviction and sentence dismissed
October 17, 2003 Supreme Court of Canada	Application for leave to appeal filed
January 7, 2004 Supreme Court of Canada (Iacobucci J.)	Applicant's application for extension of time to file and/or serve application for leave to appeal granted

29874 **The Great American Insurance Company and The Chateau Insurance Company v. Father Francis Reed, The Roman Catholic Episcopal Corporation for the Diocese of Sault Ste. Marie in Canada, The Continental Insurance Company, The Phoenix Assurance Company Limited, The Phoenix Assurance Company of Canada, The Continental Insurance Company of Canada and Ecclesiastical Insurance Office plc** (Ont.) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C35608, dated May 13, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C35608, daté du 13 mai 2003, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law – Insurance – Duty to defend and indemnify – Plaintiff brought action against parish priest and Diocese alleging sexual assault – Settlement entered into with Plaintiff and third party insurers, other than Applicants – Whether the decision of the Ontario Court of Appeal is in conflict with decisions of the Alberta and British Columbia Court of Appeal, as well as American appellate decisions – Whether there should be a presumption that the parties to an insurance contract intended to exclude, rather than to include, coverage for sexual assault claims arising from intentional misconduct – Whether the same term found in different parts of an insurance policy, or any other contract, should be accorded the same meaning unless there is some good and valid reason for doing otherwise – Whether the provisions of an insurance

policy, or any other contract, should not be interpreted in a manner that creates unexplained anomalies – Whether a clause in an insurance policy, or any other contract, should not be interpreted in a manner that renders part of that clause meaningless – Whether a single word, such as “the”, should not be given governing weight without considering that word in the context of the insurance policy, or other contract, as a whole and in accordance with the presumed intention of the parties – Whether the question of insurance coverage for clergy members who allegedly commit sexual misconduct is a matter of national importance?

PROCEDURAL HISTORY

December 15, 2000 Ontario Superior Court of Justice (Wilkins J.)	Applicants’ insurance policy found to provide coverage for Respondents Reed and Diocese with a duty under it to defend and indemnify
September 7, 2001 Ontario Superior Court of Justice (Wilkins J.)	Judgment with respect to apportionment of liability between third party insurers and costs
May 13, 2003 Court of Appeal for Ontario (McMurtry C.J.O., Doherty and Gillese JJ.A.)	Applicants’ appeal dismissed; cross-appeal allowed in part
July 25, 2003 Supreme Court of Canada	Application for leave to appeal filed

29941 **J.D. Irving, Limited v. General Longshore Workers, Checkers and Shipliners of the Port of Saint John, N.B. Local 273 of the International Longshoremen's Association and Port of Saint John Employers' Association, Inc.** (FC) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-96-02, dated June 13, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-96-02, daté du 13 juin 2003, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Judicial Review - Statutes - Statutory Interpretation - Whether the Canada Industrial Relations Board exceeded its jurisdiction and made a patently unreasonable decision when it purported to follow its previous case law, but, in fact, ignored and failed to correctly apply the most important criterion from such case law - Whether the Canada Industrial Relations Board’s decision was patently unreasonable because it leads to an unconstitutional result - Whether the Canada Industrial Relations Board has given a patently unreasonable interpretation to s. 34 of the *Canada Labour Code* by ignoring the clear wording of the statute and, in effect, creating a “statutory monopoly” in Canadian Ports, which prevents producers of goods from handling their goods themselves

PROCEDURAL HISTORY

January 21, 2002 Canada Industrial Relations Board (Hamilton, Brennan and Flynn, Members)	Respondent’s application for a declaration that certain activities fell within the scope of a geographical certification pursuant to ss. 18 and 34 of the <i>Canada Labour Code, Part I</i> , allowed
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June 13, 2003 Federal Court of Appeal
(Rothstein, Pelletier [dissenting] and Malone JJ.A.)

Applicant's application for judicial review dismissed

September 12, 2003
Supreme Court of Canada

Application for leave to appeal filed

29982 **Jean (Guy) Tremblay v. Calgary Herald Group Inc.** (Alta.) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 0201-0017-AC, dated September 30, 2003, is dismissed without costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 0201-0017-AC, daté du 30 septembre 2003, est rejetée sans dépens.

NATURE OF THE CASE

Torts - Defamation - Procedural law - Limitations - Whether lower courts correctly disposed of case.

PROCEDURAL HISTORY

November 29, 2001
Court of Queen's Bench of Alberta
(Sirrs J.)

Applicant's motion to adjourn proceedings in order to provide new evidence denied

September 30, 2003
Court of Appeal of Alberta
(Fraser, McFadyen and Fruman JJ.A.)

Applicant's appeal dismissed

November 14, 2003
Supreme Court of Canada
(Major J.)

Applicant granted extension of time to serve and file application for leave: time extended to January 5, 2004

December 19, 2003
Supreme Court of Canada

Application for leave to appeal filed

29987 **Lily Elaine Burnett v. Workers' Compensation Board** (B.C.) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number 2003 BCCA 394, CA030008, dated July 2, 2003, is dismissed without costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro 2003 BCCA 394, CA030008, daté du 2 juillet 2003, est rejetée sans dépens.

