

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Sa Majesté la Reine

Annie-Claude Bergeron
Procureur général du Québec

c. (30108)

G.R. (Qc)

Line Boivin
Boulet, Boivin, Gionet, Duchesne,
Thibault & Savard

DATE DE PRODUCTION : 23.12.2003

Douglas Louie Schwartz

Peter Duncan Ryan

v. (30099)

Her Majesty the Queen (B.C.)

Alexander Budlovsky
Attorney General of British Columbia

FILING DATE: 24.12.2003

Her Majesty the Queen

Scott C. Hutchison
Attorney General of Ontario

v. (30113)

Toronto Star Newspapers Limited, et al. (Ont.)

Paul B. Schabas
Blake, Cassels & Graydon

FILING DATE: 30.12.2003

Pierre-Gilles Tremblay

Pierre-Gilles Tremblay

c. (30123)

Feu André Charest, et autre (Qc)

Éric Hardy
Ogilvy, Renaud

DATE DE PRODUCTION : 30.12.2003

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

David Stuart Tedham

James A.W. Schuman
Schuman, Daltrop & Company

v. (30118)

Jacqueline Margaret Tedham (B.C.)

Mary E.B. Wood

FILING DATE: 6.1.2004

Warren Hitzig, et al.

Paul Burstein
Burstein, Unger

v. (30120)

Her Majesty the Queen (Ont.)

Croft Michaelson
Attorney General of Canada

FILING DATE: 7.1.2004

David Hilewitz

Cecil L. Rotenberg, Q.C.

v. (30125)

**The Minister of Citizenship and immigration
(F.C.)**

Neeta Logsetty
Attorney General of Canada

FILING DATE: 12.1.2004

Dirk De Jong

Cecil L. Rotenberg, Q.C.

v. (30127)

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

Neeta Logsetty
Attorney General of Canada

FILING DATE: 12.1.2004

Transport Robert (1973) Ltée

Robert B. Warren
WeirFoulds

v. (30130)

Her Majesty the Queen (Ont.)

Shaun Nakatsuru
Attorney General of Ontario

FILING DATE: 13.1.2004

Industries de maintenance Empire inc.

Véronique Morin
Lavery, De Billy

c. (30131)

Commission de la construction du Québec (Qc)

Michel Synnott
Ménard, Corriveau

DATE DE PRODUCTION : 13.1.2004

Q.S.B. Inc. (Santé Animale Breton)

Louis Masson
Joli-Coeur, Lacasse, Geoffrion, Jetté,
St-Pierre

c. (30133)

Ordre des pharmaciens du Québec (Qc)

Philippe Frère
Lavery, De Billy

DATE DE PRODUCTION : 14.1.2004

**American Wollastonite Mining Corp. formerly
known as White Plains Resources Corp.**

Michael R. Dunn
Dunn & Company

v. (30132)

Frank E. Scott, et al. (B.C.)

Frank E. Scott

FILING DATE: 15.1.2004

Attorney General of Canada
Judith Bowers, Q.C.
Attorney General of Canada

v. (30137)

Donald Gladstone, et al. (B.C.)
Peter L. Rubin
Blake, Cassels & Graydon

FILING DATE: 16.1.2004

Daniel Lajoie, et autre
Guy Frédéric Gervais

c. (30048)

Camping du Lac des Pins inc., et autre (Qc)
Éric Paul Masse
Bélanger, Sauvé

DATE DE PRODUCTION : 16.1.2004

Fullercon Limited
Martin Z. Black

v. (30135)

City of Ottawa, et al. (Ont.)
Daniel Leduc
Lang, Michener

FILING DATE: 19.1.2004

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

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

JANUARY 19, 2004 / LE 19 JANVIER 2004

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

Apotex Inc. and Bernard Sherman

v. (29909)

Merck & Co. Inc. and Merck Frosst Canada & Co. (F.C.)

NATURE OF THE CASE

Procedural law - Contempt of court - Civil contempt - Judgments and orders - Defendant continuing sales of infringing product after reasons issued but before final judgment signed and filed giving rise to counts of civil

contempt - President of defendant corporation as “directing mind” authorizing conduct giving rise to contempt - Whether Federal Court of Appeal erred in finding that the requisite mental element of contempt under both branches of Rule 355 of the *Federal Court Rules* was the same in light of principles of fundamental justice enshrined in s. 7 of the *Charter* - Whether Federal Court of Appeal erred in finding that where contempt is alleged on the basis of interference with the orderly administration of justice, it was unnecessary to establish contumacious intent on the part of the accused - Whether Federal Court of Appeal erred in concluding that a natural person and non-party to the underlying litigation could be found in contempt without a finding of contumacy - Whether Federal Court of Appeal erred in holding that the acts committed by Apotex subsequent to January 9, 1995 did not constitute contempt of court - Whether Federal Court of Appeal erred in reducing the penalty for contempt of court against Apotex or, alternatively, in failing to increase the penalty - Whether Federal Court of Appeal erred in reducing the award of solicitor and client costs.

PROCEDURAL HISTORY

March 7, 2000
Federal Court of Canada, Trial Division
(MacKay J.)

Applicants found to be in civil contempt of Court on two counts of interfering with the orderly administration of justice

May 26, 2003
Federal Court of Appeal
(Stone, Noël and Sexton)

Applicants’ appeal allowed in part; finding of contempt of Court sustained with respect to one count

August 25, 2003
Supreme Court of Canada

Application for leave to appeal filed

**The City of Winnipeg, Brian Moore, in his capacity as the City Assessor under the *Municipal Assessment Act*,
Robert MacLachlan, Michele Colatruglio (also known as Mike Colatruglio) and Kelly Shields**

v. (29934)

**Manitoba Hotel Association Inc., Norwood Hotel Co. Ltd., Clipper Hotels Ltd., Magni-Prince Enterprises Ltd.
& Jo-Car Enterprises Ltd., Gordon Hotels & Motor Inns Ltd., Canad Corporation of Manitoba Ltd.,
Cambridge Hospitality Corp., Dakota Village Motor Hotel Ltd., and Lakeview Management Inc. (Man.)**

NATURE OF THE CASE

Procedural law – Pre-trial procedure – Motion to strike statement of claim pursuant to Manitoba Court of Queen’s Bench Rule 25.11 – Allegation of tort of abuse of public authority – Whether, given the exclusive jurisdiction of the Municipal Board of Manitoba to deal with matters entrusted to it by legislation and in respect of which it has considerable expertise, the decision of the Manitoba Court of Appeal is contrary to its own decisions and decisions from the Supreme Court of Canada – Whether Canadian courts have not been consistent in their decisions in similar circumstances, leaving confusion in the law which this Court should clarify?

PROCEDURAL HISTORY

October 11, 2002 Court of Queen’s Bench of Manitoba (Sharp, Master)	Applicants’ motion for an order to strike out the Respondents’ amended statement of claim pursuant to Manitoba Court of Queen’s Bench Rule 25.11, dismissed
January 16, 2003 Court of Queen’s Bench of Manitoba (Hanssen J.)	Appeal dismissed
June 9, 2003 Court of Appeal of Manitoba (Scott C.J.M., Philp and Hamilton JJ.A.)	Appeal dismissed
September 8, 2003 Supreme Court of Canada	Application for leave to appeal filed

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

Mark Marren and John Brown

v. (29907)

Echo Bay Mines Ltd. (B.C.)

NATURE OF THE CASE

Procedural law - Courts - Jurisdiction - Whether compliance with an enumerated ground for service *ex juris* gives rise to the presumption of a real and substantial connection in interprovincial disputes - Are there sufficient policy reasons in wrongful dismissal disputes for revising the private international law rule governing the locus of a breach of contract? - Are federal companies domiciled within each province and territory for the purpose of establishing jurisdiction simpliciter? - Did the British Columbia Court of Appeal correctly apply the law governing jurisdiction simpliciter to the facts of this case?

PROCEDURAL HISTORY

August 6, 2002 Supreme Court of British Columbia (Cullen J.)	Respondent's application for a declaration that the Court has no jurisdiction dismissed
May 16, 2003 Court of Appeal of British Columbia (Donald, Huddart and Mackenzie JJ.A.)	Respondent's appeal allowed: action dismissed
August 18, 2003 Supreme Court of Canada	Application for leave to appeal filed

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

Frank Abbott and Tim Nyhoff and Chance Chase

v. (29895)

Vaughn Collins, S. David Crane, James Hutchinson, Ronald Gentle, Steve Layton and Brett Mailloux (Ont.)

NATURE OF THE CASE

Labour law - Collective agreement – Arbitration - Jurisdiction - *Police Services Act*, R.S.O. 1990, c. P. 15 - *Public Service Act*, R.S.O. 1990, c. P. 47 - Statutory interpretation - Disciplinary actions of police - Residual jurisdiction of courts - Whether actions of police management, while appearing to be administrative or operational, were a disguised form of discipline - Whether the Court of Appeal erred in its decision concerning how police officers are disciplined and the remedies available to those who are subjected to a disguised form of discipline - Whether, in the context of police services and discipline, the ruling of the Court of Appeal has effectively eliminated the civil court's residual jurisdiction to resolve any dispute involving a case of disguised discipline and abuse of statutory powers - Whether the Court of Appeal erred as a matter of law in holding that the provisions of the *Police Services Act*, together with the limited provisions of the Collective Agreement, formed a complete code relating to police discipline, leaving no room for redress by court action, even when the allegations related to disguised discipline and abuse of statutory powers.

PROCEDURAL HISTORY

April 3, 2002 Ontario Superior Court of Justice (Patterson J.)	Respondents' motion for an order dismissing the action, dismissed
May 15, 2003 Court of Appeal for Ontario (Morden, Doherty and Feldman JJ.A.)	Appeal allowed; order set aside; action dismissed
August 13, 2003 Supreme Court of Canada	Application for leave to appeal filed

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

Her Majesty the Queen

v. (29920)

David Jeff Elias (Crim.) (Man.)

NATURE OF THE CASE

Canadian Charter - Criminal - Criminal Law - Driver of motor vehicle required to take a roadside alcohol screening device test after police officer smells alcohol on driver's person or breath and after officer asks driver if he had been drinking - Whether infringement of s. 10(b) of the *Charter* was a reasonable limit prescribed by law?

PROCEDURAL HISTORY

March 6, 2001 Provincial Court of Manitoba (Kopstein J.)	Respondent charged with "driving impaired" and "driving over .08"; trial judge found Respondent's rights under s. 10 (b) of the <i>Charter</i> had been violated and respondent was acquitted
April 19, 2002 Court of Queen's Bench of Manitoba (Schwartz J.)	Applicant's appeal of the acquittal on the charge of "driving over.08" allowed; new trial ordered
May 30, 2003 Court of Appeal of Manitoba (Kroft, Philp and Freedman JJ.A.)	Respondent's right to counsel (s.10 (b) of the <i>Charter</i>) was violated; violation was reasonable under s.1 of the <i>Charter</i> ; even if violation was unjustifiable it would not lead to exclusion of evidence pursuant to s. 24(2) of the <i>Charter</i> ; appeal dismissed and new trial ordered
August 29, 2003 Supreme Court of Canada	Application for leave to appeal filed
January 9, 2004 Supreme Court of Canada	Motion to expedite filed

Dominic Noël

c. (30039)

Sa Majesté la Reine (Crim.) (Qc)

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

Government of Saskatchewan

v. (29973)

Rothmans Benson & Hedges Inc. (Sask.)

NATURE OF THE CASE

Constitutional law - Statutes - Statutory instruments - Whether the Court of Appeal for Saskatchewan erred in law in holding that the issue of the paramountcy of a federal law could be ruled upon as a point of law alone, without any factual foundation, pursuant to a motion made under rule 188 of the Saskatchewan *Court of Queen's Bench Rules* - Whether the Court of Appeal for Saskatchewan erred in law in ruling that section 6 of *The Tobacco Control Act*, S.S. 2001, c. T-14.1, conflicts with section 30 of the *Tobacco Act*, S.C. 1997, c. 13, and is thereby inoperative pursuant to the doctrine of federal legislative paramountcy.

PROCEDURAL HISTORY

September 25, 2002 Court of Queen's Bench for Saskatchewan (Barclay J.)	Respondent's application for a declaration that s. 6 of <i>The Tobacco Control Act</i> is inoperative, dismissed
October 3, 2003 Court of Appeal for Saskatchewan (Tallis, Cameron and Sherstobitoff JJ.A.)	Appeal allowed; s. 6 of the <i>Act</i> declared inoperative
November 24, 2003 Supreme Court of Canada (Iacobucci J.)	Motion for a stay of execution is referred to panel seized of the leave application
December 1, 2003 Supreme Court of Canada	Application for leave to appeal filed

B.F. and B.W.

v. (30075)

Minister of Community Services and Mi'kmaq Family and Children's Services of Nova Scotia (N.S.)

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

Paletta International Corporation

v. (29799)

Canada Life Assurance Company (Ont.)

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
April 2, 2003 Court of Appeal for Ontario (MacPherson, Simmons and Armstrong JJ.A)	Appeal allowed; judgment set aside; action dismissed
June 2, 2003 Supreme Court of Canada	Application for leave to appeal filed

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

Le Groupe Commerce compagnie d'assurances

c. (30058)

La Capitale, compagnie d'assurance générale (La Capitale assurances générales inc.) (Qc)

NATURE DE LA CAUSE

Droit commercial - Assurance - Subrogation - Procédure - Procédure civile - Actions - Requête en rejet d'action en vertu de l'art. 75.1 du *Code de procédure civile*, L.R.Q., ch. C-25, au motif qu'elle est frivole ou manifestement mal fondée - La Cour d'appel a-t-elle erré en interprétant restrictivement la théorie « personnes de la maison de l'assuré » de l'art. 2474 du *Code civil du Québec*, L.Q. 1991, ch. 64, en restreignant la portée du mot « personnes » aux seules personnes physiques? - La Cour d'appel a-t-elle erré en faisant défaut d'appliquer la *Loi d'interprétation*, L.R.Q., ch. I-16, particulièrement les art. 40 relativement à la primauté du texte français, 41 qui prône une interprétation large et libérale et 61.16 qui stipule que le mot « personne » comprend les personnes physiques ou morales? - La Cour d'appel a-t-elle erré en motivant sa décision en ayant recours au droit français et à l'interprétation du terme « household » en common law, contrairement à ses décisions antérieures, et en ne respectant pas l'arrêt *Prud'homme c. Prud'homme* [2002] CSC 85? - La Cour d'appel a-t-elle erré en refusant d'appliquer en l'espèce le critère qu'elle avait précédemment reconnu comme étant l'intention du législateur et élevé au rang de principe juridique, à savoir interdire le recours subrogatoire de l'assureur contre toute personne qu'il aurait été impensable que l'assuré lui-même puisse poursuivre? - La Cour d'appel a-t-elle erré en introduisant un nouveau concept juridique, soit le recours subrogatoire par anticipation?

HISTORIQUE DES PROCÉDURES

Le 17 mai 2001
Cour supérieure du Québec
(Le juge Godbout)

Requêtes en rejet d'action de la demanderesse
accueillies

Le 25 septembre 2003
Cour d'appel du Québec
(Les juges Mailhot, Rochette et Pelletier)

Pourvois de l'intimée accueillis, jugement de première
instance cassé et requêtes en rejet d'action de la
demanderesse rejetées

Le 20 novembre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Eric Scheuneman

v. (30087)

Her Majesty the Queen (F.C.)

