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FILING DATE 23.11.1993

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 Wes Wilson

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 Elaine Krivel

 Dept. of Justice

FILING DATE 23.11.1993

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| **APPLICATIONS FOR LEAVE** **SUBMITTED TO COURT SINCE LAST ISSUE** | **REQUÊTES SOUMISES À LA COUR DEPUIS LA DERNIÈRE PARUTION** |

 **NOVEMBER 16, 1993 / LE 16 NOVEMBRE 1993 (RÉVISÉ)**

**CORAM: LA FOREST, CORY AND IACOBUCCI JJ. /**

**LES JUGES LA FOREST, CORY ET IACOBUCCI**

 **Telecommunications Workers' Union**

 **v. (23778)**

 **Canadian Radio-Television and Telecommunications Commission,**

 **Shaw Cable Systems (B.C.) Ltd. and British Columbia**

 **Telephone Company (F.C.A.)**

**NATURE OF THE CASE**

Labour law - Labour relations - Collective agreement - Judicial review - Respondent CRTC requiring the Respondent Company to comply with its obligations to permit the Respondent Shaw and any other cable licensees to instal their own cable on the Respondent Company support structures - Whether the Court of Appeal erred in concluding that the CRTC does not have the power to make an order to avoid the conferring of an undue preference by a telephone company if compliance with that order would require the company to violate its collective agreement - Whether the Court of Appeal erred in concluding that the jurisdiction of the CRTC pursuant to the *Railway Act* and the *National Telecommunications Powers and Procedures Act* is limited by the provisions of a collective agreement - Whether the Court of Appeal erred in finding that there were conflicting tribunal decisions that produced a patently unreasonable result - Whether the Court of Appeal erred in applying the test for determining the standard of judicial review pursuant to *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048 - Whether the powers of regulatory bodies and their ability to fulfil their statutory mandate can be restricted by private agreement - Whether the Court of Appeal erred in failing to declare that the Applicant was entitled to notice of the hearings before the CRTC concerning the "Support Structure Agreement" involving the Company and Shaw.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| May 12, 1993Federal Court of Appeal(Heald, Mahoney and McDonald JJ.A.) | Appeal from Order of the Respondent CRTC allowed |

|  |  |
| --- | --- |
| October 21, 1993Supreme Court of Canada | Application for leave to appeal filed |

**NOVEMBER 22, 1993 / LE 22 NOVEMBRE 1993**

**CORAM: THE CHIEF JUSTICE LAMER AND CORY AND IACOBUCCI JJ. /**

**LE JUGE EN CHEF LAMER ET LES JUGES CORY ET IACOBUCCI**

 **D.W.S.**

 **v. (23822)**

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

**NATURE OF THE CASE**

Criminal law - Young offenders - Procedural law - Statutes - Interpretation - Jurisdiction - Information charging Applicant with two counts of indecent assault quashed on the ground that Youth Court has jurisdiction - Whether the Court of Appeal erred in failing to hold that the operation of the *Young Offenders Act* is prospective in application to proceedings commenced after April 1, 1985, following the conclusion of the transitional phase between the *Juvenile Delinquents Act* and the *Young Offenders Act* - Whether the Court of Appeal erred in failing to hold that ss. 5(1) and 79(4) of the *Young Offenders Act* confer exclusive jurisdiction on the Youth Court in respect of proceedings brought against any person who was under the age of 18 at the time he or she allegedly committed an offence - Whether the Court of Appeal erred in applying principles arising from proceedings commenced before or during the transitional period of March 30, 1984, to April 1, 1985 - Whether the Court of Appeal erred in holding that the phrase "young person" should be interpreted according to the proclaimed definitions in each province during the transitional period, which became inoperative as of April 1, 1985 - Whether the Court of Appeal erred in holding that the ordinary adult court of British Columbia has jurisdiction in respect of the Information sworn September 20, 1990, alleging, in part, offenses committed between November 13, 1977, and November 13, 1978, at a time when the Applicant was 17 years of age.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| September 11, 1992Provincial Court of British Columbia(Bracken P.C.J.) | Order: Information quashed |

|  |  |
| --- | --- |
| August 13, 1993Court of Appeal for British Columbia(Hutcheon, Hinds and Hollinrake JJ.A.) | Appeal allowed: Order set aside and new trial ordered in adult court |

|  |  |
| --- | --- |
| October 29, 1993Supreme Court of Canada | Application for leave to appeal filed |

 **Wilfred Leonard Nicholson**

 **v. (23821)**

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

**NATURE OF THE CASE**

Criminal law - Procedural law - Trial - Sexual offenses - Applicant and complainant engaged in custody battle over their daughter - Applicant cross-examined on *amicus curiae* report - Whether the trial judge erred in allowing the Applicant to be cross-examined on the contents of the report of the *amicus curiae* - was such error corrected by the trial judge's instruction to the jury to ignore the report?