NATURE OF THE CASE

Canadian Charter – Civil – Workers compensation – Equality rights – Age discrimination – Widow of deceased worker with dependent child losing survivor pension when child no longer a dependent – Widow under age forty when pension terminated – British Columbia *Workers' Compensation Act* providing for continuation of monthly pension only where

surviving spouse is disabled or over age 40 when child ceases to be dependent – Whether application raises issues of public importance in Canada involving the interpretation and application of s. 15(1) of the *Charter of Rights and Freedoms*, such as to warrant leave to appeal – Whether B.C. Court of Appeal judgment inconsistent with decisions of courts in other jurisdictions across Canada – *Canadian Charter of Rights and Freedoms*, s.15(1).

PROCEDURAL HISTORY

July 25, 2002 Supreme Court of British Columbia (Holmes J.)	Applicant's application for judicial review of a decision by the Respondent allowed: declaration that s.17(4) of the <i>Workers Compensation Act</i> and the decision of the Respondent both violate s.15 of the <i>Charter of Rights and Freedoms</i>
July 2, 2003 Court of Appeal of British Columbia (Newbury, Braidwood and Levine JJ.A.)	Respondent's appeal allowed
October 1, 2003 Supreme Court of Canada	Application for leave to appeal filed
December 15, 2003 Supreme Court of Canada Fish, J.S.C.C.	Applicant's motion to extend time to file and / or to serve application for leave, granted

30007 **Kwok Yung Chan v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C34828, dated August 19, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C34828, daté du 19 août 2003, est rejetée.

NATURE OF THE CASE

Criminal Law - Narcotics - Possession for the purposes of trafficking - Attempted possession for the purposes of trafficking - Police conduct a "controlled delivery" of an intercepted shipment of heroin by replacing all but one gram of heroin with wooden blocks and a transmitter and tracing shipment - Whether use of a controlled delivery should only permit a conviction for lesser include offence of attempted possession for the purpose of trafficking.

PROCEDURAL HISTORY

April 25, 2000 Ontario Superior Court of Justice (Gans J.)	Applicant found guilty of possession of heroin for the purpose of trafficking: sentenced to 10 years imprisonment
August 19, 2003 Court of Appeal for Ontario (Simmons, Catzman and Feldman JJ.A.)	Applicant's appeals against conviction and sentence dismissed

October 20, 2003
Supreme Court of Canada

Application for leave to appeal filed

30035 **Robert Lavigne v. Canada Post Corporation** (F.C.) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-596-02, dated June 3, 2003, is dismissed with costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-596-02, daté du 3 juin 2003, est rejetée avec dépens.

NATURE OF THE CASE

Labour law - Administrative law - Privacy law - Jurisdiction - Collective agreement - Dispute arising from the application of a seniority tie-breaker clause in the collective agreement - Whether the Federal Court erred in finding that it lacked jurisdiction *ratione materiae* to hear the dispute - Whether the action arises under the *Privacy Act*, R.S.C., c. P-21, due to use of personal information in contravention with s. 7 of the *Privacy Act* - Whether procedural fairness can oust the exclusive jurisdiction of the grievance arbitrator

PROCEDURAL HISTORY

August 14, 2002
Federal Court of Canada, Trial Division
(Morneau, Prothonotary)

Respondent's motion for an order striking the Applicant's statement of claim, granted : Applicant's action pursuant to s. 17(1), (2)(b) and 48 of the *Federal Court Act*, arising from a complaint for use by the Respondent of the Applicant's personal information in contravention with s. 7 of the *Privacy Act*, dismissed

September 30, 2002
Federal Court of Canada, Trial Division
(Tremblay-Lamer J.)

Appeal dismissed

June 3, 2003
Federal Court of Appeal
(Desjardins, Létourneau and Noël JJ.A.)

Appeal dismissed

September 10, 2003
Federal Court of Appeal
(Desjardins, Létourneau and Noël JJ.A.)

Applicant's motion under section 37.1 of the *Supreme Court Act* for leave to appeal to the Supreme Court of Canada, dismissed

November 5, 2003
Supreme Court of Canada

Application for leave to appeal and motion for an extension of time filed

30039 **Dominic Noël c. Sa Majesté la Reine** (Qc) (Criminelle) (Autorisation)

Coram: Les juges Iacobucci, Binnie et Arbour

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Québec), numéro 200-10-001279-012, daté du 9 septembre 2003, est rejetée.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Quebec), Number 200-10-001279-012, dated September 9, 2003, is dismissed.

NATURE DE LA CAUSE

Droit criminel - Preuve - Procédure - Confession - Admissibilité - Libre et volontaire - La Cour d'appel du Québec a-t-elle commis une erreur de droit sur l'étendue du droit de persuasion d'un policier visant à convaincre une personne détenue de passer aux aveux après que celle-ci ait choisi d'exercer son droit au silence ? - La Cour d'appel du Québec a-t-elle commis une erreur de droit sur l'étendue du droit d'un policier de persuader une personne détenue que l'interrogatoire qu'elle subit ne peut prendre fin que par une confession sans que le caractère libre et volontaire de celle-ci ne soit vicié ? - La Cour d'appel du Québec a-t-elle commis une erreur de droit sur l'étendue du droit d'un policier d'utiliser des scénarios et des hypothèses réducteurs de responsabilité juridique pour inciter une personne détenue à faire une confession libre et volontaire.