NATURE OF THE CASE

Procedural law - Judgments and orders - Action dismissed for want of prosecution - Appeal dismissed for mootness - Applicant failing to appoint counsel to his case as ordered by the Federal Court, Trial Division - Whether the Federal Court of Appeal erred in stating that the underlying cause of action had disappeared, that the issues were fact driven and that the appeal was moot - Whether the criteria established in *Borowski v. Canada (Attorney General)* [1989] 1 R.C.S. 342 was applicable to the present case and could have enabled the Federal Court of Appeal to exercise its discretion to hear the appeal regardless of its moot character

PROCEDURAL HISTORY

January 16, 2003
Federal Court, Trial Division
(Hugessen J.)

Applicant ordered to appoint counsel on or before
March 3, 2003

June 26, 2003
Federal Court of Canada, Trial Division
(Hugessen J.)

Applicant's action dismissed for want of prosecution

November 19, 2003
Federal Court of Appeal
(Richard C.J., Evans and Pelletier JJ.A.)

Appeal dismissed; Respondent's motion that the appeal
be dismissed on the ground of mootness allowed

December 12, 2003
Supreme Court of Canada

Application for leave to appeal filed

Eric Scheuneman

v. (30088)

Attorney General of Canada (F.C.)

NATURE OF THE CASE

Procedural law - Rules pertaining to self-representation in court or representation by counsel - Possibility for a litigant to be represented by a person who is not a lawyer - Whether rule 12(1) of the *Rules of the Supreme Court of Canada*, SOR/83-74 and rules 119 and 121 of the *Rules of the Federal Court, 1998*, SOR/98-106 violate sections 2(b), 7 and 15 of the *Charter* - Whether the Federal Court of Appeal erred in omitting to address, in the reasons for judgment, the issue relating to rule 12(1) of the *Rules of the Supreme Court of Canada* - Whether the Applicant's fundamental rights to justice were breached in the present instance

PROCEDURAL HISTORY

November 21 st , 2002 Federal Court, Trial Division (Aronovitch, Prothonotary)	Respondent's motion to strike out Applicant's statement of claim, granted; Applicant's action struck out
January 16, 2003 Federal Court of Canada, Trial Division (Blanchard J.)	Applicant's appeal of an order striking a statement of claim, dismissed
November 20, 2003 Federal Court of Appeal (Richard C.J., Evans and Pelletier JJ.A.)	Appeal dismissed
December 15, 2003 Supreme Court of Canada	Application for leave to appeal filed

Highland Capital Management, L.P., ML CBO IV (Cayman) Ltd., Pamco Cayman, Ltd., Highland Legacy, Ltd., Pam Capital Funding, L.P. and Prospect Street High Income Portfolio Inc.

v. (29969)

Uniforêt Inc., Uniforêt Scierie-Pâte Inc., Foresterie Port-Cartier Inc., Richter & Associés Inc. and Jolina Capital Inc. (Qc)

NATURE OF THE CASE

Procedural law - Commercial law - Courts - Leave to appeal - Creditor and debtor - *Companies' Creditors Arrangement Act, R.S.C.*, 1985, c. C-35 - Whether a plan of arrangement pursuant to the *CCAA* is fair and reasonable, when first-ranking secured creditors are asked to reduce their indebtedness to 51% of its face value while the shareholders are retaining all of the debtor's equity, without further consideration or contribution on their part - Whether it is appropriate that the debtor's largest shareholder receive preferential treatment in the plan of arrangement, when this treatment does not contribute to the survival of the debtor or the success of its plan of arrangement - Whether it is appropriate to consider the cost of the debt instrument of one member of a group of minority creditors, instead of that group of creditors' legal claim and entitlement, and to use this cost consideration to by-pass the rules that should normally apply

PROCEDURAL HISTORY

May 16, 2003
Superior Court of Quebec
(Tingley J.)

Respondents' petition maintained; Applicants' contestation dismissed; Second Amended Plan of Compromise and Arrangement (Plan) sanctioned and approved

July 24, 2003
Court of Appeal of Quebec
(Dalphond J.A.)

Motion for leave to appeal dismissed

September 26, 2003
Supreme Court of Canada

Application for leave to appeal filed

JANUARY 22, 2004 / LE 22 JANVIER 2004

29694 **Walter Theodor Bartel v. The Manitoba Securities Commission** (Man.) (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 Manitoba, Number AI02-30-05160, dated February 21, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Manitoba, numéro AI02-30-05160, daté du 21 février 2003, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Appeal - Property law - Real property - What is the standard degree of deference to be given to a decision of the Commission in a hearing pursuant s. 11(1) of the *Real Estate Brokers Act*, R.S.M. 1987, c.R20? - What are the meanings of "for cause" and "public interest" used in s. 11(1) of the Act? - What is the degree of detail and disclosure that must be included in the statement of allegations when prosecuted pursuant s. 11(1) of the Act? - Is a person accused pursuant s. 11(1) of the Act entitled to the protection of the *Charter*? - In cases involving the disciplining of professionals, and where their licences can be revoked, are they entitled to be represented by legal counsel? - What authority does the Commission have in cases requiring adjudication on points of law? - What are the tests for independence and competence that can be applied to a tribunal in a disciplinary hearing?

PROCEDURAL HISTORY

January 24, 2001 Manitoba Securities Commission (Bergman, McEwen and Bulman, Members)	Applicant's registration as a real estate salesperson suspended for 90 days; Applicant required to enroll in specific real estate courses
September 24, 2001 Court of Queen's Bench of Manitoba (Schulman J.)	Applicant's appeal allowed; dismissal of charges ordered
February 21, 2003 Court of Appeal of Manitoba (Huband, Steel and Hamilton JJ.A)	Respondent's appeal allowed in part; matter remitted back to the Respondent Commission for consideration of Applicant's penalty regarding the Heywood Property
May 13, 2003 Supreme Court of Canada (Major J.)	Application for an order extending the time to serve and file the application for leave is granted to July 31, 2003
July 31, 2003 Supreme Court of Canada	Application for leave to appeal filed

29782 **Liquid Carbonic Inc., Praxair Canada Inc., Kenneth M. Hibbert, Neil F. Weaver, and Vernon N. S. Lorish v. British Columbia's Children's Hospital, Boundary Hospital Society, Burnaby Hospital Society, Burns Lake and District Hospital Society, Campbell River & District General Hospital Society, Cariboo Memorial Hospital Society, Chilliwack General Hospital Society, The Cowichan District Hospital Association, Cranbrook Regional Hospital Society, The Creston Valley Hospital Association, Dawson Creek and District Hospital Society, Delta Centennial Hospital Society, Fort Nelson Hospital Society, Fort St. John and District Hospital Society, The Fraser Burrard Hospital Society (doing business as Eagle Ridge Hospital and**

Royal Columbia Hospital), The Governing Council of the Salvation Army in Canada (doing business as Grace Hospital), G.R. Baker Memorial Hospital Society, Greater Victoria Hospital Society, Kimberley and District Hospital Society, Ladysmith and District Hospital Association, Langley Memorial Hospital, Matsqui-Sumas-Abbotsford General Hospital Society, Nanaimo Regional General Hospital Society, Nicola Valley Health Care Society, The North and West Vancouver Hospital Society (doing business as Lions' Gate Hospital), 100 Mile District Hospital Society, Peace Arch District Hospital Society, Penticton Hospital Society, Port Hardy Hospital Society, Powell River Hospital Society, The Prince George and District Hospital Society, Prince Rupert Regional Hospital Association, Revelstoke District Health Society (doing business as Queen Victoria Hospital), Richmond Hospital Society, Royal Inland Hospital, Saanich Peninsula Hospital Society, Shuswap Community Health Care Society (doing business as Shuswap Lake General Hospital), South Okanagan Hospital Society, Sparwood General Hospital Society, St. Paul's Hospital, St. Vincent's Health Care Society, Surrey Memorial Hospital Society, Terrace Regional Hospital Care Society (doing business as Mills Memorial Hospital), The Bishop of Victoria: A Corporation Sole (doing business as St. Joseph's General Hospital), The United Church of Canada (doing business as Wrinch Memorial Hospital), University Hospital Society, Vancouver General Hospital, West Coast General Hospital, The Windermere District Hospital Association (prior to August 15, 1991, Invermere and District Hospital Association) AND BETWEEN Air Products Canada Ltd./Prodair Canada Ltée, Robin A. Scott v. British Columbia's Children's Hospital, Boundary Hospital Society, Burnaby Hospital Society, Burns Lake and District Hospital Society, Campbell River & District General Hospital Society, Cariboo Memorial Hospital Society, Chilliwack General Hospital Society, The Cowichan District Hospital Association, Cranbrook Regional Hospital Society, The Creston Valley Hospital Association, Dawson Creek and District Hospital Society, Delta Centennial Hospital Society, Fort Nelson Hospital Society, Fort St. John and District Hospital Society, The Fraser Burrard Hospital Society (doing business as Eagle Ridge Hospital and Royal Columbia Hospital), The Governing Council of the Salvation Army in Canada (doing business as Grace Hospital), G.R. Baker Memorial Hospital Society, Greater Victoria Hospital Society, Kimberley and District Hospital Society, Ladysmith and District Hospital Association, Langley Memorial Hospital, Matsqui-Sumas-Abbotsford General Hospital Society, Nanaimo Regional General Hospital Society, Nicola Valley Health Care Society, The North and West Vancouver Hospital Society (doing business as Lions' Gate Hospital), 100 Mile District Hospital Society, Peace Arch District Hospital Society, Penticton Hospital Society, Port Hardy Hospital Society, Powell River Hospital Society, The Prince George and District Hospital Society, Prince Rupert Regional Hospital Association, Revelstoke District Health Society (doing business as Queen Victoria Hospital), Richmond Hospital Society, Royal Inland Hospital, Saanich Peninsula Hospital Society, Shuswap Community Health Care Society (doing business as Shuswap Lake General Hospital), South Okanagan Hospital Society, Sparwood General Hospital Society, St. Paul's Hospital, St. Vincent's Health Care Society, Surrey Memorial Hospital Society, Terrace Regional Hospital Care Society (doing business as Mills Memorial Hospital), The Bishop of Victoria: A Corporation Sole (doing business as St. Joseph's General Hospital), The United Church of Canada (doing business as Wrinch Memorial Hospital), University Hospital Society, Vancouver General Hospital, West Coast General Hospital, The Windermere District Hospital Association (prior to August 15, 1991, Invermere and District Hospital Association) AND BETWEEN Boc Canada Ltd./Boc Canada Ltée (formerly Canadian Oxygen Limited/La compagnie canadienne d'oxygene limitée), David S. Watson, T. John Tindale v. British Columbia's Children's Hospital, Boundary Hospital Society, Burnaby Hospital Society, Burns Lake and District Hospital Society, Campbell River & District General Hospital Society, Cariboo Memorial Hospital Society, Chilliwack General Hospital Society, The Cowichan District Hospital Association, Cranbrook Regional Hospital Society, The Creston Valley Hospital Association, Dawson Creek and District Hospital Society, Delta Centennial Hospital Society, Fort Nelson Hospital Society, Fort St. John and District Hospital Society, The Fraser

Burrard Hospital Society (doing business as Eagle Ridge Hospital and Royal Columbia Hospital), The Governing Council of the Salvation Army in Canada (doing business as Grace Hospital), G.R. Baker Memorial Hospital Society, Greater Victoria Hospital Society, Kimberley and District Hospital Society, Ladysmith and District Hospital Association, Langley Memorial Hospital, Matsqui-Sumas-Abbotsford General Hospital Society, Nanaimo Regional General Hospital Society, Nicola Valley Health Care Society, The North and West Vancouver Hospital Society (doing business as Lions' Gate Hospital), 100 Mile District Hospital Society, Peace Arch District Hospital Society, Penticton Hospital Society, Port Hardy Hospital Society, Powell River Hospital Society, The Prince George and District Hospital Society, Prince Rupert Regional Hospital Association, Revelstoke District Health Society (doing business as Queen Victoria Hospital), Richmond Hospital Society, Royal Inland Hospital, Saanich Peninsula Hospital Society, Shuswap Community Health Care Society (doing business as Shuswap Lake General Hospital), South Okanagan Hospital Society, Sparwood General Hospital Society, St. Paul's Hospital, St. Vincent's Health Care Society, Surrey Memorial Hospital Society, Terrace Regional Hospital Care Society (doing business as Mills Memorial Hospital), The Bishop of Victoria: A Corporation Sole (doing business as St. Joseph's General Hospital), The United Church of Canada (doing business as Wrinch Memorial Hospital), University Hospital Society, Vancouver General Hospital, West Coast General Hospital, The Windermere District Hospital Association (prior to August 15, 1991, Invermere and District Hospital Association) (B.C.) (Civil) (By Leave)

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

The applications for an extension of time are granted, the application for leave to cross-appeal is granted and the applications for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA028902, dated March 19, 2003, are granted with costs to the applicants Liquid Carbonic Inc., Praxair Canada Inc., Kenneth M. Hibbert, Neil F. Weaver and Vernon N.S. Lorish.

Les demandes de prorogation de délai sont accordées, la demande d'autorisation d'appel incident est accordée et les demandes d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA028902, daté du 19 mars 2003, sont accordées avec dépens en faveur des demandeurs Liquid Carbonic Inc., Praxair Canada Inc., Kenneth M. Hibbert, Neil F. Weaver et Vernon N.S. Lorish.

NATURE OF THE CASE

Procedural law - Evidence - Privilege - Are concluded settlement agreements in multi-party litigation covered by a blanket or class privilege.

PROCEDURAL HISTORY

July 25, 2001 Supreme Court of British Columbia (Neilson J.)	Applicants' application for production of a settlement agreement under Rule 26 of the <i>Rules of Court</i> dismissed; Respondents ordered to produce portions of settlement agreement
March 19, 2003 Court of Appeal for British Columbia (Ryan, Huddart [dissenting] and Hall JJ.A.)	Applicants' appeal dismissed; Respondents' cross appeal allowed in part
May 16, 2003 Supreme Court of Canada	Application for leave to appeal filed by Liquid Carbonic Inc. et al.
June 13, 2003	Application for an extension of time to file and serve an

Supreme Court of Canada	application for leave to appeal filed by Air Products Canada Ltd./Prodair Canada Ltee et al.
June 16, 2003 Supreme Court of Canada	Application for an extension of time to file and serve an application for leave to appeal filed by Boc Canada Ltd./Boc Canada Ltee. et al.
June 16, 2003 Supreme Court of Canada	Conditional application for leave to cross-appeal filed

29835 **A. Ted Ewachniuk v. The Law Society of British Columbia** (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 CA028048, dated April 15, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA028048, daté du 15 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law -- Appeal -- Labour law – Barristers and Solicitors – Member of the Law Society of B.C. found guilty of professional misconduct – Whether the decision of the B.C. Court of Appeal dismissing the appeal from a decision of the Law Society Disciplinary Panel, which found the member guilty of professional misconduct and resulted in disbarment, is correct?