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| October 3, 1992Court of Queen's Bench of Alberta(Brennan J.) | Convictions: sexual assault; sexual intercourse with a young person; sexual assault with a weapon; sexual assault causing bodily harm; gross indecency |

|  |  |
| --- | --- |
| June 3, 1993Court of Appeal for Alberta(McClung, Kerans and Rawlins JJ.A.) | Appeal from conviction dismissed |

|  |  |
| --- | --- |
| September 30, 1993Court of Appeal for Alberta(Lomas, Irving and Picard JJ.A.) | Appeal from sentence allowed in part |

|  |  |
| --- | --- |
| October 27, 1993Supreme Court of Canada | Application for leave to appeal filed |

 **Clifford Crawford**

 **v. (23711)**

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

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Pre-trial procedure - Applicant and co-accused convicted of second degree murder - Applicant cross-examined by counsel for the co-accused on his failure to give a statement to the police - Whether the Court of Appeal erred in holding that the cross-examination of the Applicant on his failure to give a statement to the police by counsel for the Applicant's co-accused and the failure of the trial judge to instruct the jury to disregard that cross-examination did not violate his pre-trial right to silence protected in s. 7 of the *Charter*.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| November 28, 1989Supreme Court of Ontario (White J.) | Conviction: second degree murder |

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| --- | --- |
| April 6, 1993Court of Appeal for Ontario (Tarnopolsky, Finlayson and Weiler [dissenting] JJ.A.) | Appeal from conviction dismissed |

|  |  |
| --- | --- |
| October 6, 1993Supreme Court of Canada (Major J.) | Application for extension of time granted |

|  |  |
| --- | --- |
| September 21, 1993Supreme Court of Canada | Notice of appeal as of right filed (see attached copy) |

|  |  |
| --- | --- |
| October 29, 1993Supreme Court of Canada | Application for leave to appeal filed |

 **Her Majesty the Queen**

 **v. (23772)**

 **Harriet Renae Giesecke (Crim.)(Ont.)**

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Trial - Evidence - Respondent and co-accused tried together for murder of Respondent's husband - Intercepted communication between Respondent and co-accused's ex-girlfriend, who agreed to interception, admitted into evidence - Respondent convicted of first degree murder and co-accused acquitted - Whether the Court of Appeal erred in concluding that the closing address to the jury by defence counsel for the co-accused was such that it resulted in a "miscarriage of justice" and denied the Respondent a fair trial - Whether the Court of Appeal erred in concluding that the Applicant was prohibited from tendering the evidence of the consensually intercepted private communications even though the Court expressly refrained from determining the admissibility of that evidence under s. 24(2) of the *Charter*.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| June 18, 1988Supreme Court of Ontario (Campbell J.) | Conviction: First degree murder |

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| --- | --- |
| June 21, 1993Court of Appeal for Ontario(Lacourcière, Goodman and Abella JJ.A.) | Appeal allowed: Conviction quashed and new trial ordered |

|  |  |
| --- | --- |
| October 20, 1993Supreme Court of Canada | Application for leave to appeal filed |

 **Mayfield Investments Ltd. operating as the Mayfield Inn**

 **v. (23739)**

 **Gillian Stewart, Keith Stewart and Stuart David Pettie (Alta.)**

**NATURE OF THE CASE**

Torts - Damages - Negligence - Standard of care - Extent of liability - Causation - Respondent Gillian Stewart injured in motor vehicle accident following party at dinner theatre operated by the Applicant and attended by the Respondents - Respondent Pettie driving while intoxicated - Action in damages against the Applicant allowed - Liability to the public for service of liquor - Policy considerations in relation to the duty of care - Increased risk as proof of causation.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| May 10, 1990Court of Queen's Bench of Alberta(Agrios J.) | Action in damages against the Applicant dismissed |

|  |  |
| --- | --- |
| June 4, 1993Court of Appeal for Alberta(Kerans, Hetherington and Irving JJ.A.) | Appeal allowed |

|  |  |
| --- | --- |
| October 1, 1993Supreme Court of Canada | Application for leave to appeal filed |