HISTORIQUE DES PROCÉDURES

Le 25 septembre 2001 Cour supérieure (Le juge Grenier)	Confession du demandeur jugée libre et volontaire
Le 16 octobre 2001 Cour supérieure (Le juge Grenier)	Jury déclare le demandeur coupable de meurtre au premier degré et d'homicide involontaire
Le 9 septembre 2003 Cour d'appel du Québec (Les juges Otis, Rochette et Morissette)	Pourvoi rejeté
Le 10 novembre 2003 Cour suprême du Canada	Demande d'autorisation d'appel déposée

30042 **Richard Condo v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C38063, dated September 9, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38063, daté du 9 septembre 2003, est rejetée.

NATURE OF THE CASE

Criminal Law - Elements of Offence - Aggravated Assault - Sentencing - Long Term Offender Designation - Did the prosecutor fail to prove the elements of the offence of aggravated assault? - At a dangerous or long-term offender hearing can prior discreditable conduct be considered in determining whether an untried allegation of criminal offence has been

proven beyond a reasonable doubt? - Did the Court err in its reliance on hearsay to prove untried allegations? - In cases where the sentencing judge has declined to make a dangerous offender designation, does the accused retain the right to be heard prior to the judge making a long-term offender designation? - How should "substantial risk" to re-offend be interpreted for purposes of determining whether a long-term offender designation should be made? - Is proof of a pattern of criminal behaviour necessary prior to designating an offender a long-term offender? - What are the factors to be considered in determining the length of a long-term supervision order? - When an accused has been designated a long-term offender, are the general principles of sentencing still applicable to the sentencing of the accused for the predicate offences? - Does a sentencing judge retain the duty to consider the aboriginal background of an offender in sentencing an accused who has been designated a long-term offender? - Did the Court err in refusing to give a two for one credit for pre-trial custody? - Are the general principles of sentencing applicable to the length of a long-term supervision order?

PROCEDURAL HISTORY

April 14, 2000 Ontario Court of Justice (MacPhee J.)	Applicant convicted of criminal harassment, assault, breach of bail conditions, threatening to cause death, kidnapping and aggravated assault contrary respectively to ss. 264(1), 266, 145(3), 264.1, 279(1.1) and 268 of the <i>Criminal Code</i>
July 26, 2001 Ontario Court of Justice (MacPhee J.)	Applicant sentenced to 8 years of imprisonment pursuant to s. 753(5)(a)
September 9, 2003 Court of Appeal for Ontario (Catzman, Abella and Gillese JJ.A.)	Appeal against conviction dismissed; appeal against designation as long term offender dismissed; appeal against sentence dismissed
November 10, 2003 Supreme Court of Canada	Application for leave to appeal filed
January 5, 2004 Supreme Court of Canada (Iacobucci J.)	Applications for extension of time to file and serve leave application granted

30051 **Société en commandite Sainte-Hélène c. G.M. Développement Inc.** (Qc) (Civile) (Autorisation)

Coram: Les juges Iacobucci, Binnie et Arbour

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Québec), numéro 200-09-004179-021, daté du 17 septembre 2003, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Quebec), Number 200-09-004179-021, dated September 17, 2003, is dismissed with costs.

NATURE DE LA CAUSE

Droit des biens - Bien immeubles - Droits réels - Titre de propriété - Servitude par destination du père de famille - Fond servant et fond dominant - La Cour d'appel a-t-elle erré en répudiant la condition d'un aménagement physique ? - La Cour d'appel a-t-elle erré dans ses conclusions relatives à l'extinction de la servitude par les effets de la renonciation et de la clause de dation en paiement ? - La Cour d'appel a-t-elle erré dans son interprétation de l'article 1184 *C.c.Q.* sur la contribution du propriétaire du fonds dominant aux travaux nécessaires à la conservation de la servitude de stationnement?

HISTORIQUE DES PROCÉDURES

Le 14 août 2002
Cour supérieure du Québec
(Le juge Gervais)

Action confessoire de servitude de l'intimée G.M. Développement Inc, rejetée; demande reconventionnelle et requête en radiation d'inscription de la demanderesse, accueillies en partie

Le 17 septembre 2003
Cour d'appel du Québec
(Les juges Baudouin, Chamberland et Morin)

Appel accueilli; jugement cassé; action déclaratoire de servitude accueillie

Le 14 novembre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

30075 **B.F. and B.W. v. Minister of Community Services and Mi'kmaq Family and Children's Services of Nova Scotia** (N.S.) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Nova Scotia Court of Appeal, Number CA202056, dated November 12, 2003, is dismissed without costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Nouvelle-Écosse, numéro CA202056, daté du 12 novembre 2003, est rejetée sans dépens.

NATURE OF THE CASE

Family law - Infants - Child protection proceedings - Parents with limited intellectual ability requiring extensive family support services - Order for continued supervision of Applicants' four children extending past maximum date for supervision orders under the *Children and Family Services Act*, S.N.S. 1990, c. 5, s. 43(4) - Whether trial court could extend the time limits following an express finding that it was in the best interests of the children to do so - Whether approach to appellate review undertaken by Court of Appeal, and the refusal to remit the matter to the trial judge resulted in a breach of fundamental justice

PROCEDURAL HISTORY

May 5, 2003
Family Court of Nova Scotia
(Comeau C.J.F.C.)