PROCEDURAL HISTORY

July 19, 2000 Professional Disciplinary Panel, Law Society of British Columbia (Margetts, Lecovin and Trotter, Panel Members)	Applicant found guilty of professional misconduct
December 29, 2000 Professional Disciplinary Panel, Law Society of British Columbia (Margetts, Lecovin and Trotter, Panel Members)	Applicant's disbarment ordered
April 15, 2003 Court of Appeal for British Columbia (Newbury, Huddart and Saunders JJ.A)	Appeal dismissed
June 17, 2003 Supreme Court of Canada	Application for leave to appeal filed
July 8, 2003 Supreme Court of Canada (Major J.)	Motion to extend time to file and/or serve leave application granted

29840 **Pacific Forest Products Limited v. AXA Pacific Insurance Company** (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 CA029121, dated April 29, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029121, daté du 29 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law - Insurance - Procedural law - Actions - Pre-trial procedure - Preliminary motion to dismiss action as misconstrued - Action brought on a subrogated basis for the benefit of an insurer - Two insurance policies covering same loss - Whether Court of Appeal erred in finding that there was "double insurance"- Whether Court of Appeal erred in failing to find that subrogated claims may be prosecuted against a primary insurer whose obligations were paid by an excess insurer - Whether Court of Appeal erred in finding that the only remedy available for an excess insurer who pays the obligation of a primary insurer is a separate action in equity for contribution.

PROCEDURAL HISTORY

May 17, 2001 Supreme Court of British Columbia (Clancy J.)	Respondent's application to strike the Applicant's claim dismissed
April 29, 2003 Court of Appeal of British Columbia (Saunders, Levine and Thackray JJ.A.)	Respondent's appeal allowed in part: the subrogated portion of the Applicant's claim dismissed
June 23, 2003 Supreme Court of Canada	Application for leave to appeal filed

29845 **Falconbridge Limited, Noranda Inc., Noranda Dupont of Canada Inc. and Noranda Metallurgy Inc. v. Commissioner of Competition** (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 M29047, dated May 1, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro M29047, daté du 1 mai 2003, est rejetée.

NATURE OF THE CASE

Statutes - Statutory instruments - Interpretation - International mutual legal assistance - Whether the judiciary has a role in determining if particular conduct constitutes an offence within the meaning of the *Mutual Legal Assistance in Criminal Matters Act* - Whether antitrust offences under United States law are "offences" within the meaning of the *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters* - Whether the *Mutual Legal Assistance in Criminal Matters Act* contains a reciprocal offence requirement that has not been met in this case.

PROCEDURAL HISTORY

October 1, 2002
Ontario Superior Court of Justice
(Ratushny J.)

Respondents' application for sending order under s.15 of *Mutual Legal Assistance in Criminal Matters Act* granted; Applicants' applications to set aside warrants and evidence-gathering order and for return of seized records dismissed, Applicants' application for declarations dismissed; Application to continue sealing orders granted in part and sealing orders dated September 30, 1999 and January 13, 2000 continued

May 1, 2003
Court of Appeal for Ontario
(Rosenberg, Moldaver and Simmons JJ.A.)

Appeal dismissed; Matter remitted to applications judge to determine if terms and conditions should be included in sending order

June 27, 2003
Supreme Court of Canada

Application for leave to appeal filed

29865 **Her Majesty the Queen v. Krystopher Krymowski, Ryan Douglas Marshall, Quinn Mason McFarlane, Michael Peter Schultz and J.J.V., A.M.V.** (Ont.) (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 Ontario, Number C38595, dated May 20, 2003, is granted.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38595, daté du 20 mai 2003, est accordée.

NATURE OF THE CASE

Criminal Law (Non-Charter) - Evidence - Trial - Judicial notice - Amending an Information - Re-opening a case - Whether Court of Appeal erred with respect to principles governing taking judicial notice of dictionary definitions or amending an Information or re-opening a case against an accused.

PROCEDURAL HISTORY

March 24, 2000
Ontario Court of Justice
(Otter J.)

Charges against adult Respondents for willful promotion of hatred against an identifiable group contrary to s. 319(2) of the *Criminal Code* dismissed

March 24, 2000
Ontario Court of Justice
(Otter J.)

Identical charges against the Young Offenders J.J.V. and A.M.V. dismissed in separate reasons for judgment

June 28, 2002
Ontario Superior Court of Justice
(Ewaschuk J.)

Crown's summary conviction appeal from both decisions dismissed

May 20, 2003
Court of Appeal for Ontario
(O'Connor, Carthy and MacPherson JJ.A.)

Crown's appeal and respondents' cross-appeal dismissed

July 16, 2003
Supreme Court of Canada

Application for leave to appeal filed

29886 **Terry Power, Raymond Power, Cindy Mason, Patrick Fewer, Joan Green v. Attorney General of Canada** (N.L.) (Civil) (By Leave)

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

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal of Newfoundland and Labrador, Number 99/18 - 2003 NLCA17, dated April 23, 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 de Terre-Neuve-et-Labrador, numéro 99/18 - 2003 NLCA17, daté du 23 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Constitutional Law - *Charter of Rights and Freedoms* - Civil - Civil Rights- Equality Rights - Whether the Court of Appeal erred in law, in holding that the Applicants did not establish an infringement of section 15 (1) of the *Charter* by failing to defer to the Applicants' identification of the appropriate comparator group prior to engaging in the comparator group analysis and engaging in a modification and refinement of the comparator group identified by the Applicants - Whether the Court of Appeal erred in law, in holding that the Applicants did not establish an infringement of section 15 (1) of the *Charter*, by failing to appropriately characterize the Atlantic Groundfish Strategy ("TAGS") program as a disaster relief program for the purpose of s. 15 of the *Charter* and mischaracterizing the TAGS program as primarily a program of income replacement - Whether the Court of Appeal erred in law, in holding that the Applicant Green, did not establish an infringement of section 15 (1) of the *Charter* on the basis of marital status or sex - Whether the Court of Appeal erred in law, in holding that the Applicant Joan Green, did not establish an infringement of section 15 (1) of the *Charter*, alternatively on the enumerated ground of physical disability or a ground analogous thereto.

PROCEDURAL HISTORY

February 9, 1999
Supreme Court of Newfoundland
(Orsborn J.)

Applicants' action for infringement of s. 15(1) of the *Charter* dismissed

April 23, 2003
Court of Appeal of Newfoundland & Labrador
(Marshall [*dissenting*], Roberts and Welsh JJ.A.)

Appeal dismissed

August 5, 2003
Supreme Court of Canada

Application for extension of time and leave to appeal filed

29899 **Reynolds John Bonneau, Mildred Rose Bonneau and Wallace Stephen Parker v. Chief Dan Wilson, on his own behalf and on behalf of all members of the Okanagan Indian Band and the Attorney General of Canada** (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 CA030075, dated May 16, 2003, is dismissed with costs to the Okanagan Indian Band.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA030075, daté du 16 mai 2003, est rejetée avec dépens en faveur de la bande indienne Okanagan.

NATURE OF THE CASE

Native law - *Indian Act*, R.S.C. 1985, c. I-5 - Statutes - Interpretation - Property law - Estates - Intestacy - Real property - When an Indian dies intestate and his closest living relatives at the time of his death are nieces and nephews, does any right of possession to land in a reserve held by that Indian pursuant to the *Indian Act* go to those nieces and nephews pursuant to section 48(6) of the *Indian Act*, or does it vest in Her Majesty for the benefit of the band pursuant to section 48(8) of the *Indian Act*?

PROCEDURAL HISTORY

August 6, 2002 Supreme Court of British Columbia (Taylor J.)	Determination on point of law: right of possession in land in reserve held by an Indian dying intestate vests in the Queen for benefit of the band pursuant to s. 48(8) of the <i>Indian Act</i>
May 16, 2003 Court of Appeal for British Columbia (Rowles, Newbury and Smith JJ.A.)	Appeal dismissed
August 15, 2003 Supreme Court of Canada	Application for leave to appeal filed

29919 **Simon Kwok Cheng Chow 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 CA028280, dated March 4, 2003, is granted.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA028280, daté du 4 mars 2003, est accordée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Procedural Law - Appeal - Evidence - Entitlement to severance in order to compel co-accused to testify - Significance to attach on appeal to a trial judge's issuance of a certificate pursuant to s. 675(1)(a)(ii) - Whether applicant's intercepted communications should have been admitted against him.

PROCEDURAL HISTORY

January, 2001 Supreme Court of British Columbia (Oppal J.)	Applicant's application for an order for severance denied
February 6, 2001 Supreme Court of British Columbia (Oppal J.)	Conviction: first degree murder Sentence: life imprisonment without parole eligibility for 25 years

March 7, 2001 Supreme Court of British Columbia (Oppal J.)	Certificate under s. 675(1)(a)(ii) granted
March 4, 2003 Court of Appeal for British Columbia (Donald, Saunders and Low JJ.A.)	Applicant's appeal from conviction dismissed
May 2, 2003 Court of Appeal for British Columbia (Donald, Saunders and Low JJ.A.)	Applicant's application to re-open appeal dismissed
September 2, 2003 Supreme Court of Canada	Application for leave to appeal filed

29944 **Greg Takung Chao v. United States of America and The Minister of Justice for Canada** (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 CA028946, dated August 15, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA028946, daté du 15 août 2003, est rejetée.

NATURE OF THE CASE

Criminal law - Extradition - Whether delay caused by waiting for the decision of Supreme Court of Canada in *Minister of Justice v. Burns and Rafay* is a "neutral" factor - Application of *Charter* s. 11 (b) reasoning to a *Charter* s. 7 issue - Whether failure to comply with s. 19 of the *Extradition Act* R.S.C. 1985, c. E-23 was an error of law by the Minister of Justice denying the Applicant procedural fairness in his extradition proceedings - Whether Court of Appeal erred in refusing to require the Minister of Justice to make the Applicant's surrender conditional on the Applicant's evidence on the *voir dire* not being available to the requesting state.

PROCEDURAL HISTORY

February 24, 1999 Supreme Court of British Columbia (Wong J.)	Ruling: Applicant ordered to be extradited to the United States
August 15, 2003 Court of Appeal of British Columbia (Low, Levine and Hollinrake JJ.A.)	Application for judicial review dismissed
September 22, 2003 Supreme Court of Canada	Application for leave to appeal filed

29976 **Daryl Milland Clark 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 CA029762, dated July 9, 2003, is granted.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029762, daté du 9 juillet 2003, est accordée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Offences - Indecent act in public place - Accused found guilty of wilfully doing an indecent act in a public place in the presence of one or more persons - Whether there are circumstances which can convert the living room of a private residence into a "public place" - The *mens rea* requirement for the offence - *Criminal Code*, R.S.C. 1985, s. C-46, s. 173(1)(a).

PROCEDURAL HISTORY

March 27, 2002 Supreme Court of British Columbia (Lander J.)	Applicant convicted of wilfully doing an indecent act in public contrary to s.173(1)(a) of the <i>Criminal Code</i>
July 9, 2003 Court of Appeal of British Columbia (Huddart, Hall and Saunders JJ.A.)	Applicant's appeal against conviction dismissed
September 29, 2003 Supreme Court of Canada	Application for leave to appeal filed

30011 **John Thiessen and Suzanne Thiessen v. Her Majesty the Queen** (Man.) (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 Manitoba, Number AR 02-30-05374, dated September 19, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Manitoba, numéro AR 02-30-05374, daté du 19 septembre 2003, est rejetée avec dépens.

NATURE OF THE CASE

Procedural Law - Administrative Law - Appeal - Judicial review - Civil procedure - Whether the Associate Chief Judge erred in ordering a stay of proceedings on the charges under the *Income Tax Act*? - Whether the Crown Prosecutor improperly exercised his prosecutorial discretion by entering a stay of proceedings of the *Criminal Code* charges? - Whether the Crown Prosecutor or the Department of Justice (Manitoba) were in a conflict of interest? - Whether the Court of Appeal erred in not granting the motion for fresh evidence?

PROCEDURAL HISTORY

May 8, 2002 Court of Queen's Bench of Manitoba (Beard J.)	Applicants' application for orders of <i>mandamus</i> , <i>certiorari</i> and prohibition dismissed
September 19, 2003 Court of Appeal of Manitoba (Scott C.J.M., Monnin and Steel JJ.A.)	Appeal dismissed
October 22, 2003 Supreme Court of Canada	Application for leave to appeal filed

30017 **Andreas Alexander Meyn v. Her Majesty the Queen** (B.C.) (Criminal) (By Leave)

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

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA029118, dated July 4, 2003, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029118, daté du 4 juillet 2003, est rejetée.

NATURE OF THE CASE

Criminal law (Non *Charter*) - Trial - Jury trial - Charge to the jury - Reasonable doubt - Credibility - In the charge to the jury, the jury was told that the standard was not one of absolute certainty and was only a standard of proof beyond a reasonable doubt - Whether the jury instructions in this case diminished the criminal standard of proof to something less than proof beyond a reasonable doubt - Whether, in context, the charge placed the burden closer to the civil burden than to near certainty - Whether the trial judge failed to charge the jury on the second step in *R. v. W.(D.)*, [1991] 1 S.C.R. 742. - If he did so fail, whether that failure was sufficient to require a new trial.

PROCEDURAL HISTORY

March 27, 2001 Supreme Court of British Columbia (Ralph J.)	Applicant convicted, by a jury, on two counts of sexual assault
July 4, 2003 Court of Appeal for British Columbia (Finch C.J.B.C., Ryan and Mackenzie JJ.A.)	Applicant's appeal dismissed, conviction upheld
October 29, 2003 Supreme Court of Canada	Motion to extend time and application for leave to appeal filed

29777 **Vasiliki Tsiaprailis v. Her Majesty the Queen** (F.C.) (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-40-02, dated March 17, 2003, is granted with costs to the applicant in any event of the cause.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-40-02, daté du 17 mars 2003, est accordée avec dépens en faveur du demandeur quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Taxation - Assessment - Statutes - Interpretation - Should a disabled person who surrenders all rights under a disability insurance policy in exchange for a lump sum payment, be taxed on that payment because the disability insurance benefits were payable periodically but the settlement was not - Should the imposition of tax give effect to the legal nature of the transactions entered into by the taxpayer provided they were not shams or should “substantive” analysis be used so as to impose additional tax on persons of limited means unable to work as a result of disability.

PROCEDURAL HISTORY

December 20, 2001 Tax Court of Canada (Bowman A.C.J.T.C.)	Applicant’s appeal from the assessment for 1996 taxation year, allowed; assessment referred back to the Minister for reconsideration and reassessment
March 17, 2003 Federal Court of Appeal (Strayer, Evans [<i>dissenting</i>], and Pelletier J.J.A.)	Appeal allowed; order set aside; matter remitted to the Minister for reconsideration and reassessment
May 16, 2003 Supreme Court of Canada	Application for leave to appeal filed

29815 **Sehdev Kumar v. The Mutual Life Assurance Company of Canada and Prudential Assurance Company Limited** (Ont.) (Civil) (By Leave)

Coram: **Iacobucci, Major and Arbour JJ.**

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C37858, dated April 8, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C37858, daté du 8 avril 2003, est rejetée.