**CORAM: LA FOREST, SOPINKA AND MAJOR JJ. /**

**LES JUGES LA FOREST, SOPINKA ET MAJOR**

 **Terry Lee Philip Hynes**

 **v. (23718)**

 **Her Majesty the Queen (Crim.)(N.S.)**

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Trial - Evidence - Sentencing - Applicant sentenced to seven year term under offence of attempted armed robbery - Order under s. 741.2 of the *Criminal Code* that Applicant not eligible for parole until he has served one-half of the term - Whether the trial judge erred in not finding evidence of diminished responsibility - Whether the Applicant's rights under ss. 7, 10(*b*) and 11(*d*) of the *Charter* were violated when he was denied Legal Aid to appeal - Whether the Applicant's rights under ss. 11(*d*) and 15 of the *Charter* were violated when the trial judge referred to facts conducted at a previous preliminary hearing on other charges - Whether the Applicant's rights under s. 11(*d*) and 15 of the *Charter* were violated when the trial judge stated that the Applicant should be sentenced as if he had committed a robbery - Whether the sentence imposed was a heavy sentence for a first time conviction on such an offence -Whether the trial judge erred in finding that the gun was loaded - Whether the trial judge erred in not letting the Applicant speak before passing sentence.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| September 3, 1992Provincial Court of Nova Scotia(Ross J.) | Conviction: Breach of recognizance, attempted armed robbery and wearing a mask during attempt |

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| --- | --- |
| May 20, 1993Court of Appeal for Nova Scotia(Jones, Hallett and Matthews JJ.A.) | Appeal against conviction dismissed; Appeal against sentence allowed in part |

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| --- | --- |
| September 23, 1993Supreme Court of Canada | Application for leave to appeal filed |

 **Carlo Rizzo and 460561 Ontario Limited**

 **v. (23769)**

 **Hanover Insurance Company (Ont.)**

**NATURE OF THE CASE**

Procedural law - Insurance - Evidence - Defence - Applicant's restaurant burning and Applicant acquitted on charges of arson - Respondent refusing to pay Applicant's insurance claim - Whether the Court of Appeal erred in holding that the defence of arson may be proved by an insurer in civil cases without the necessity of demonstrating the Applicant's exclusive opportunity - If proof of exclusive opportunity is not an indispensable requirement of proof of arson in civil cases where evidence of opportunity is accompanied by other inculpatory evidence, whether the Court of Appeal erred in holding that the Applicant's simple possession of a key constitutes evidence of opportunity - If a defence of arson may succeed in the absence of proof of exclusive opportunity and if the Applicant's simple possession of a key constitutes evidence of opportunity, whether the Court of Appeal erred in holding that, where there is some evidence of motive and opportunity, arson may be proved without any evidence connecting the Applicant with the setting of the fire.

**PROCEDURAL HISTORY**

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| --- | --- |
| April 2, 1990Supreme Court of Ontario(Farley J.) | Action dismissed |

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| June 15, 1993Court of Appeal for Ontario(Morden A.C.J.O., Tarnopolsky and Catzman JJ.A.) | Appeal dismissed |

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| --- | --- |
| October 15, 1993Supreme Court of Canada | Application for leave to appeal filed |

 **Manson Insulation Inc. and Crossroads Industries & Distributors Inc.**

 **v. (23784)**

 **Wallace Construction Specialties Ltd. (Sask.)**

**NATURE OF THE CASE**

Commercial law - Torts - Contracts - Damages - Assessment - Tort of conspiracy - Whether the Court of Appeal erred in concluding that a simple breach of contract is actionable against the contractbreaker in conspiracy - Whether the Court failed to conclude that the agreement to breach the contract merged with the actual breach of contract, with the result that the appropriate damages for breach of contract were arbitrarily inflated - Whether the Court erred in permitting the general award and punitive award of damages for conspiracy to stand when the jury had already assessed a lesser amount for breach of contract - Whether the decision of the Court of Appeal distorts the distinction between contract and tort and the distinction between an action for breach of contract and an action for inducing breach of contract.