Time limits extended; Applicants awarded care and custody of the children subject to general supervision of the Agency for six months; Agency ordered to provide funding

June 24, 2003
Nova Scotia Court of Appeal
(Roscoe J.A.)

Respondent Minister's application for a stay pending appeal allowed

November 12, 2003
Nova Scotia Court of Appeal
(Roscoe, Bateman and Fichaud JJ.A.)

Appeal allowed; Applicants' children ordered placed in permanent care and custody of Respondent Minister

November 21, 2003
Nova Scotia Court of Appeal
(Cromwell J.A.)

Applicants' motion for stay of proceedings refused; Minister ordered to provide Applicants with reasonable notice of any intended placement of the children

December 5, 2003
Supreme Court of Canada

Application for leave to appeal filed

January 8, 2004
Supreme Court of Canada
(Iacobucci, J.)

Motion to expedite the application for leave to appeal
granted

29432 **C.U. v. Marley McGonigle and the Director of Child Welfare for the Province of Alberta** (Alta.)
(Civil) (By Leave) **2004 SCC 12 / 2004 CSC 12**

Coram: **McLachlin C.J. and Iacobucci, Major, Arbour and Fish JJ.**

On September 18, 2003, a panel of this Court composed of Gonthier, Major and Arbour JJ. dismissed an application for leave to appeal brought by the Applicant. The Applicant now applies for reconsideration of her application for leave to appeal.

In her Amended Notice of Motion for Reconsideration of Application for Leave to Appeal, the Applicant argues that, in view of Gonthier J.'s retirement on August 1, 2003, this Court did not have jurisdiction to dismiss her application for leave to appeal on September 18, 2003. The Applicant submits that s. 27(2) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, applies only to appeals and not to applications for leave to appeal. In the alternative, the Applicant submits that her application for leave to appeal was not "heard" prior to August 1, 2003.

Section 27(2) must be read in conjunction with s. 27(1) of the *Supreme Court Act*. These provisions read as follows:

27. (1) A judge who has heard a case for which judgment is delivered pursuant to paragraph 26(1)(a) and who is absent from the delivery of judgment may sign a copy of the opinion with which the judge concurs or, where the judge has written an opinion, give the opinion to a judge present at the delivery of judgment, which concurrence or opinion shall be announced or read in open court and then left with the Registrar or reporter of the Court.

(2) A judge who has resigned the office of judge, or who has ceased to hold office under section 9, shall, within six months thereafter, for the purposes of this section, be deemed to be absent at the delivery of judgment in any case heard by that judge in which judgment has not been delivered during his tenure of office.

For the reasons that follow, however, it is unnecessary, in our view, to deal with the Applicant's arguments under s. 27(2) of the *Supreme Court Act*.

Section 41.1(1) of the *Judges Act*, R.S.C. 1985, c. J-1, adopted in 2001 by s. 20 of *An Act to Amend the Judges Act and to amend another Act in consequence*, S.C. 2001, c. 7, disposes of this matter. This provision represents Parliament's most recent expression of intent in this area and reads as follows:

41.1 (1) A judge of the Supreme Court of Canada who has retired may, with the approval of the Chief Justice of Canada, continue to participate in judgments in which he or she participated before retiring, for a period not greater than six months after the date of the retirement.

In our view, it is evident that s. 41.1(1) of the *Judges Act* applies equally to applications for leave to appeal and appeals.

The Applicant's application for leave to appeal was submitted to Gonthier, Major and Arbour JJ. on July 14, 2003, prior to Gonthier J.'s retirement. Judgment was subsequently issued on September 18, 2003, well within the six month window established by s. 41.1(1) of the *Judges Act*. As a result, we are all of the view that under s. 41.1(1) of the *Judges Act*, Gonthier J. was entitled to participate in the judgment dismissing the application for leave to appeal.

We are further of the view that the Applicant's other arguments do not warrant reconsideration of her application for leave to appeal.

The Motion for Leave to File an Amended Notice of Motion for Reconsideration of Application for Leave to Appeal is granted and the Amended Motion for Reconsideration of Application for Leave to Appeal is dismissed.

Le 18 septembre 2003, une formation de la Cour, composée des juges Gonthier, Major et Arbour, a rejeté la demande d'autorisation d'appel présentée par la requérante. Cette dernière sollicite maintenant le réexamen de cette demande.

Dans son Avis de requête modifié en réexamen de la demande d'autorisation d'appel, la requérante prétend que, compte tenu du départ à la retraite du juge Gonthier le 1^{er} septembre 2003, la Cour n'avait pas compétence pour rejeter sa demande d'autorisation d'appel le 18 septembre 2003. La requérante plaide que le par. 27(2) de la *Loi sur la Cour suprême*, L.R.C. 1985, ch. S-26, s'applique uniquement aux appels et non aux demandes d'autorisation d'appel. Elle soutient subsidiairement que sa demande d'autorisation n'a pas été « entendue » avant le 1^{er} août 2003.