NATURE OF THE CASE

Commercial law - Insurance - *Class Proceedings Act, 1992*, S.O. 1992, c. 6 - Statutory interpretation - Definition of “common issue”- Whether the Court of Appeal erred in finding that the Applicant had not provided an evidentiary basis for establishing the existence of a common issue - Whether the Court erred in its use of the evidentiary record in determining whether there were common issues - Whether the Court erred in failing to find that certification of the common issues would meet the judicial goals of judicial economy and access to justice – Whether the Court erred in finding that a trial of the common issues was not the preferable procedure for resolving these issues when there is no other viable procedure available - Whether the Court erred in awarding costs to the Respondent - Whether the Court erred in misinterpreting the manner in which sections 5, 6, 25 and 31 of the *Class Proceedings Act* operate.

PROCEDURAL HISTORY

October 18, 2000 Ontario Superior Court of Justice (Cumming J.)	Applicant’s motion for certification under the <i>Class Proceedings Act</i> , involving life insurance policies with a “premium offset” feature, dismissed
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December 14, 2001 Ontario Superior Court of Justice (McRae, Then and Day JJ.)	Applicant's appeal dismissed
April 8, 2003 Court of Appeal for Ontario (McMurtry C.J.O., Catzman and Rosenberg JJ.A.)	Applicant's appeal dismissed
June 9, 2003 Supreme Court of Canada	Application for leave to appeal filed

29816 **George Zicherman v. The Equitable Life Insurance Company of Canada** (Ont.) (Civil) (By Leave)

Coram: Iacobucci, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C37857, dated April 8, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C37857, daté du 8 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law - Insurance - *Class Proceedings Act, 1992*, S.O. 1992, c. 6 - Statutory interpretation - Definition of "common issue" - Whether the Court of Appeal erred in finding that the Applicant had not provided an evidentiary basis for establishing the existence of a common issue - Whether the Court erred in its use of the evidentiary record in determining whether there were common issues - Whether the Court erred in failing to find that certification of the common issues would meet the judicial goals of judicial economy and access to justice - Whether the Court erred in finding that a trial of the common issues was not the preferable procedure for resolving these issues when there is no other viable procedure available - Whether the Court erred in finding an identifiable class of two or more persons that would be represented by the representative plaintiff - Whether the Court erred in awarding costs to the Respondent - Whether the Court erred in misinterpreting the manner in which sections 5, 6, 25 and 31 of the *Class Proceedings Act* operate.

PROCEDURAL HISTORY

October 25, 2000 Ontario Superior Court of Justice (Ferrier J.)	Applicant's motion for certification under the <i>Class Proceedings Act</i> , involving life insurance policies with "premium offset" feature, dismissed
December 14, 2001 Ontario Superior Court of Justice (McRae, Then and Day JJ.)	Appeal from order refusing the certification of action as a class proceeding, dismissed; Respondent's cross-appeal, dismissed
April 8, 2003 Court of Appeal for Ontario (McMurtry C.J.O., Catzman and Rosenberg JJ.A.)	Applicant's appeal dismissed
June 9, 2003 Supreme Court of Canada	Application for leave to appeal filed

29828 **James Stewart Tyhurst v. Jill Gorman** (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 CA028376, dated April 16, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA028376, daté du 16 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Torts - Intentional torts - Breach of fiduciary duty and breach of contract - Psychiatrist/patient relationship - Psychiatrist "treating" patient with whipping sessions and degrading language - Procedural law - Actions - Similar fact evidence - Trial judge allowing admission of evidence of other former patients subjected to similar treatment - Whether Court of Appeal created a modified rule and standard for admissibility of similar fact evidence in civil cases from rule and standard in criminal proceedings - Appeal - Judgments and orders - Whether Court of Appeal entitled to review the record itself or should have remitted the matter back for a new trial after finding trial judge erred in not conducting an acceptable, careful analysis as required by *R. v. Handy*, 2002 SCC 56.

PROCEDURAL HISTORY

December 4, 2000 Supreme Court of British Columbia (Vickers J.)	Respondent's action in damages allowed: Applicant found liable to Respondent in tort, breach of contract and breach of fiduciary duty; Applicant ordered to pay \$556,790 in damages
April 16, 2003 Court of Appeal of British Columbia (Esson, Ryan and Huddart JJ.A.)	Appeal dismissed
June 13, 2003 Supreme Court of Canada	Application for leave to appeal filed

29843 **Peter Brown v. Her Majesty the Queen** (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, Numbers A-208-02 and A-311-02, dated June 4, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéros A-208-02 et A-311-02, daté du 4 juin 2003, est rejetée avec dépens.

NATURE OF THE CASE

Taxation - Assessment - Calculation of income - Partnerships - Deemed limited partners - Non-arm's length transactions - Losses - Whether Court of Appeal erred in finding that a partnership is a taxpayer for all purposes of Division B and s. 69 of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1, as amended, overriding the common law principle that a partnership is not a legal entity - Whether Court of Appeal erred in finding that the at-risk rules in ss. 96 (2.2) and (2.4) of the *Income Tax Act* apply to treat members of general partnerships as having less at risk for tax purposes than identically-placed members of limited partnerships contrary to principles of statutory interpretation

PROCEDURAL HISTORY

March 13, 2002 Tax Court of Canada (Rip J.)	Applicant's appeal of 1993, 1994, 1995 and 1996 income tax re-assessments allowed in part; matter referred back to the Minister of National Revenue
June 4, 2003 Federal Court of Appeal (Rothstein, Sexton and Pelletier JJ.A)	Appeal dismissed; Cross-appeal allowed in part; matter referred back to the Minister of National Revenue
June 23, 2003 Supreme Court of Canada	Application for leave to appeal filed

29851 **Darren Domkowsky v. Her Majesty the Queen** (N.W.T.) (Criminal) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for the Northwest Territories, Numbers A1-AP 2002 0000019 and A1-AP 2002 0000020, dated April 23, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel des Territoires du Nord-Ouest, numéros A1-AP 2002 0000019 et A1-AP 2002 0000020, daté du 23 avril 2003, est rejetée.

NATURE OF THE CASE

Criminal law (Non Charter) - Evidence - Identification - Sentence - What are the minimum requirements of the depth and accuracy of the "close scrutiny" of the reliability of eyewitness evidence by trial and appeal courts where that evidence is the only evidence implicating an accused? - What proactive actions must lower courts in Canada take to give real effect to section 718.2(e) of the *Criminal Code* and the directions contained in Supreme Court of Canada case law?

PROCEDURAL HISTORY

November 14, 2002 Supreme Court of the Northwest Territories (Richard J.)	Applicant convicted of robbery contrary to s. 344 of the <i>Criminal Code</i>
November 16, 2002 Supreme Court of the Northwest Territories (Richard J.)	Applicant sentenced to two years imprisonment
April 23, 2003 Court of Appeal for the Northwest Territories (Tallis, Vertes and McFadyen JJ.A.)	Appeal from conviction dismissed; sentence appeal allowed - sentence varied to two years less a day
June 24, 2003 Supreme Court of Canada	Application for leave to appeal filed

29885 Grain Services Union, Local 3000 (I.L.W.U - Canada) and United Food and Commercial Workers International Union, Local 342P-2 (AFL-CIO-CLC) v. Saskatchewan Wheat Pool, operating as CSP Foods, Dawn Food Products (Canada) Ltd. and, an Arbitration Board chaired by William F.J. Hood (Sask.) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Saskatchewan, Number C.A. No. 695, dated May 15, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Saskatchewan, numéro C.A. No. 695, daté du 15 mai 2003, est rejetée avec dépens.

NATURE OF THE CASE

Labour law - Collective agreement - Arbitration - Jurisdiction - Whether the lower courts properly applied the exclusive arbitral jurisdiction model in a matter arising out of collective bargaining agreements - Whether the essential character of this dispute arose under the collective agreement - Whether the pension plan was incorporated into the collective agreement such that disputes concerning the pension plan were disputes under the collective agreement.

PROCEDURAL HISTORY

January 21, 2003 Court of Queen's Bench of Saskatchewan (McIntyre J.)	Applicants' application for judicial review dismissed
May 15, 2003 Court of Appeal for Saskatchewan (Vancise, Gerwing and Jackson JJ.A.)	Applicants' appeal dismissed
August 8, 2003 Supreme Court of Canada	Application for leave to appeal filed

29897 Yahong Bai, Shuhuan Qu, Lan Sing Cheng, Dongfeng Yang, Dong Xu, Li Zheng, Suzhen Li, Jin Xiao, Lingyi Zhang, Susan Mitchell, Dan Di Pasquale, Michael Koo, Mary Koo, Jane Hu, Zhilan Guo, Benda Liu, Zhenhua He, Genhua Feng, Ning Bai, Yue Wei, Jinan Liu, Chunling Yang, Qian Guo, Zhujie Tang, Ming-fu Chen, Rose Jen Chen, Janet Yuen, Pianpian Li, Gordon Yu, Sheree Wong, Ying Gao, Zhuofu Li, Jane Yu, Zhuoying Huang, Wen Wang, Donghui Ren, Zheng Wang, Enkai Liu, Youmin Qian, Mei Wu, Yun Huang, Manjing Liu, Nianzeng Shou, Xianling Chen, Yongzhen Liu, Zhibo Wang, Qi Liu, Fan Wang, Wen-chen Shadbolt, Barbara Qui, Thi Keo Duong, Rongtian Qi, Johnny Wu, Li Wang, Hong Ji, Fengying Mao, Tonggui Ye, Tony Chung Wong, Yunqin Huang, Sui-Lan Lo, Gordon Lo, Ming Ye, Qili Zhang, Xi Ming Liu, Tian Ying Peng, Fuzhen Xu, Feili Zhang, Yushan Zhi, Xiaojun Yang, Qiu Mei Hou, Anthony Tin Cheung Yeung, Huizhen Liu, Tongjin Zhang, Hong Wang, Wen Ying Li, Shaoxu Li, Tian Fu, Fang Wu, Yong Xin Jackie Chen, Chi Shu Lee, Gang Liang, Chris Trottier, Xiaolei Wu, Yanyan Cai, Bing Lu, Tanya Ma, Sam Chu, Yong Sun, Hock Tung Hui, Sheila Hui, Chao Wen, Ying Li, Louis Yip, Sophia Sun, Shaojiu Wang, Jijun Wang, Wenli Chang, Tiejun Zhang, Christine Loftus, Yufang Zhang, Lanlan Liu, Michael Mahonen, Zoe Ackah, Zenon Dolnycky, Wai-kwan Cheung, Jin Mei, Qinxin Yu, Ruoyu Lan, Jack Fan, Mingda Ni, Qiang Zhou, May Peng, Christine Marsh, Hui Yang, Ziyu Fan, Xueye Zhu, Xiaoyan Sun, Ying Zhu, R. Chen, Yunping Cheng, Litian Zhou, Zhili Li, Huiying Chen, Ling Li, Xiaoe Hu, Weicai Li, Ningxu Zhao, Dongdong Yang, Xiaomei Gao, Zhu Wu, Kun Lun Zhang, Zhong, Gerry M. Smith, Yongtao Huang, Min Liu, Gang Chen,

Diane Shi, Cindy K. Y. Chan, Kathy Gillis, Xiaoyang Gao, Shizhong Lei Hong Yu, Jie He, Jie Li, Huaiwen Chan, Lingdi Zhang, Yang Wang, Hua Gao, Mary Zhu, Annie Wu, Changgeng Xi, Hong Li, Jing Zhi, Daiming Huang, Rose Chan, Donna He, Yee Hwa Shin, Ling Zhang, Qiao Ying Nie and Zhenkun Xie v. Sing Tao Daily Limited (Ontario Corporation #1287844), Sing Tao Daily (Canada) Limited (Ontario Corporation #313470), Sing Tao Newspapers (Toronto) Limited, John and Jane Doe(s), yet unidentified defendants responsible for the actions, of the Defendant Corporation(s) to be identified and added as parties (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 C38484, dated May 20, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38484, daté du 20 mai 2003, est rejetée avec dépens.

NATURE OF THE CASE

Torts - Libel and slander - Alleged defamatory statements made against a group - Whether it is arguable that the publication was reasonably capable of being defamatory of the Applicants, given the content of the publication and the extrinsic circumstances, including the distinctive circumstances identifying the Applicants in their communities as Falun Gong practitioners - Whether the lower courts erred in principle in their approach to this question and to the substantive adequacy of the Applicants' statement of claim - Whether the decisions of the lower courts privileged formalism over substance - Whether fundamental values of freedom of conscience, belief and association were violated in the present instance

PROCEDURAL HISTORY

June 20, 2002 Ontario Superior Court of Justice (Backhouse J.)	Applicants' claim in libel and accessory claims, struck out
May 20, 2003 Court of Appeal for Ontario (McMurtry C.J.O., Doherty and Gillese JJ.A.)	Appeal dismissed
August 18, 2003 Supreme Court of Canada	Application for leave to appeal filed
November 5, 2003 Supreme Court of Canada (Major J.)	Motion for leave to intervene of Friends of Falun Gong Association, dismissed

29935 **Narine Loojune v. Gary N. Holmes** (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 M29490, dated June 12, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro M29490, daté du 12 juin 2003, est rejetée.

NATURE OF THE CASE

Procedural Law - Civil procedure - Appeal - Judgments and orders - Whether the Court erred in striking Applicant's motion with respect to disclosure of documents pursuant to the *Rules of Civil Procedure*?

PROCEDURAL HISTORY

August 20, 2002 (Abrams, Master)	Applicant's motion to order the Respondent to disclose documents and the identity of persons pursuant to rule 30.02(1) and 31.06(2) of the <i>Rules of Civil Procedure</i> , dismissed
November 14, 2002 Ontario Superior Court of Justice (Wright J.)	Appeal dismissed
January 14, 2003 Ontario Superior Court of Justice(Divisional Court) (Campbell J.)	Motion for Leave to Appeal dismissed
June 12, 2003 Court of Appeal for Ontario (Abella, Moldaver and Feldman JJ.A.)	Motion for Leave to Appeal dismissed
September 8, 2003 Supreme Court of Canada	Application for leave to appeal filed

29951 **Esho Yousef v. United States of America** (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, Numbers C30530 and C32376, dated August 1, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéros C30530 et C32376, daté du 1 août 2003, est rejetée.

NATURE OF THE CASE

Canadian Charter - Criminal - Criminal Law - Extradition - Whether a self-conscriptive statement taken in violation of the right to counsel under the Charter should be admitted into evidence in an extradition hearing - Whether international treaty obligations are a relevant factor to consider in determining whether to admit into evidence in an extradition hearing a self-conscriptive statement obtained in violation of the Charter.

PROCEDURAL HISTORY

September 3, 1998
Ontario Court (General Division)
(Roberts J.)

Applicant's written confession of murder admitted into
evidence; Applicant committed for extradition to
Respondent

August 1, 2003
Court of Appeal for Ontario
(Cronk, Gillese and Armstrong JJ.A.)

Appeal dismissed

September 23, 2003
Supreme Court of Canada

Application for leave to appeal filed

29991 **Keneeth Dean Peepeetch v. Her Majesty the Queen** (Sask.) (Criminal) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Saskatchewan, Number 7611, dated August 19, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Saskatchewan, numéro 7611, daté du 19 août 2003, est rejetée.

NATURE OF THE CASE

Criminal Law (Non-*Charter*)- Trial - Self Representation - Is there an obligation on a trial judge to assess an accused's competence to represent himself? - Is the limited cognitive capacity test the standard to apply to assess competency for self representation?

PROCEDURAL HISTORY

October 9, 1998
Provincial Court of Saskatchewan

Applicant convicted by a jury of first degree murder

August 19, 2003
Court of Appeal for Saskatchewan
(Vancise, Sherstobitoff and Jackson JJ.A.)

Applicant's appeal dismissed

October 14, 2003
Supreme Court of Canada

Application for leave to appeal filed

29995 **Soodarsan Bajrangie-Singh v. Her Majesty the Queen** (Ont.) (Criminal) (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 Court of Appeal for Ontario, Number C32913, dated April 9, 2003, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C32913, daté du 9 avril 2003, est rejetée.

NATURE OF THE CASE

Criminal Law - Expert Witnesses - Expert Reports - Solicitor-Client Privilege - Conflict of Interest
-Whether the Court of Appeal for Ontario erred in dismissing the Applicant's appeal from conviction - The dimensions of the solicitor-client privilege protection that attaches to experts hired by the defence

PROCEDURAL HISTORY

September 29, 1996 Ontario Court of Justice (General Division) (Browne J.)	Applicant found guilty of Second Degree Murder
October 29, 1996 Ontario Court of Justice (General Division) (Browne J.)	Applicant sentenced to life imprisonment without eligibility for parole for a period of 15 years
April 9, 2003 Court of Appeal for Ontario (Abella, Goudge and Armstrong JJ.A.)	Applicant's conviction appeal dismissed; Applicant's sentence appeal granted and ineligibility for parole reduced to 13 years
October 15, 2003 Supreme Court of Canada	Application for extension of time and leave to appeal filed

29997 **Huguette Gagnon c. Les Assurances Laurentienne (maintenant Axa)** (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 (Montréal), numéro 500-09-012473-021, daté du 13 août 2003, est rejetée sans dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-012473-021, dated August 13, 2003, is dismissed without costs.

NATURE DE LA CAUSE

Procédure - Procédure civile - Appel - Jugements et ordonnances - Requête pour faire rejeter l'appel de la demanderesse en raison de son caractère abusif et dilatoire - La Cour d'appel a-t-elle erré en disposant de l'appel principal au motif qu'il avait peu de chance raisonnable de succès? - Les juges ont-ils erré en ne vérifiant pas l'ensemble du dossier qui inclut les lettres du Dr. Morin qui précisent l'état de santé déficient de la demanderesse et la nécessité d'être représentée par avocat pour défendre ses droits? - La Cour d'appel a-t-elle erré en ignorant le droit de la demanderesse à un avocat? - Les juges ont-ils erré en ne suspendant pas les procédures jusqu'à ce qu'un avocat soit au dossier et jusqu'à ce que la santé de la demanderesse soit rétablie?

HISTORIQUE DES PROCÉDURES

Le 21 octobre 2002
Cour supérieure du Québec
(Le juge Baker)

Requête de la demanderesse en rétractation d'un jugement accueillant une requête de l'intimée en péremption d'instance rejetée

Le 26 mai 2003
Cour d'appel du Québec
(Les juges Rothman, Baudouin et Delisle)

Requête de l'intimée pour rejet d'un appel abusif et dilatoire et pour cautionnement accueillie; appel de la demanderesse rejeté

Le 13 août 2003
Cour d'appel du Québec
(Les juges Nuss, Dalphond et Morissette)

Requête de la demanderesse en rétractation du jugement du 26 mai accueillie; requête de l'intimée en rejet d'appel accueillie; appel de la demanderesse rejeté

Le 14 octobre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

30009 **Commission des lésions professionnelles c. Louise Bourassa et Hydro-Québec** (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 (Montréal), numéro 500-09-011014-016, daté du 28 août 2003, est rejetée avec dépens en faveur de l'intimée, Louise Bourassa.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-011014-016, dated August 28, 2003, is dismissed with costs to the Respondent, Louise Bourassa.

NATURE DE LA CAUSE

Droit administratif - Droit du travail - Contrôle judiciaire - Lésions professionnelles - Santé et sécurité au travail - Indemnisation - Quelle est la norme de contrôle applicable à l'égard de la décision de la Commission des lésions professionnelles ?

HISTORIQUE DES PROCÉDURES

Le 28 avril 1999
Commission des lésions professionnelles
(Le Commissaire André Gauthier)

Requête de l'intimée Louise Bourassa à l'encontre de la décision rendue en révision par la Commission de la santé et de la sécurité du travail; accordée en partie

Le 2 mars 2000
Commission des lésions professionnelles
(M^e Michèle Carignan)

Requête de l'intimée Hydro Québec en révision de la décision de la Commission des lésions professionnelles, accordée

Le 3 mai 2001
Cour supérieure du Québec
(Le juge Champagne)

Requête de l'intimée Louise Bourassa en révision judiciaire de la décision de la Commission des lésions professionnelles, rejetée

Le 28 août 2003
Cour d'appel du Québec
(Les juges Mailhot, Rousseau-Houle et Rayle)

Appel de l'intimée Louise Bourassa accueilli; jugement infirmé et la requête en révision judiciaire est accueillie

Le 27 octobre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

30010 **Mohammed Zaki v. Ottawa Hospital (General Campus) and Ontario Public Service Employees Union (OPSEU)** (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 M29705, dated August 28, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro M29705, daté du 28 août 2003, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Application for judicial review - Lack of standing - Excessive delay - Exclusive bargaining agent's refusal to pursue the matter on behalf of the discharged member employee - Whether the employer and labour unions have immunity from an independent cause of action based in tort when they are alleged to have acted with malice

PROCEDURAL HISTORY

March 25, 1994 (Kates, Arbitrator)	Applicant's grievance against Respondent Ottawa Hospital for five day suspension with respect to professional misconduct denied
January 17, 1995 (Keller, Arbitrator)	Applicant's grievance against discharge by Respondent Ottawa Hospital, denied
July 15, 1996 Judicial Committee, Canadian Society of Respiratory Therapists (Boone, Abdool and Turnbull, Members)	Applicant not cited as incompetent to act as respiratory therapist
November 1 st , 1999 Ontario Labour Relations Board (Sargeant, Vice-Chair)	Applicant's complaint against Respondent OPSEU, dismissed
March 14, 2003 Ontario Superior Court of Justice, Divisional Court (McKinnon J.)	Applicant's application for judicial review, dismissed
August 28, 2003 Court of Appeal for Ontario (Carthy, MacPherson and Simmons JJ.A.)	Leave to appeal denied
October 27, 2003 Supreme Court of Canada	Application for leave to appeal filed

30023 **Sa Majesté la Reine c. Daniel Major** (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 200-10-001493-035, daté du 4 septembre 2003, est rejetée.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Quebec), Number 200-10-001493-035, dated September 4, 2003, is dismissed.

NATURE DE LA CAUSE

Droit criminel - Détermination de la peine - Facteur de dissuasion - La Cour d'appel a-t-elle erré en concluant que la peine imposée se démarque par une trop grande sévérité eu égard aux principes de la détermination de la peine établis aux articles 718 à 718.2 du *Code criminel*? - La Cour d'appel a-t-elle erré en ne prononçant pas une ordonnance de prélèvement pour l'analyse génétique conformément à l'alinéa 487.051(1)a) du *Code criminel* alors qu'elle avait l'obligation d'ordonner ledit prélèvement?

HISTORIQUE DES PROCÉDURES

Le 8 mai 2003 Cour du Québec (Le juge Auger)	Intimé condamné sous huit chefs d'accusation à être purgés concurremment.
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Le 4 septembre 2003 Cour d'appel du Québec (Les juges Rochette, Pelletier et Morin)	Appel accueilli; peine d'emprisonnement réduite.
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Le 3 novembre 2003 Cour suprême du Canada	Demande d'autorisation d'appel déposée.
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30036 **Regroupement des camionneurs indépendants Inc. c. Les Transporteurs en vrac de Sainte-Foy Inc., Denis Déry, Alain Drolet, Denis Drolet, Jacques Drolet, Marcel Frenette, Claude Jean, Charles Samuelsen** (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 200-09-004026-024, daté du 8 septembre 2003, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Quebec), Number 200-09-004026-024, dated September 8, 2003, is dismissed with costs.

NATURE DE LA CAUSE

Législation - Interprétation - Portée de l'art. 36.1 de la *Loi sur les transports*, L.R.Q., ch. T-12, qui exige l'obtention d'un permis pour effectuer du courtage en transport dans un marché public - L'interprétation des mots "marché public" contenus dans une loi provinciale peut-elle avoir pour conséquence de rendre inopérantes les dispositions de d'autres lois de la province? - L'application d'un accord intergouvernemental de libéralisation des marchés dans le cadre d'une loi provinciale peut-elle avoir comme conséquence la création d'un monopole dans le secteur d'activités visé par cette loi? - Conséquemment, en adoptant et appliquant des dispositions législatives relatives au transport de matière en vrac, une autorité législative provinciale peut-elle priver ses citoyens de leur droit à l'accès aux marchés publics alors qu'une telle restriction n'est pas applicable aux citoyens des autres provinces? - Dans l'application d'un

accord intergouvernemental de libéralisation des marchés publics sur son territoire, une province peut-elle imposer à ses citoyens une législation contraire aux engagements qu'elle a contractés?

HISTORIQUE DES PROCÉDURES

Le 2 mai 2002 Cour supérieure du Québec (Le juge Boisvert)	Action des intimés en injonction rejetée
Le 8 septembre 2003 Cour d'appel du Québec (Les juges Pelletier, Morin et Biron [<i>ad hoc</i>])	Appel des intimés accueilli
Le 6 novembre 2003 Cour suprême du Canada	Demande d'autorisation d'appel déposée

29847 **C.W.M. v. British Columbia Securities Commission and B.D.S.** (B.C.) (Civil) (By Leave)

Coram: Iacobucci, Binnie and Arbour JJ.

The application for an extension of time to apply for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Numbers CA027889 and CA029728, dated April 30, 2003, is dismissed with costs to the Respondent, British Columbia Securities Commission. In any event, had such application been granted, the application for leave to appeal from the said judgment would have been dismissed with costs to the Respondent, British Columbia Securities Commission.

La demande de prorogation de délai pour le dépôt d'une demande d'autorisation d'appel contre l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéros CA027889 et CA029728, daté du 30 avril 2003, est rejetée avec dépens en faveur de l'intimée British Columbia Securities Commission. Quoiqu'il en soit, même si la demande de prorogation avait été accueillie, la demande d'autorisation d'appel aurait été rejetée avec dépens en faveur de l'intimée British Columbia Securities Commission.

NATURE OF THE CASE

Canadian Charter - Civil rights - Mobility rights - Whether the Commission ought not to have the power and authority to compel the attendance of a foreign resident to come before the Commission contrary to the mobility rights guaranteed by the *Charter* - Procedural law - Pre-trial procedure - Right to cross-examine deponent on affidavit - Whether judge should accept an affidavit of an affiant as admissible or having force or effect before the Court, after denial of the right of cross examination in the face of a direct and contradictory affidavit by the opposing party, on a substantial matter in dispute Order to produce documents pursuant to investigatory powers of Securities Commission - Solicitor client privilege - Whether court should override the direct and uncontradicted evidence of both the solicitor and the client that would justify a claim of solicitor client privilege in the absence of any statutory authority - Whether chambers judge adequately considered and applied the law in regard to solicitor client privilege in light of *Lavallée*

PROCEDURAL HISTORY

October 23, 2000 Supreme Court of British Columbia (Macaulay J.)	Applicant and Respondent B.D.S. ordered to comply with a demand for production of records and a summons to attend before an investigator
May 3 rd , 2002 Supreme Court of British Columbia (Macaulay J.)	Some records produced by Respondent B.D.S. declared not subject to solicitor and client privilege and ordered released to the Respondent Commission; other documents subject to solicitor and client privilege

April 30, 2003
Court of Appeal for British Columbia

(Prowse, Newbury and Huddart JJ.A.)
Appeals dismissed

June 23, 2003
Supreme Court of Canada

Application for leave to appeal filed

October 28, 2003
Supreme Court of Canada

Application for an extension of time to file the
formal order of the Court of Appeal filed

29813 **Sunnybrook and Women's College Health Sciences Centre v. Her Majesty the Queen in Right of Ontario (through her representative, the Minister of Finance)** (Ont.) (Civil) (By Leave)

Coram: Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C38519, dated April 9, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38519, daté du 9 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Taxation — Sales and service taxes — Sales tax — Taxing powers, interpretation — Interest of justice, equity and fairness — Exemptions — Interpretation — Statutory appeal or review — *Retail Sales Tax Act*, R.S.O. 1990, c. R.31, s. 1.1. — *Sunnybrook and Women's College Health Sciences Centre Act*, 1998, S.O. 1998, c. 12, ss. 4(1), 21, 21(1), 21(2). — *Sunnybrook Hospital Act*, 1966, S.O. 1966, c. 150, s. 10(3). — Does section 1.1 of the *Ontario Retail Sales Tax Act* (“RSTA”) enacted December 5, 2001 override the Applicant’s judicially-recognized immunity from retail sales tax ? - Does this issue require the Court to consider application of the concept of “dialogue” between courts and legislatures in the situation where the legislature responded to a judicial decision and attempted to implicitly override a broad statutory tax immunity ? - Does this issue require the Court to apply its decision in Québec (*Communauté urbaine*) v. *Corporation Notre-dame de Bon Secours* regarding the degree of clarity required in order for the Government to carry its burden of showing “that the taxpayer is clearly covered by the wording of the legislative provision which it sought to apply” to a situation where the Government is attempting to impose taxation by implication ? — Does this issue raise constitutional implications in relation to (i) the interplay of sections 53 and 90 of the *Constitution Act, 1867*; and (ii) the similarity between the Hospital’s statutory tax immunity and the constitutional inter-governmental immunity contained in section 125 of the *Constitution Act, 1867* and the immunity afforded First Nations under section 87 of the *Indian Act*? - Is the Court of Appeal’s interpretation of “expressly mentions” in section 1.1 RSTA likely to affect the interpretation of analogous provisions of the *Interpretation Act*, R.S.C. c. I-23 and of the Interpretation Acts in every province ?

PROCEDURAL HISTORY

June 20, 2002
Ontario Superior Court of Justice
(Backhouse J.)

Applicant’s application for a declaration that s.21(2) of the *Sunnybrook and Women’s College Health Sciences Act* exempts the Applicant from the *Retail Sales Tax Act*, dismissed

April 9, 2003
Court of Appeal for Ontario
(Goudge, Borins and Armstrong JJ.A.)