Le paragraphe 27(2) de la *Loi sur la Cour suprême* doit être lu en corrélation avec le par. (1) du même article. Voici le texte de ces dispositions :

27. (1) Dans le cas de l'application de l'alinéa 26(1)a), le juge ayant instruit l'affaire mais absent lors du prononcé du jugement peut signer une copie de l'exposé des motifs auxquels il souscrit ou remettre à un juge qui sera présent à l'audience publique le texte de l'exposé de ses propres motifs. Communication est faite à l'audience de son accord ou de son exposé, l'un ou l'autre étant ensuite consigné par le registraire ou l'arrêtiériste de la Cour.

(2) Pour l'application du présent article, lorsque le jugement d'une affaire entendue par lui est rendu après qu'il a démissionné ou cessé d'exercer sa charge en raison de l'article 9, le juge intéressé est assimilé, pour les six mois qui suivent sa cessation de fonction, à un juge absent lors du prononcé du jugement.

Toutefois, pour les motifs qui suivent, il n'est pas nécessaire à notre avis de se pencher sur les arguments de la requérante fondés sur le par. 27(2) de la *Loi sur la Cour suprême*.

Le paragraphe 41.1(1) de la *Loi sur les juges*, L.R.C. 1985, ch. J-1, édicté en 2001 par l'art. 20 de la *Loi modifiant la Loi sur les juges et une autre loi en conséquence*, L.C. 2001, ch. 7, tranche la question. Cette disposition, qui constitue l'expression la plus récente de l'intention du législateur à cet égard, est rédigée ainsi :

41.1 (1) Tout juge de la Cour suprême du Canada qui prend sa retraite peut, avec l'autorisation du juge en chef du Canada, continuer de participer aux jugements auxquels il participait avant sa retraite pendant une période maximale de six mois après celle-ci.

Il est évident, selon nous, que le par. 41.1(1) de la *Loi sur les juges* s'applique autant aux demandes d'autorisation d'appel qu'aux appels.

La demande d'autorisation d'appel de la requérante a été soumise aux juges Gonthier, Major et Arbour le 14 juillet 2003, soit avant le départ à la retraite du juge Gonthier. Jugement a par la suite été rendu le 18 septembre 2003, bien à l'intérieur de la période de six mois prévue par le par. 41.1(1) de la *Loi sur les juges*. En conséquence, nous sommes tous d'avis que le juge Gonthier pouvait, en vertu du par. 41.1(1) de la *Loi sur les juges*, participer au jugement rejetant la demande d'autorisation d'appel.

Nous sommes également d'avis que les autres arguments de la requérante ne justifient pas le réexamen de sa demande d'autorisation d'appel.

La Requête sollicitant l'autorisation de déposer un avis de requête modifié en réexamen de la demande d'autorisation d'appel est accueillie et la Requête modifiée en réexamen de la demande d'autorisation d'appel est rejetée.

13.2.2004

Before / Devant : THE REGISTRAR

Motion to extend the time in which to serve and file the respondent's response to the second and third applications for leave to appeal

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimé à la deuxième et à la troisième demande d'autorisation d'appel

Ajit Singh Grewal, et al.

v. (29961)

Her Majesty the Queen, et al. (B.C.) (Crim.)

GRANTED / ACCORDÉE Time extended to December 30, 2003.

17.2.2004

Before / Devant : THE CHIEF JUSTICE

Motion to state a constitutional question

Requête pour formulation d'une question constitutionnelle

Procureur général du Québec, et autres

c. (29822)

Raymond Chabot Inc., ès qualité de syndic à la faillite de D.I.M.S. Construction inc. (Qc)

GRANTED / ACCORDÉE

À LA SUITE DE LA DEMANDE des appelants visant à obtenir la formulation de questions constitutionnelles dans l'appel susmentionné;

ET APRÈS AVOIR LU la documentation déposée;

LES QUESTIONS CONSTITUTIONNELLES SUIVANTES SONT FORMULÉES:

1. L'article 54 de la *Loi sur les relations du travail, la formation professionnelle et la gestion de la main-d'oeuvre dans l'industrie de la construction*, L.R.Q., ch. R-20, est-il, en totalité ou en partie, inapplicable ou inopérant pour cause de conflit avec la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, ch. B-3, et, en particulier avec l'art. 136 de cette loi ?
 2. L'article 316 de la *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., ch. A-3.001, est-il, en totalité ou en partie, inapplicable ou inopérant pour cause de conflit avec la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, ch. B-3, et, en particulier avec l'art. 136 de cette loi ?
-
1. Is s. 54 of *An Act respecting labour relations, vocational training and manpower management in the construction industry*, R.S.Q., c. R-20, inapplicable or inoperable in whole or in part, by reason of being in conflict with the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and in particular s. 136 thereof?

2. Is s. 316 of *An Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A-3.001, inapplicable or inoperable in whole or in part, by reason of being in conflict with the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and in particular s. 136 thereof?
-

17.2.2004

Before / Devant : BINNIE J.

Miscellaneous motions

Autre requêtes

Colleen Pritchard

v. (29677)

Ontario Human Rights Commission (Ont.)

UPON APPLICATION by the appellant for an order for access to a copy of the sealed legal opinion and upon application by the respondent for orders sealing the sealed envelope containing the legal opinion and allowing counsel for the respondent to include the legal opinion at issue in this appeal in a sealed envelope for review by the Court;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

- 1) The appellant's motion for access to a copy of the sealed legal opinion is dismissed with costs.
 - 2) The respondent's motion allowing counsel for the respondent to include the legal opinion at issue in this appeal in a sealed envelope for possible review by the Court (if the Court should think fit), is granted without costs.
-

18.2.2004

Before / Devant : IACOBUCCI J.