Appeal dismissed

June 9, 2003
Supreme Court of Canada

Application for leave to appeal filed

29814 **Don Deptuck v. Her Majesty the Queen** (FC) (Civil) (By Leave)

Coram: **Bastarache, LeBel and Deschamps JJ.**

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-347-02, dated April 8, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-347-02, daté du 8 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Taxation - Income tax — Computation of income — Non-arm's length transactions — What constitutes arm's length — Partnerships — Capital gains and losses — Fair market value — *Income Tax Act*, R.S.C. 1 985 (5th Supp.), c.1, as amended, ss.69(1)(a), 96(1)(a), 248(1), 251(1)(a), 251(2)(a), 251(2)(c) and 251(6)(b) — *Income Tax Regulations*, s.1102(1a) — *British Columbia Partnership Act*, R.S.B.C. 1979, c. 312, s. 2. — Should the arm's length rule at paragraph 69(1)(a) of the *Income Tax Act* be applied at the partner level in accordance with the Chutka 2001 DTC 5093 (FCA) decision or at the partnership level in accordance with the Deptuck 2003 FCA 177 (FCA) decision ? — Is section 96 of the *Income Tax Act* effective to deem a partnership to be a "person" for the purposes of applying the arm's length rule contained in subsection 251(1) of the *Income Tax Act*? — Is a partnership a "taxpayer" for the purposes of paragraph 69(1)(a) of the *Income Tax Act*? — Was the "directing mind" test properly applied to the limited partnership in question ? — Was the fair market value of the processing equipment 6.85 million or \$422,000 ?

PROCEDURAL HISTORY

June 12, 2002 Tax Court of Canada (O'Connor J.T.C.C.)	Applicant's appeal from a reassessment made under the <i>Income Tax Act</i> for the 1983 taxation year, dismissed
April 8, 2003 Federal Court of Appeal (Décary, Linden and Noël JJ.A.)	Applicant's application for judicial review, dismissed
June 9, 2003 Supreme Court of Canada	Application for leave to appeal filed

29832 **Eric Scheuneman v. Attorney General of Canada** (FC) (Civil) (By Leave)

Coram: **Bastarache, LeBel and Deschamps JJ.**

The applications for leave to appeal from the judgment of the Federal Court of Appeal, Number A-333-02, dated April 29, 2003, are dismissed with costs.

Les demandes d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-333-02, daté du 29 avril 2003, sont rejetées avec dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Procedural law - Federal Court of Appeal - Written submissions - Whether the Federal Court of Appeal erred in dismissing the Applicant's motion for the appeal to be conducted entirely on the basis of written materials - Whether the Federal Court of Appeal erred in finding that the Applicant would not be prejudiced by an oral hearing - Whether the Federal Court of Appeal erred in finding that the Supreme Court of

Canada is not a “federal board, commission or other tribunal” within the meaning of sections 18 and 18.1 of the *Federal Court Act*, R.S.C. 1985, c. F-7 and that, therefore, its decisions or orders cannot be the subject of an application for judicial review in Federal Court - Whether the Federal Court of Appeal erred in *de facto* concluding that section 52 of the *Supreme Court Act*, R.S.C. 1985 c. S-26 condones or allows illegal acts by the Supreme Court of Canada or by its administrators - Whether the Federal Court of Appeal erred in not finding that the decision being subjected to judicial review was an administrative decision to refuse to rectify illegalities rather than a decision by a judge or judges of the Supreme Court of Canada - Whether the Federal Court of Appeal erred in awarding costs.

PROCEDURAL HISTORY

May 22, 2002 Federal Court of Canada (Pinard J.)	Respondent’s motion to strike the Applicant’s application for judicial review, granted
April 29, 2003 Federal Court of Appeal (Stone, Evans and Malone JJ.A.)	Appeal dismissed
June 19, 2003 Supreme Court of Canada	Application for leave to appeal filed

29848 **International Association of Fire Fighters Local 255 and Michael Pearce v. The Corporation of the City of Calgary** (Alta.) (Civil) (By Leave)

Coram: **Bastarache, LeBel and Deschamps JJ.**

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 0201-0114-AC, dated April 28, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 0201-0114-AC, daté du 28 avril 2003, est rejetée avec dépens.

NATURE OF THE CASE

Labour Law - Arbitration - Judicial Review - Whether the majority judgment of the Court of Appeal undermines well-established arbitral jurisprudence on the legal consequences of the transition from probation to permanent employment and on the differing standards of arbitral review of discipline and dismissal as between probationary and permanent employees - Whether the majority judgment undermines well-established arbitral jurisprudence on “culminating incident” - Whether the majority judgment undermines well-established arbitral jurisprudence on the prerequisites to establish just cause for dismissal in the context of culpable and non-culpable conduct - The legal effect of employer failure to follow its own policies and procedures on evaluation and discipline

PROCEDURAL HISTORY

October 9, 2001 Arbitration Board (D.P. Jones, D.R. Laird and B. Robb [<i>dissenting</i>], Members)	Association’s grievance of improper termination of Applicant Pearce’s employment, dismissed
March 1, 2002 Court of Queen’s Bench of Alberta (Hutchinson J.)	Application allowed; award of the Arbitration Board quashed; new hearing ordered

April 28, 2003
Court of Appeal of Alberta
(Côté, Hunt and Wittmann [*dissenting*] JJ.A.)

Appeal allowed; Board's decision reinstated

June 27, 2003
Supreme Court of Canada

Application for leave to appeal filed

29960 **Petro-Canada Inc., Ultramar Canada Inc., Compagnie Pétrolière Impériale Ltée, Produits Shell Canada Ltée., Pétro-Canada Inc. (en reperise d'instance au lieu et place de Bitumar Inc.) et Sun Oil Co. Ltd. c. Ville de Montréal-Est (maintenant nouvelle Ville de Montréal) et Communauté urbaine de Montréal (maintenant nouvelle Ville de Montréal) (Qc) (Civile)**
(Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel et la demande d'autorisation d'appel incident de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-009560-004, daté du 27 juin 2003, sont rejetées sans dépens.

The application for leave to appeal and the application for cross-appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-009560-004, dated June 27, 2003, are dismissed without costs.

NATURE DE LA CAUSE

Droit administratif - Appel - Compétence - Législation - Interprétation - Droit transitoire - Dispositions transitoires de la *Loi sur l'application de la Loi sur la justice administrative*, L.Q. 1997, ch. 43 - La Cour d'appel du Québec a-t-elle erré en déclarant qu'elle est sans compétence pour entendre les présents dossiers au motif que le jugement entrepris n'était pas susceptible d'appel?

HISTORIQUE DES PROCÉDURES

Le 31 mars 2000
Cour du Québec
(Le juge Gagnon)

Décision du Tribunal administratif du Québec infirmée en partie; plaintes originaires et supplémentaires de Sun Oil contre le rôle foncier de la Ville de Montréal-Est pour 1995 à 1997 accueillies; réduction de la valeur du bâtiment et la valeur totale portées à ce rôle à 4 000\$; prise d'effet de la radiation fixée au 1^{er} janvier 1995; plaintes des demandresses contre le rôle foncier dressé par la CUM entré en vigueur le 1^{er} janvier 1995 et reconduit pour la période 1998-2000 rejetées

Le 27 juin 2003
Cour d'appel du Québec
(Les juges Mailhot, Rayle et Lemelin [*ad hoc*])

Appel et appel incident rejetés pour défaut de compétence

Le 25 septembre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Le 23 octobre 2003
Cour suprême du Canada

Demande d'autorisation d'appel incident déposée

Le 13 novembre 2003
Cour suprême du Canada
(Le juge Major)

Demande d'autorisation d'intervention de la Société
du port de Montréal rejetée

29966 **Ville de Montréal-Est (maintenant nouvelle Ville de Montréal), Communauté urbaine de Montréal (maintenant nouvelle Ville de Montréal) c. Groupe Pétrolier Olco Inc.** (Qc) (Civile)
(Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel des arrêts de la Cour d'appel du Québec (Montréal), numéros 500-09-010735-017 et 500-09-010737-013, datés du 27 juin 2003, est rejetée avec dépens.

The application for leave to appeal from the judgments of the Court of Appeal of Quebec (Montreal), Numbers 500-09-010735-017 and 500-09-010737-013, dated June 27, 2003, is dismissed with costs.

NATURE DE LA CAUSE

Droit administratif - Appel - Compétence - Législation - Interprétation - Droit transitoire - Dispositions transitoires de la *Loi sur l'application de la Loi sur la justice administrative*, L.Q. 1997, ch. 43 - La Cour d'appel du Québec a-t-elle erré en déclarant qu'elle est sans compétence pour entendre les présents dossiers au motif que les jugements entrepris n'étaient pas susceptibles d'appel?

HISTORIQUE DES PROCÉDURES

Le 16 février 2001
Cour du Québec, Chambre civile
(Le juge Gagnon)

Pourvoi de l'intimée à l'encontre de la décision du Tribunal administratif du Québec accueillant en partie des plaintes contre des inscriptions au rôle foncier: rejeté; pourvoi des demanderesses contre la même décision: accueillis quant à la valeur des terrains de la partie sud seulement

Le 27 juin 2003
Cour d'appel du Québec
(Les juges Mailhot, Rayle et Lemelin [*ad hoc*])

Appels rejetés pour défaut de compétence

Le 25 septembre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

29985 **Her Majesty the Queen v. Wayne Hayes** (Ont.) (Criminal) (By Leave)

Coram: Bastarache, LeBel and Deschamps JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36130, dated July 10, 2003, is dismissed without costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36130, daté du 10 juillet 2003, est rejetée sans dépens.

NATURE OF THE CASE

Criminal law - Respondent refusing to provide his motorcycle helmet for inspection upon request - Respondent charged with wilfully obstructing a police officer in the execution of his duty - Offence of obstruct police contrary to

s. 129 (a) of the *Criminal Code* of Canada - Whether the Court of Appeal erred in holding that a motorcyclist who refuses to remove his helmet to permit inspection by a police officer pursuant to the statutory duty to do so, does not commit the offence of obstruct police - *Criminal Code*. s. 129 - *Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 82.

PROCEDURAL HISTORY

October 26, 1999 Ontario Court of Justice (Gorewich J.)	Respondent acquitted of wilfully obstructing a peace officer contrary to s. 129(a) of the <i>Criminal Code</i>
March 26, 2001 Ontario Superior Court of Justice (Ferguson J.)	Appeal allowed; conviction entered
July 10, 2003 Court of Appeal for Ontario (McMurtry C.J.O., Weiler and Laskin JJ.A.)	Appeal allowed; conviction set aside; acquittal entered
September 30, 2003 Supreme Court of Canada	Application for leave to appeal filed
November 14, 2003 Supreme Court of Canada	Motion for an extension of time to serve and file the application for leave to appeal filed

30003 **Khalid Hasan v. Her Majesty the Queen** (N.B.) (Criminal) (By Leave)

Coram: **Bastarache, LeBel and Deschamps JJ.**

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal of New Brunswick, Number 20/02/CA, dated July 10, 2003, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Nouveau-Brunswick, numéro 20/02/CA, daté du 10 juillet 2003, est rejetée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Evidence - Appeal - Statutes - Whether the Court of Appeal of New Brunswick erred in law in applying the wrong test in deciding whether fresh evidence should have been admitted pursuant to s. 683(1)(d) of the *Criminal Code of Canada*.

PROCEDURAL HISTORY

November 24, 2001 New Brunswick Court of Queen's Bench (Clendening J.)	Applicant convicted of sexual assault
January 8, 2002 New Brunswick Court of Queen's Bench (Clendening J.)	Six month conditional sentence imposed
July 10, 2003 Court of Appeal of New Brunswick	

(Drapeau C.J.N.B., Ryan and Deschênes JJ.A.)

Applicant's application for leave to introduce evidence dismissed; Applicant's appeal of sexual assault conviction by jury dismissed

October 20, 2003
Supreme Court of Canada

Application for extension of time and leave to appeal filed

30015 **La Banque de Nouvelle-Écosse c. Les Promotions Atlantiques Inc.** (Qc) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-010650-018, daté du 27 août 2003, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-010650-018, dated August 27, 2003, is dismissed with costs.

NATURE DE LA CAUSE

Droit commercial - Banques - Cautionnement - Devoir de renseignement - La Banque demanderesse n'a-t-elle pas droit de refuser de livrer à une caution des évaluations privées qu'elle aurait ou n'aurait pas dans son dossier concernant les autres garanties détenues ? - En accueillant la requête pour preuve nouvelle, en permettant l'introduction de faits postérieurs au jugement de la Cour supérieure, la décision dont appel est requis ne viole-t-elle pas la règle du respect du dossier en état ainsi que les termes des articles 509 et 483 *C.p.c* ? - Le principe de la chose jugée n'interdit-il pas que soit renversé le jugement interlocutoire sur la requête ne révision de précisions, lequel dispensait la banque demanderesse de fournir ses évaluations des autres garanties qu'elle pouvait détenir ? - L'absence de toute preuve de préjudice pour la caution n'empêche-t-elle pas d'annuler la totalité de l'obligation de la caution envers la banque, contrairement à tous les enseignements de la doctrine et de la jurisprudence ?

HISTORIQUE DES PROCÉDURES

Le 5 février 2001
Cour supérieure du Québec
(Le juge Turmel)

Demande de la demanderesse accueillie; l'intimée condamnée à payer à la demanderesse la somme de 757 174 \$

Le 27 août 2003
Cour d'appel du Québec
(Les juges Mailhot, Proulx et Rayle)

Appel de l'intimé rejeté; jugement de première instance infirmé

Le 27 octobre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

30034 **Ville de Montréal (en reprise d'instance de Ville de Saint-Laurent et de la Communauté urbaine de Montréal) c. 150460 Canada Inc., Garadex Inc., Lapray Realities Ltd, Corporation immobilière Montriche, Corporation d'investissement Hilou** (Qc) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel des arrêts de la Cour d'appel du Québec (Montréal), numéros 500-09-008885-998 et 500-09-008886-996, datés du 10 septembre 2003, est rejetée avec dépens.

The application for leave to appeal from the judgments of the Court of Appeal of Quebec (Montreal), Numbers 500-09-008885-998 and 500-09-008886-996, dated September 10, 2003, is dismissed with costs.

NATURE DE LA CAUSE

Droit administratif - Appel - Compétence - Législation - Interprétation - Droit transitoire - Dispositions transitoires de la *Loi sur l'application de la Loi sur la justice administrative*, L.Q. 1997, ch. 43 - La Cour d'appel du Québec a-t-elle erré en déclarant qu'elle est sans compétence pour entendre les présents dossiers au motif que les jugements entrepris n'étaient pas susceptibles d'appel?

HISTORIQUE DES PROCÉDURES

Le 25 octobre 1999
Cour du Québec, Chambre civile
(Le juge Barbe)

Appel de la demanderesse d'une décision du Tribunal administratif du Québec concernant la valeur de terrains inscrite au rôle d'évaluation et l'assujettissement à une surtaxe rejeté; appel des intimées accueilli en partie

Le 10 septembre 2003
Cour d'appel du Québec
(Les juges Dussault, Rochon et Dalphond [dissident])

Appels de la demanderesse rejetés et appels incidents de la société 150460 Canada Inc. rejetés pour défaut de compétence

Le 6 novembre 2003
Cour suprême du Canada

Demande d'autorisation d'appel déposée

23.12.2003

Before / Devant : THE REGISTRAR

Taxation of costs**Taxation des dépens**

Benjamin Krela, et autre

c. (29567)

Sulzer Medica AG, et autres (Qc)

Par son jugement rendu le 2 octobre 2003, la Cour suprême a rejeté la requête en sursis d'exécution avec dépens à l'intimée Sulzer, elle a rejeté avec dépens la demande d'autorisation des arrêts de la Cour d'appel du Québec Nos 500-09-010733-012, 500-09-010738-011, 500-09-010739-019 datés du 4 décembre 2002 et 9 décembre 2002 et elle a rejeté avec dépens en faveur de l'intimée Sulzer la demande d'autorisation de l'arrêt de la Cour d'appel du Québec Nos 500-09-010733-012 daté du 7 avril 2003.

Les intimées Orthosoft Inc. et Orthosoft R & D Inc. ont présenté leur mémoire de frais incluant les dépens de la requête en sursis d'exécution et, au titre des débours, les honoraires du séquestre-gérant. Les demandeurs Benjamin Krela et 3588106 Canada Inc. contestent le mémoire de frais et demandent que les dépens de la taxation leur soient accordés.

Après un examen du mémoire de frais, de la contestation, de la réponse et de la réplique, je conclus que les dépens relatifs à la requête en sursis d'exécution doivent être radiés vu la décision de la Cour accordant les dépens à l'intimée Sulzer.

Les honoraires du séquestre-gérant sont également exclus de la présente taxation, vu les pouvoirs limités du registraire en matière de dépens. Le registraire est tenu d'exercer sa compétence dans les limites du Tarif des honoraires et des débours, ce qui ne comprend pas le traitement d'honoraires tels que ceux demandés. Les parties doivent s'en remettre à la décision de la Cour d'appel pour obtenir le paiement des honoraires.

Le mémoire de frais est taxé en conséquence. Il n'y a pas lieu d'accorder les dépens de la taxation aux demandeurs.

Fait à Ottawa, le 23 décembre 2003

In a judgment dated October 2, 2003, the Supreme Court dismissed the motion for stay of execution with costs to the Respondent Sulzer, dismissed with costs the application for leave to appeal from the judgments of the Court of Appeal for Quebec in File Numbers 500-09-010733-012, 500-09-010738-011 and 500-09-010739-019, dated December 4, 2002 and December 9, 2002, and dismissed the application for leave to appeal from the judgment of the Court of Appeal for Quebec in File Number 500-09-010733-012, dated April 7, 2003, with costs to the Respondent Sulzer.

The Respondents Orthosoft Inc. and Orthosoft R & D Inc. submitted their bill of costs including the costs for the motion for stay of execution and, as disbursements, the fees of the receiver-manager. The Applicants Benjamin Krela and 3588106 Canada Inc. dispute the bill of costs and request that the taxation costs be awarded to them.

Having reviewed the bill of costs, the objection, the response and the reply, I find that the costs relating to the motion for stay of execution must be struck off from the bill of costs in view of the Court's decision to award costs to the Respondent Sulzer.

The fees of the receiver-manager are also struck off from the bill of costs in view of the limited powers of the Registrar in matters involving costs. The jurisdiction of the Registrar must be exercised within the limits of the Tariff of Fees and Disbursements, which does not include fees such as those requested. The parties must rely on the Court of Appeal's judgment to obtain payment of those fees.

The bill of costs is taxed accordingly. There is no basis to award the taxation costs to the Applicants.

Signed at Ottawa, December 23, 2003

7.1.2004

Before / Devant : THE REGISTRAR

Taxation of costs

Taxation des dépens

Her Majesty the Queen in Right of the Province of
British Columbia

v. (27721)

Leanne Rumley, et al. (B.C.)

In its reasons for judgment delivered on October 18, 2001, the Court granted costs throughout to the respondents. The Bill of Costs filed by the respondents on April 4, 2003 was objected to by the appellant. A response and a reply were filed.

Having reviewed the material filed by the respondents and having considered the arguments put forward by both parties, I conclude as follows.

The objection focuses on the disbursements and the quantum allowable under Part II of the Tariff of Fees and Disbursements. The issue is whether, given the particular situation of the respondents as "profoundly deaf persons," some of the costs of the litigation related to their particular needs qualify under "reasonable amounts . . . necessarily incurred in proceedings before the Court, including travel expenses" (Tariff of Fees and Disbursements, Part II, s. 3).

The costs granted by the Court are party and party costs. Therefore, the Registrar must tax them within the parameters of the Tariff, which does not cover all the expenditures incurred by a party in the conduct of the case. For instance, travel expenses have always been limited to the travel of counsel to the Supreme Court of Canada to argue the case. Expenses related to preparatory work cannot be included in party and party costs. The Supreme Court provided qualified ASL interpreters at the hearing, which removed the need for the parties to provide their own. Therefore the costs related to the preparatory meetings, the travel of Leanne Rumley and of the interpreters and the interpreters' fees are disallowed.

The expenses related to the TTD & Supplies are allowed in view of the special needs of the respondents. The costs relating to photocopies, faxes, long distance, courier fees and postage are allowed as per the attached. I have reduced them to meet the reasonableness criteria and the obligation of the parties to mitigate their costs.

Applying the above mentioned principles, the disbursements filed by Acheson & Company are taxed as per the attached.

The Bill of Costs is taxed accordingly.

Dated at Ottawa this 7th day of January 2004.

Dans ses motifs du jugement rendu le 18 octobre 2001, la Cour a adjugé les dépens aux intimés dans toutes les cours. L'appelante a contesté le mémoire de frais déposé, le 4 avril 2003, par les intimés. Une réponse et une réplique ont été déposées.

Après l'examen des documents déposés par les intimés et tenant compte des arguments avancés par les deux parties, je conclus que :

La contestation est centrée sur les débours et le montant admissible en vertu de la partie II du Tarif des honoraires et débours. La question est de savoir si, étant donné la situation particulière des intimés en tant que « personnes atteintes de surdit  profonde », certains des frais du litige engag s en raison de leurs besoins particuliers constituent une « [s]omme raisonnable [...] n cessairement engag e] dans le cadre de l'instance devant la Cour, dont les frais de d placement » (tarif des honoraires et d bours, partie II, art. 3).

Ce sont des d pens partie-partie qui ont  t  adjudg s par la Cour. Par cons quent, le registraire est tenu d'exercer sa comp tence dans les limites du tarif, lequel ne couvre pas toutes les d penses engag es par une partie dans la conduite de son dossier. Par exemple, les frais de d placement ont toujours  t  limit s   ceux qui ont  t  engag s par les procureurs pour se rendre   la Cour supr me plaider leur dossier. Les frais li s aux travaux pr liminaires ne peuvent pas  tre inclus dans les d pens partie-partie. La Cour supr me a offert les services d'interpr tes en ASL comp tents   l'audience, ce qui a  vit  aux parties de devoir fournir leurs propres interpr tes. Par cons quent, les frais li s aux r unions pr paratoires, les frais de d placement de Leanne Rumley et des interpr tes ainsi que les honoraires des interpr tes sont refus s.

Les frais li s   l'ATS et aux fournitures connexes sont accord s compte tenu des besoins sp ciaux des intim s. Les frais de photocopie, de t l copie, d'interurbain, de messageries et d'affranchissement sont accord s selon ce qui est indiqu    la pi ce jointe. Je les ai r duits en tenant compte du crit re du caract re raisonnable et de l'obligation qui incombe aux parties de limiter leurs frais.

Les d bours r clam s par Acheson & Company sont, en application de ces principes, tax s selon les indications de la pi ce jointe.

Le m moire de frais est tax  en cons quence.

Fait   Ottawa, le 15 janvier 2004

12.1.2004

Before / Devant : IACOBUCCI J.

Motion for leave to intervene

Requ te en autorisation d'intervention

BY / PAR : Chicken Farmers of Canada

IN / DANS : Andr  Pelland

c. (29805)

F d ration des producteurs de
volailles du Qu bec, et autre (Qc)

GRANTED IN PART / ACCORD E EN PARTIE

UPON APPLICATION by the Chicken Farmers of Canada for leave to intervene in the above appeal and permission to file submissions in respect of the appellant's motion to state constitutional questions;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

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

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

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

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

2) The motion to file submissions in respect of the appellant's motion to state constitutional questions is dismissed.

À LA SUITE DE LA DEMANDE des Producteurs de poulet du Canada visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné et de déposer des soumissions concernant la requête de l'appellant pour formulation de questions constitutionnelles;

ET APRÈS AVOIR LU la documentation déposée;

L'ORDONNANCE SUIVANTE EST RENDUE;

1) La demande d'autorisation d'intervenir présentée par les Producteurs de poulet du Canada; la requérante aura le droit de signifier et déposer un mémoire de 20 pages tout au plus.

La demande visant à présenter une plaidoirie sera examinée après la réception et l'examen de l'argumentation écrite des parties et de l'intervenante.

L'intervenante n'aura pas le droit de produire d'autres éléments de preuve ni d'ajouter quoi que ce soit au dossier des parties.

Conformément au par. 59(1)(a) des Règles de la Cour suprême du Canada, l'intervenante paiera à l'appellant et aux intimés tous débours supplémentaires résultant de leur intervention.

2) La requête pour déposer des soumissions concernant la requête de l'appellant pour formulation de questions constitutionnelles est rejetée.

12.1.2004

Before / Devant : THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimé

Her Majesty the Queen

v. (30079)

Marvin Sazant (Crim.) (Ont.)

GRANTED / ACCORDÉE Time extended to January 15, 2004.

13.1.2004

Before / Devant : THE CHIEF JUSTICE

Motion to adjourn the hearing of the appeal and to extend the time in which to file the appellants' record, factum and book of authorities

Requête pour ajourner l'audition de l'appel et en prorogation du délai imparti pour déposer les dossier, mémoire et recueil de jurisprudence et de doctrine des appelants

Director, Income Maintenance Branch, Ministry of Community and Social Services, et al.

v. (29294)

Sandra Falkiner, et al. (Ont.)

GRANTED / ACCORDÉE

UPON APPLICATION by the appellants for an order adjourning the hearing of the appeal and to extend the time to serve and file their record, factum and book of authorities to July 31, 2004;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

This appeal scheduled to be heard on March 18, 2004, shall be adjourned to a date to be set by the Registrar in the Fall 2004 session. The appellants' record, factum and book of authorities shall be served and filed by August 30, 2004.

14.1.2004

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

Norman E. Bower, et al.

v. (30084)

Cominco Ltd., et al. (B.C.)

GRANTED / ACCORDÉE Time extended to January 12, 2004.

14.1.2004

Before / Devant : THE REGISTRAR

Motion by the appellant to file a lengthy factum

Requête par l'appelante en vue de déposer un long mémoire

Les Entreprises Sibeca Inc.

v. (29600)

Municipalité de Frelighsburg (Qc)

GRANTED / ACCORDÉE

14.1.2004

Before / Devant : IACOBUCCI 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

Her Majesty the Queen

v. (30113)

Toronto Star Newspapers Limited, et al. (Ont.)

GRANTED / ACCORDÉE

UPON APPLICATION by the applicant for an order extending the time to serve and file an application for leave to appeal to December 30, 2003;

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 is granted to December 30, 2003.

15.1.2004

Before / Devant : IACOBUCCI J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY / PAR : Barreau du Québec

IN / DANS : Mireille Boisvert

c. (29544)

La Régie de l'assurance-maladie du Québec, et autre (Qc)

GRANTED / ACCORDÉE

À LA SUITE DE LA DEMANDE du Barreau du Québec visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné;

ET APRÈS AVOIR LU la documentation déposée;

L'ORDONNANCE SUIVANTE EST RENDUE;

La demande d'autorisation d'intervenir présentée par le Barreau du Québec est accordée; le requérant aura le droit de signifier et déposer un mémoire de 20 pages au plus tard le 18 février 2004.

La demande visant à présenter une plaidoirie seront examinées après la réception et l'examen de l'argumentation écrite des parties et de l'intervenant.

L'intervenant n'aura pas le droit de produire d'autres éléments de preuve ni d'ajouter quoi que ce soit au dossier des parties.

Conformément au par. 59(1)(a) des Règles de la Cour suprême du Canada, l'intervenant paiera à l'appelante et aux intimées tous débours supplémentaires résultant de leur intervention.

15.1.2004

Before / Devant : THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimée

Jonathan Ching Chang

v. (30097)

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

GRANTED / ACCORDÉE Time extended to February 16, 2004.

15.1.2004

Before / Devant : IACOBUCCI J.

Motions to extend the time in which to serve the application for leave and for substitutional service

Requêtes en prorogation du délai imparti pour signifier la demande d'autorisation et en substitution de signification

Gouvernement du Maroc

c. (30068)

Rhita El Ansari (Qc)

GRANTED / ACCORDÉES

À LA SUITE D'UNE DEMANDE du demandeur visant à obtenir l'utilisation d'un mode spécial de signification et une prorogation de délai pour signifier une demande d'autorisation d'appel;

ET APRÈS AVOIR PRIS CONNAISSANCE de la documentation déposée;

IL EST PAR LA PRÉSENTE ORDONNÉ CE QUI SUIT:

La prorogation de délai pour signifier la demande d'autorisation d'appel est accordée. Le demandeur signifiera sa demande d'autorisation d'appel par courrier ordinaire.

16.1.2004

Before / Devant : IACOBUCCI J.

Motion to substitute parties and motions to examine

Requête en substitution de parties et requêtes visant à obtenir l'autorisation d'interroger

Jacques Chaoulli, et autre

c. (29272)

Procureur général du Québec, et autre (Qc)

DISMISSED / REJETÉES

À LA SUITE DE LA DEMANDE de l'appelant, Jacques Chaoulli, pour une ordonnance de substitution de la partie George Zeliotis par la partie Jacques Chaoulli;

À LA SUITE DE LA DEMANDE de l'appelant, George Zeliotis, pour une ordonnance interrogeant l'appelant, Jacques Chaoulli, sur l'affidavit du 11 décembre 2003 déposé au soutien de sa requête pour substitution de partie;

À LA SUITE DE LA DEMANDE de l'appelant, George Zeliotis, pour une ordonnance interrogeant l'intervenant proposé, Augustin Roy, sur l'affidavit daté du 25 novembre 2003, déposé au soutien de sa requête en intervention;

ET APRÈS AVOIR LU la documentation déposée;

L'ORDONNANCE SUIVANTE EST RENDUE;

- 1) La requête de l'appelant, Jacques Chaoulli, pour une ordonnance de substitution de la partie George Zeliotis par la partie Jacques Chaoulli, est rejetée.
 - 2) Les requêtes de l'appelant, George Zeliotis, pour des ordonnances interrogeant l'appelant, Jacques Chaoulli, et l'intervenant proposé, Augustin Roy, sont rejetées.
-

 16.1.2004

Before / Devant : IACOBUCCI J.

Motions to extend the time for leave to intervene**Requêtes en prorogation du délai imparti pour obtenir l'autorisation d'intervenir**

BY / PAR : Manitoba Human Rights
Commission

IN / DANS : 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 the Order in Council P.C.
2003-1055, dated the 16 day of july,
2003 (Can.) (29866)

GRANTED / ACCORDÉES The extension of time to apply for leave to intervene is granted to January 2, 2004.

16.1.2004

Before / Devant : IACOBUCCI J.

Motion to file an affidavit**Requête visant le dépôt d'un affidavit**

BY / PAR : Dawn Barbeau
Elizabeth Barbeau
Peter Cook
Murray Warren
Jane Eaton Hamilton
Joy Masuhara

IN / DANS : 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 the Order in Council P.C.
2003-1055, dated the 16 day of july,
2003 (Can.) (29866)

GRANTED / ACCORDÉE The motion is granted. The affidavit of Kathleen A. Lahey will form part of the motion for leave to intervene on behalf of Dawn Barbeau, Elizabeth Barbeau, Peter Cook, Murray Warren, Jane Eaton Hamilton and Joy Masuhara (B.C. Couples).