Further order on motions for leave to intervene

Autre ordonnance sur des requêtes en autorisation d'intervention

BY / PAR : Attorney General of Canada;
Squamish Indian Band and Lax Kw'alaams Indian Band;
Haisla Nation;
First Nations Summit;
Dene Tha' First Nation;
Teningyet, also known as Art Matthews, Gitxsan Hereditary Chief;
Business Council of British Columbia, the Aggregate Producers Association of British Columbia, the British Columbia & Yukon Chamber of Mines, the British Columbia Chambers of Commerce, the Council of Forest Industries and the Mining Association of British Columbia;
British Columbia Cattlemen's Association;

IN / DANS : The Minister of Forests, et al.

v. (29419)

Council of the Haida Nation and Guujaaw, on their own behalf and on behalf of all other members of the Haida Nation, et al. (B.C.)

UPON APPLICATION by the Attorney General of Canada, the Squamish Indian Band and Lax Kw'alaams Indian Band, the Haisla Nation, the First Nations Summit, the Dene Tha' First Nation, Tenimgyet, also known as Art Matthews, Gitxsan Hereditary Chief, the Business Council of British Columbia, the Aggregate Producers Association of British Columbia, the British Columbia & Yukon Chamber of Mines, the British Columbia Chambers of Commerce, the Council of Forest Industries and the Mining Association of British Columbia, and the British Columbia Cattlemen's Association and pursuant to the order of November 24, 2003;

IT IS HEREBY FURTHER ORDERED THAT the said interveners, Squamish Indian Band and Lax Kw'alaams Indian Band, the Haisla Nation, the Dene Tha' First Nation, the British Columbia Cattlemen's Association, are each granted permission to present oral argument not exceeding ten (10) minutes at the hearing of the appeal.

IT IS HEREBY FURTHER ORDERED THAT the said intervener, Tenimgyet, also known as Art Matthews, Gitxsan Hereditary Chief, is granted permission to present oral argument not exceeding fifteen (15) minutes at the hearing of the appeal.

IT IS HEREBY FURTHER ORDERED THAT the said interveners, the Attorney General of Canada, the First Nations Summit, the Business Council of British Columbia, the Aggregate Producers Association of British Columbia, the British Columbia & Yukon Chamber of Mines, the British Columbia Chambers of Commerce, the Council of Forest Industries and the Mining Association of British Columbia, are not granted permission to present oral argument in this appeal since they were granted oral argument not exceeding fifteen (15) minutes at the hearing of the appeal Norm Ringstand, et al. v. The Taku River Tlingit First Nation, et al. (29146).

18.2.2004

Before / Devant : IACOBUCCI J.

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

The Minister of Forests, et al.

v. (29419)

Council of the Haida Nation and Guujaaw, on their own behalf and on behalf of all other members of the Haida Nation, et al. (B.C.)

GRANTED / ACCORDÉE

UPON APPLICATION by the intervener, the Attorney General for Saskatchewan, for an order extending the time to serve and file its factum and book of authorities to January 16, 2004 and for an order permitting the Attorney General for Saskatchewan to present oral argument at the hearing of this appeal.

AND HAVING READ the material filed;

Requête en prorogation du délai imparti pour signifier et déposer les mémoires et recueil de sources et de doctrine du Procureur général de la Saskatchewan

IT IS HEREBY ORDERED THAT:

- 1) The motion to extend the time to serve and file the Attorney General for Saskatchewan's factum and book of authorities to January 16, 2004 is granted.
- 2) The Attorney General for Saskatchewan is granted permission to present oral argument not exceeding fifteen (15) minutes at the hearing of the appeal.

19.2.2004

Before / Devant : THE CHIEF JUSTICE

Motion for directions**Demande pour obtenir des directives**

In the Matter of a Reference by the Governor in Council concerning the Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes, as set out in Order in Council P.C. 2003-1055, dated July 16, 2003 (Can.) (29866)

UPON APPLICATION by the Attorney General of Canada for directions;

HAVING READ the material filed and the submissions of the Attorney General of Canada and the interveners;

IT IS HEREBY ORDERED THAT:

1. The Attorney General of Canada shall serve forthwith a copy of the Notice of Amended Reference on the Attorneys General of the provinces, the Ministers of Justice of the governments of the territories, and the interveners granted leave to intervene in this reference;
2. Those provincial Attorneys General who have filed a notice of intervention may address the additional reference question without having to file a further notice of intervention.
3. Provincial Attorneys General or Ministers of Justice of the governments of the territories who have not intervened to date, but who now seek to do so, shall serve notice of their intention to intervene under s. 53(5) of the *Supreme Court Act* by February 27, 2004;
4. Intervenors granted leave to intervene by the order of Iacobucci J. dated January 23, 2004, may address the additional reference question without applying for further leave to intervene;
5. The Attorney General of Canada is allowed to serve and file a supplementary factum of no more than 10 pages, a supplementary record and a book of authorities to address the additional reference question, no later than March 30, 2004;
6. By March 30, 2004, the Attorney General of Canada shall, at the cost of the Attorney General of Canada, file hard copies of all affidavits (both expert and personal), transcripts of cross-examinations and written interrogatories from the record of the Ontario Court of Appeal in *Halpern v. Canada (Attorney General)* (C39172 and C39174), and from the record of the British Columbia Court of Appeal in *Egale Canada Inc. v. Canada (Attorney General)* (CA029017 and CA029048), without reproducing materials already filed in the Attorney General of Canada's Record of October 30, 2003;
7. By March 30, 2004, the Attorney General of Canada shall, at the cost of the Attorney General of Canada, serve on all intervenors and file with the Court an electronic version of all affidavits (both expert and personal), transcripts of cross-examinations and written interrogatories from the record of the Ontario Court of Appeal in *Halpern v. Canada (Attorney General)* (C39172 and C39174), and from the record of the British Columbia Court

of Appeal in *Egale Canada Inc. v. Canada (Attorney General)* (CA029017 and CA029048), and, without duplication, the materials filed in the Attorney General of Canada's Record of October 30, 2003. These materials can be served and filed electronically either by e-mail, or by delivering a disk containing data in a readable PDF format. The Attorney General Canada shall serve forthwith an electronic version of the same materials on all interveners granted leave to intervene after March 30, 2004, if any;

8. Persons not already granted leave to intervene in this reference shall serve and file their motions for leave to intervene by April 6, 2004;
9. The Attorney General of Canada shall serve and file its responses to the motions for leave to intervene, if any, by April 13, 2004;
10. Replies to the responses of the Attorney General of Canada, if any, shall be served and filed by April 16, 2004;
11. All persons who have been or will be granted leave to intervene in this reference, and all provincial Attorneys General and territorial Ministers of Justice who have intervened or will intervene pursuant to s. 53(5) of the *Supreme Court Act*, shall serve and file their materials addressing all four reference questions, by May 11, 2004. At the same time, the Attorney General of Quebec, having already filed his factum, may, if he wishes, serve and file supplementary materials addressing the additional reference question;
12. The Attorney General of Canada shall serve and file his reply factum of no more than 20 pages in response to the issues raised by all of the interveners, by June 8, 2004;
13. The hearing of the Reference is scheduled for October 6, 7 and 8, 2004;
14. No variation is made to the order of Iacobucci J. dated January 23, 2004, regarding the terms of intervention or length of factum of any person granted leave to intervene under that order;
15. No order as to costs is made at the present time.

À LA SUITE D'UNE DEMANDE de directives présentée par le procureur général du Canada;

APRÈS EXAMEN des documents déposés et des observations présentées par le procureur général du Canada et les intervenants;

IL EST ORDONNÉ CE QUI SUIT :

1. Le procureur général du Canada doit sans délai signifier copie de l'Avis de renvoi modifié aux procureurs généraux des provinces, aux ministres de la Justice des gouvernements territoriaux et aux intervenants autorisés à participer au présent renvoi.
2. Les procureurs généraux provinciaux qui ont déposé un avis d'intervention peuvent présenter des observations à l'égard de la question additionnelle faisant l'objet du renvoi sans être tenus de produire un autre avis d'intervention.
3. Les procureurs généraux provinciaux et les ministres de la Justice des gouvernements territoriaux qui ne sont pas encore intervenus mais qui désirent le faire doivent signifier leur intention en ce sens en vertu du par. 53(5) de la *Loi sur la Cour suprême* d'ici le 27 février 2004.
4. Les intervenants qui ont été autorisés à participer à l'instance par l'ordonnance du juge Iacobucci datée du 23 janvier 2004 peuvent présenter des observations à l'égard de la question additionnelle faisant l'objet du renvoi sans être tenus de demander à nouveau l'autorisation d'intervenir.
5. Le procureur général du Canada est autorisé à signifier et déposer, au plus tard le 30 mars 2004, un mémoire additionnel d'au plus 10 pages, ainsi qu'un dossier et un recueil de sources supplémentaires à l'égard de la question additionnelle faisant l'objet du renvoi.