9.1.2004

Procureur général du Québec, et autres

c. (29822)

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

16.1.2004

Christopher Orbanski

v. (29793)

Her Majesty the Queen (Man.)

2.1.2004

BY / PAR : Attorney General of Ontario

IN / DANS : **House of Commons, et al.**

v. (29564)

Satnam Vaid, et al. (F.C.)

**APPEALS HEARD SINCE LAST
ISSUE AND DISPOSITION**

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

16.1.2004

Coram: Major, Bastarache, Binnie, Arbour, LeBel, Deschamps and Fish JJ.

Jason Richard Kerr

Charles B. Davison for the appellant.

v. (29714)

Jim Bowron for the respondent.

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

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Acquittal of charge of second degree murder and possession of a weapon for a purpose dangerous to the public peace - Court of Appeal allowing appeal and substituting a conviction for possession of a weapon for a dangerous purpose - Self defence - Whether the Court of Appeal exceeded its jurisdiction by allowing the Crown appeal and convicting the Appellant of an offence under section 88(1) of the *Criminal Code* - Whether the Court of Appeal erred in law by convicting the Appellant on the basis that because he was carrying a concealed weapon inside a penitentiary, he was guilty of having "possession of a weapon for purposes dangerous to the public peace" contrary to section 88(1) of the *Criminal Code*.

Nature de la cause:

Droit criminel - Acquittement relativement à des accusations de meurtre au second degré et de possession d'une arme dans un dessein dangereux pour la paix publique - La Cour d'appel a accueilli l'appel de la Couronne en ce qui a trait à la seconde accusation sous réserve de la substitution d'une déclaration de culpabilité de possession d'une arme dans un dessein dangereux pour la paix publique - Légitime défense - La Cour d'appel a-t-elle excédé sa juridiction en accueillant l'appel de la Couronne et en déclarant l'appellant coupable d'une infraction visée à l'article 88(1) du *Code Criminel* ? La Cour d'appel a-t-elle erré en droit en déclarant l'appellant coupable de possession d'une arme dans un dessein dangereux pour la paix publique contrairement à l'article 88(1) du *Code criminel* du fait du port, dans un pénitencier, d'une arme dissimulée ?

19.1.2004

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

**The League for Human Rights of B’Nai Brith
Canada**

v. (29252)

Syndicat Northcrest (Que.)

- and -

Moïse Amselem, et al.

v. (29253)

Syndicat Northcrest (Que.)

Julius H. Grey, Lynne-Marie Casgrain, Elisabeth Goodwin and Jean-Philippe Desmarais for the appellants (29253).

David Matas and Steven G. Slimovitch for the appellant (29252).

Dale Fedorchuk, Bradley Minuk and Dave Ryan for the interveners (Joint) The Evangelical Fellowship of Canada and Seventh-day Adventist Church in Canada

Palbinder K. Shergill for the intervener World Sikh Organization of Canada (Joint)

Prabhu Rajan for the intervener Ontario Human Rights Commission (Joint)

Pierre-G. Champagne et Yves Joli-Coeur pour l’intimé (Conjointement)

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

29252

Canadian Charter - Civil Rights - Property Law - Co-ownership - Freedom of religion - What is the proper approach to be taken by a trial judge when a litigant advances an issue of freedom of religion - Whether the trial judge erred when he entered into the analysis of the religious duty, and in essence ruled that there was no Jewish religious duty to erect a Succah hut on one’s balcony, and in effect, went beyond examining the religious duty, but more so questioned the very existence thereof.

29253

Canadian Charter - Civil Rights - Property Law - Co-ownership - Freedom of religion - Duty to accommodate - Whether one can waive his or her right to freedom of religion in advance by signing a contract of adhesion containing a general prohibition against decorations or constructions on one’s balcony - Whether the infringement of the right to freedom of religion can be justified by the signing of a contract and the desire to protect other co-owners’ property rights - Whether the general prohibition against any religious symbols or constructions on the co-owners’

Nature de la cause:

29252

Charte canadienne - Droits de la personne - Droit des biens - Copropriété - Liberté de religion - Sous quel angle un juge de première instance doit-il aborder une question relative à la liberté de religion soumise par une partie à un litige? - Le juge a-t-il commis une erreur lorsqu’il s’est mis à faire une analyse du devoir religieux et a conclu que, essentiellement, il n’existait aucune obligation pour le juif pratiquant d’ériger une souccah sur son balcon et lorsqu’il a fait plus qu’examiner le devoir religieux, c’est-à-dire lorsqu’il a remis en question l’existence même de ce devoir religieux?

29253

Charte canadienne - Droits de la personne - Droit des biens - Copropriété - Liberté de religion - Devoir d’accommodement - Une personne peut-elle renoncer à l’avance à son droit de liberté de religion en signant un contrat d’adhésion dans lequel figure une disposition qui interdit expressément l’installation de décorations ou l’érection de constructions sur les balcons? - L’atteinte au droit de liberté de religion peut-elle être excusée par la signature d’un contrat et par le désir de protection des droits de propriété des autres copropriétaires? - L’interdiction générale visant

balconies is discriminatory - Whether the limitation of the property rights of the other co-owners amounts to undue hardship that justifies Respondent's refusal to exempt Appellants from the declaration of co-ownership for a period of 7 to 9 days every year.

l'installation de symboles religieux ou l'érection de constructions sur les balcons des copropriétaires est-elle discriminatoire? - La restriction des droits de propriété des autres copropriétaires leur cause-t-elle un préjudice indu qui justifie le refus de l'intimé de soustraire une fois l'an les appelants à l'application de la déclaration de copropriété pour une période de 7 à 9 jours?

19.1.2004

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

La Congrégation des témoins de Jéhovah de St-Jérôme Lafontaine, et autres

André Carbonneau and David M. Gnam pour les appelants

c. (29507)

Gerald D. Chipeur and Ivan Bernardo for the interveners (Joint) The Evangelical Fellowship of Canada and Seventh-day Adventist Church in Canada

Municipalité du village de Lafontaine, et autres (Qc)

Andrew K. Lokan and Megan Shortreed for the interveners Canadian Civil Liberties Association

Michel Lalonde and Jean-Pierre St-Amour pour les intimés Municipalité du village de Lafontaine et Harold Larente

Mario Normandin pour l'intimé Procureur général du Québec

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter - Civil rights - Municipal law - Municipalities - Freedom of religion - Zoning by-law - Duty of reasonable accommodation - Prohibitive effect of zoning by-law - Interpretation - Whether a municipality must exercise its discretion in such a manner as to provide locations on its territory that are not already zoned for other uses where it is possible to construct a place of worship - Whether municipality has a duty of reasonable accommodation to apply or amend its zoning by-law in such a manner as to permit the Appellants to exercise their right to freedom of religion by establishing a place of worship - Whether municipality's zoning by-law permits construction of buildings similar to Appellants' place of worship in commercial zone.

Nature de la cause:

Charte canadienne - Libertés publiques - Droit municipal - Municipalités - Liberté de religion - Règlement de zonage - Devoir d'accommodement raisonnable - Effet prohibitif du règlement de zonage - Interprétation - Une municipalité doit-elle exercer sa discrétion de façon à prévoir des endroits sur son territoire qui ne sont pas déjà affectés à d'autres utilisations et où il est possible de construire un lieu de culte? - La municipalité a-t-elle un devoir d'accommodement raisonnable d'appliquer ou de modifier son règlement de zonage de façon à permettre aux appelants d'exercer leur droit à la liberté de religion en établissant un lieu de culte? - Le règlement de zonage de la municipalité permet-il la construction de bâtiments semblables au lieu de culte des appelants dans la zone commerciale?

20.1.2004

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

Percy Schmeiser, and Schmeiser Enterprises Ltd.

v. (29437)

Monsanto Canada Inc., et al. (F.C.)

Terry J. Zakreski for the appellants

Steven Shrybman and Steven Barrett for the
interveners Council of Canadians et al.

Roger T. Hughes, Q.C., Arthur B. Renaud and L.E.
Trent Horne for the respondents

Sara Blake and Ryan Collier for the intervener
Attorney General of Ontario

Anthony G. Creber and Henry S. Brown, Q.C. for the
intervener Biotech Canada

A. David Morrow and Colin B. Ingram for the
intervener Canadian Seed Trade Association

Mona G. Brown and Carena Roller for the intervener
Canadian Canola Growers Association (CCGA)

Richard W. Danyliuk for the intervener AG-West
Biotech Inc. (Written submission only)

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Property Law - Patents - Agricultural products -
Genetically modified plants - Respondents invent and
patent a genetic insert into genes of canola plant that
produces a plant resistant to glyphosate herbicide -
Genetically modified crop sold to licensed growers and
controls placed on licensees' harvesting and use of seed
- Farmer discovers genetically modified canola growing
on his field - Farmer not a licensed grower - Transfer of
genetically modified canola to farmer's fields occurs
without farmer's participation or knowledge - Whether
subject matter claimed in Patent 1,313, 830 lies outside
the *Patent Act* - If not, should the patent be given a
narrower scope - If not, should farmer be granted an
implied license to continue to save and re-use seed that
may contain the patented gene absent exploitation - If
not, should Monsanto have been awarded the entire
profit from farmer's 1998 canola when he did not
benefit or profit from the infringement.

Nature de la cause:

Droit des biens - Brevets - Produits agricoles - Plantes
génétiquement modifiés - Les intimées ont inventé et
breveté un insert génétique qui produit un plant de canola
résistant à un herbicide à base de glyphosate - Vente du
canola provenant de semences génétiquement modifiées
uniquement à un producteur autorisé et conditions portant
sur la culture de ces plants et l'emploi de ces semences
imposées à leurs acheteurs - Découverte par un
agriculteur de la présence de canola génétiquement
modifié dans son champ - L'agriculteur n'est pas un
producteur autorisé - L'arrivée de canola génétiquement
modifié dans le champ de l'agriculteur, qui en ignorait la
présence, s'est faite sans la participation de ce dernier -
L'objet du brevet 1,313, 830 relève-t-il de la *Loi sur les
brevets* ? - Sinon, devrait-on restreindre la portée du
brevet ? - Sinon, devrait-on accorder à l'agriculteur une
licence implicite lui permettant de conserver et d'utiliser
à nouveau une semence qui peut contenir un insert
génétique breveté s'il n'en fait pas l'exploitation ? -
Sinon, est-ce que l'on aurait dû accorder à Monsanto la
totalité des profits provenant de la récolte de canola d'un
agriculteur qui n'a pas profité de la contrefaçon ?

21.1.2004

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

Réjean Demers

c. (29234)

Sa Majesté la Reine (Qc)

Suzanne Gagné et Stéphane Lepage pour l'appelant

Joanne Marceau pour l'intimée

Michel F. Denis et Yvan Poulin pour l'intervenant
Procureur général du Canada

Lucy Cecchetto and Shaun Nakatsuru for the
intervener Attorney General of Ontario

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Accused unfit to stand trial - Constitutionality of s. 672.54 of Criminal Code concerning accused persons found unfit to stand trial - Whether s. 672.54 of Criminal Code unconstitutional on ground that it infringes rights and freedoms guaranteed by ss. 7, 11b) and 15(1) of Charter - Whether Appellant entitled to stay of proceedings as remedy under s. 24(1) of Charter, on ground of infringement of his rights guaranteed by ss. 7 and 11(b) of Charter.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Accusé inapte à subir un procès - Constitutionnalité de l'article 672.54 du Code criminel en ce qui a trait aux accusés inaptes à subir leurs procès - L'article 672.54 du Code criminel est-il inconstitutionnel au motif qu'il viole des droits et libertés garantis par les articles 7, 11b) et 15(1) de la Charte ? - L'appelant a-t-il droit à un arrêt des procédures à titre de réparation en vertu du paragraphe 24(1) de la Charte, en raison d'une atteinte portée à ses droits garantis par les articles 7 et 11b) de la Charte ?

NOVEMBER 13, 2003 /REVISED JANUARY 20, 2004
LE 13 NOVEMBRE 2003 /RÉVISÉ LE 20 JANVIER 2004

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

Corporation of the Town of Oakville

v. (29359)

Vann Niagara Ltd.

George H. Rust-D'Eye, Barnet H. Kussner and Kim Mullin for the appellant.

John A. Crossingham for the Respondent.

ALLOWED / ACCUEILLI

The appeal from the judgment of the Court of Appeal for Ontario, Number C36773, dated June 14, 2002, was heard on November 13, 2003 and the Court on that day delivered the following judgment orally:

L'appel contre l'arrêt de la Cour d'appel de l'Ontario, numéro C36773, en date du 14 juin 2002, a été entendu le 13 novembre 2003 et la Cour a prononcé oralement le même jour le jugement suivant :

[TRADUCTION]

ARBOUR J. — There is no appeal from the unanimous decision of the Ontario Court of Appeal that the by-law prohibiting third party signs is unconstitutional.

LA JUGE ARBOUR — La décision unanime de la Cour d'appel de l'Ontario voulant que le règlement municipal prohibant l'érection par des tiers de

We agree with MacPherson J.A. that the by-law limiting the size of signs to 80 square feet (7.5 square meters) infringes s. 2(b) of the *Canadian Charter of Rights and Freedoms* but is saved under s. 1 as it minimally impairs the freedom of expression of the respondent.

The appeal is allowed, the judgment of the Court of Appeal on that issue is set aside and the constitutional questions are answered in the affirmative. The appellant will have its costs in this Court. Each party will bear its own costs in the Court of Appeal.

panneaux publicitaires soit inconstitutionnel ne fait pas l'objet du présent pourvoi.

Nous sommes d'accord avec le juge MacPherson pour dire que le règlement limitant à 80 pieds carrés (7,5 mètres carrés) la superficie des panneaux publicitaires viole l'al. 2b) de la *Charte canadienne des droits et libertés* mais qu'il est sauvegardé au regard de l'article premier du fait qu'il porte atteinte le moins possible à la liberté d'expression de l'intimée.

Le pourvoi est accueilli, l'arrêt de la Cour d'appel sur cette question est annulé et une réponse affirmative est donnée aux questions constitutionnelles. L'appelante a droit à ses dépens en notre Cour. Chaque partie supportera ses dépens devant la Cour d'appel.

DEADLINES: APPEALS

The Winter Session of the Supreme Court of Canada started January 12, 2004.

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

Appellant's record; appellant's factum; and appellant's book(s) of authorities must be filed within 12 weeks of the filing of the notice of appeal or 12 weeks from decision on the motion to state a constitutional question.

Respondent's record (if any); respondent's factum; and respondent's book(s) of authorities must be filed within eight weeks after the service of the appellant's documents.

Intervener's factum and intervener's book(s) of authorities, (if any), must be filed within eight weeks of the order granting leave to intervene or within 20 weeks of the filing of a notice of intervention under subrule 61(4).

Parties' condensed book, if required, must be filed on the day of hearing of the appeal.

The Registrar shall enter the appeal on a list of cases to be heard after the respondent's factum is filed or at the end of the eight-week period referred to in Rule 36.

DÉLAIS : APPELS

La session d'hiver de la Cour suprême du Canada a commencé le 12 janvier 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:

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