6. D'ici le 30 mars 2004, le procureur général du Canada doit déposer, à ses frais et sur support papier, copie des documents suivants : les affidavits (souscrits par des experts ou d'autres personnes), les transcriptions des contre-interrogatoires et les interrogatoires écrits figurant dans le dossier de la Cour d'appel de l'Ontario dans l'affaire *Halpern c. Canada (Attorney General)* (C39172 et C39174) et dans le dossier de la Cour d'appel de la Colombie-Britannique dans l'affaire *Egale Canada Inc. c. Canada (Attorney General)* (CA029017 et CA029048), sans reproduire les documents déjà déposés et figurant dans le Dossier du procureur général du Canada daté du 30 octobre 2003.
7. D'ici le 30 mars 2004, le procureur général du Canada doit, à ses frais, signifier à tous les intervenants et déposer à la Cour une version électronique des documents suivants : les affidavits (souscrits par des experts ou d'autres personnes), les transcriptions des contre-interrogatoires et les interrogatoires écrits figurant dans le dossier de la Cour d'appel de l'Ontario dans l'affaire *Halpern c. Canada (Attorney General)* (C39172 et C39174) et dans le dossier de la Cour d'appel de la Colombie-Britannique dans l'affaire *Egale Canada Inc. c. Canada (Attorney General)* (CA029017 et CA029048), et les documents déposés dans le Dossier du procureur général du Canada daté du 30 octobre 2003 qui ne figurent pas parmi les documents susmentionnés. Ces documents peuvent être signifiés soit par courrier électronique soit par remise d'une disquette contenant les données en format PDF. Le procureur général du Canada devra signifier sans délai une version électronique de ces documents à tous les intervenants qui, après le 30 mars 2004, pourraient être autorisés à intervenir.
8. Les personnes qui n'ont pas déjà été autorisées à intervenir au présent renvoi ont jusqu'au 6 avril 2004 pour signifier et déposer leur requête sollicitant l'autorisation d'intervenir.
9. Le procureur général aura jusqu'au 13 avril 2004 pour signifier et déposer ses réponses à ces requêtes, le cas échéant.
10. Les répliques aux réponses du procureur général du Canada, le cas échéant, devront être signifiées et déposées au plus tard le 16 avril 2004.
11. Toutes les personnes qui ont été ou seront autorisées à intervenir au présent pourvoi, ainsi que tous les procureurs généraux provinciaux et ministres de la Justice territoriaux qui sont intervenus ou qui interviendront en vertu du par. 53(5) de la *Loi sur la Cour suprême* doivent signifier et déposer d'ici le 11 mai 2004 leurs documents à l'égard des quatre questions du renvoi. Comme le procureur général du Québec a déjà déposé son mémoire, il peut à son gré, d'ici cette même date, signifier et déposer des documents supplémentaires à l'égard de la question additionnelle faisant l'objet du renvoi.
12. Le procureur général du Canada a jusqu'au 8 juin 2004 pour signifier et déposer son mémoire répondant aux points soulevés par tous les intervenants; ce mémoire ne doit pas compter plus de 20 pages.
13. L'audition du Renvoi a été fixée aux 6, 7 et 8 octobre 2004.
14. Aucune modification n'est apportée à l'ordonnance du juge Iacobucci datée du 23 janvier 2004 en ce qui concerne les conditions d'intervention, notamment quant à la longueur des mémoires, que doivent respecter les personnes qui ont été autorisées à intervenir par cette ordonnance.
15. Aucune ordonnance n'est rendue à l'égard des dépens à ce moment-ci.

19.2.2004

Before / Devant : THE CHIEF JUSTICE

Motion to state a constitutional question

Requête pour formulation d'une question constitutionnelle

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

UPON APPLICATION by the respondent for an order stating constitutional questions in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT THE CONSTITUTIONAL QUESTIONS BE STATED AS FOLLOWS:

1. Do par. (a)(I), (ii) and (iii) of New Brunswick *Order in Council 2002-110* interfere with the financial security of Provincial Court judges and thereby violate the principle of judicial independence guaranteed by the preamble to the *Constitution Act, 1867*?

2. Do par. (a)(I), (ii) and (iii) of New Brunswick *Order in Council 2002-110* interfere with the financial security of Provincial Court judges and thereby violate the principle of judicial independence guaranteed by s. 11(d) of the *Canadian Charter of Rights and Freedoms*?

3. If the answer to question 2 is in the affirmative, do par.(a)(I), (ii) and (iii) of New Brunswick *Order in Council 2002-110* constitute a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

1. Les paragraphes (a)(I), (ii) et (iii) du *Décret en conseil du Nouveau-Brunswick 2002-110* portent-ils atteinte à la sécurité financière des juges de la Cour provinciale et contreviennent-ils, de ce fait, au principe de l'indépendance judiciaire garanti par le préambule de la *Loi constitutionnelle de 1867*?

2. Les paragraphes (a)(I), (ii) et (iii) du *Décret en conseil du Nouveau-Brunswick 2002-110* portent-ils atteinte à la sécurité financière des juges de la Cour provinciale et contreviennent-ils, de ce fait, au principe de l'indépendance judiciaire garanti par l'alinéa 11d) de la *Charte canadienne des droits et libertés*?

3. Si la réponse à la question précédente est affirmative, les paragraphes (a)(i), (ii) et (iii) du *Décret en conseil du Nouveau-Brunswick 2002-110* constituent-ils une limite raisonnable prescrite par une règle de droit dont la justification peut se démontrer dans le cadre d'une société libre et démocratique en vertu de l'article premier de la *Charte*?

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

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

19.2.2004

Simon Kwok Cheng Chow

v. (29919)

Her Majesty the Queen (B.C.)

23.2.2004

Le Procureur général du Canada

c. (30187)

Le Procureur général du Québec (Qc)

(De plein droit / l'art. 36 Loi sur la Cour suprême)

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 -

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
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9	10	H 11	12	13	14	15
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04-07-2002

DECEMBER - DECEMBRE						
S D	M L	T M	W M	T J	F V	S S
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28	29	30	31			

- 2004 -

JANUARY - JANVIER						
S D	M L	T M	W M	T J	F V	S S
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FEBRUARY - FÉVRIER						
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MARCH - MARS						
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APRIL - AVRIL						
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MAY - MAI						
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JUNE - JUIN						
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6	M 7	8	9	10	11	12
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27	28	29	30			

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

M
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