**PROCEDURAL HISTORY**

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| --- | --- |
| April 10, 1992Court of Queen's Bench for Saskatchewan(Dielschneider J.) | Action and counterclaim allowed |

|  |  |
| --- | --- |
| July 23, 1993Court of Appeal for Saskatchewan(Wakeling, Lane and Jackson JJ.C.A.) | Applicants' appeal dismissed except to the extent that the trial decision be varied by reducing the award of damages for conspiracy to injure |

|  |  |
| --- | --- |
| October 27, 1993Supreme Court of Canada | Application for leave to appeal filed |

 **Kobe ter Neuzen**

 **v. (23773)**

 **Dr. Gerald Korn (B.C.)**

**NATURE OF THE CASE**

Torts - Negligence - Contracts - Damages - Physicians and surgeons - Sale - Applicant infected with HIV virus as a result of artificial insemination procedure performed by the Respondent - When are the general standards of liability for negligence applicable in a medical negligence case where it is alleged that, even if there is a common medical practice, the practice itself does not reflect the general standard of prudent and diligent conduct? - When can a jury find an approved practice negligent? - What is the standard of care expected of a medical practitioner who is practising in two overlapping and developing areas of medicine. Whether the Court of Appeal erred in overturning the verdict of a jury and finding there was no evidence to support the jury's finding of fact and ordering a new trial - When does the upper limit of non-pecuniary damages not apply in a personal injury action? - Is a doctor who supplies goods which injure a patient liable pursuant to common law contract principles or sale of goods legislation?

**PROCEDURAL HISTORY**

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| --- | --- |
| November 20, 1991Supreme Court of British Columbia(Hutchinson J.) | Finding of liability in negligence against the Respondent: total sum of $883,800 awarded |

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| --- | --- |
| June 21, 1993Court of Appeal for British Columbia(McEachern C.J., Seaton and Proudfoot JJ.A.) | Respondent's appeal against finding of negligence allowed and new trial ordered; Applicant's cross appeal against dismissal of action based upon sale of goods dismissed; and new trial ordered on question of damages |

|  |  |
| --- | --- |
| October 20, 1993Supreme Court of Canada | Application for leave to appeal filed |

**CORAM: L'HEUREUX-DUBÉ, GONTHIER AND McLACHLIN JJ. /**

**LES JUGES L'HEUREUX-DUBÉ, GONTHIER ET McLACHLIN**

 **Joan Marie Atta**

 **c. (23672)**

 **Céleste Malouf et Nanette Malouf Koury**

 **et**

 **Roger Comtois, *notaire*,**

 **Le régistrateur de la division d'enregistrement de Terrebonne,**

 **Le régistrateur de la division d'enregistrement de Papineau (Qué.)**

**NATURE DE LA CAUSE**

Code civil - Procédures - Preuve - Succession - Action de la demanderesse en annulation de testament -L'exécuteur testamentaire est un ancien juge de la Cour d'appel du Québec -Partialité des juges - Requête de la demanderesse en récusation des juges de la Cour d'appel rejetée - Confection et preuve d'un testament suivant la forme dérivée de la loi de l'Angleterrre - Article 844 du *C.C.B.-C.* - Le témoignage de l'ancien juge de la Cour d'appel est-il recevable? - Les membres de la Cour d'appel pouvaient-ils entendre l'appel de la demanderesse en l'espèce? - Quelle est la force probante de la preuve littérale constituée par les écritures du dossier hospitalier du *de cujus*? - À qui incombe le fardeau de prouver la confection, la signature et la date d'un testament suivant la forme anglaise? - L'alinéa 844.3 du *C.c.B.-C.* est-il applicable aux témoins attestant un testament suivant la forme anglaise?

**HISTORIQUE PROCÉDURAL**

|  |  |
| --- | --- |
| Le 12 janvier 1990Cour supérieure du Québec(Larouche J.C.S.) | Action de la demanderesse en annulation d'un testament accueillie en partie |

|  |  |
| --- | --- |
| Le 5 mars 1993Cour d'appel du Québec(Nichols, Proulx et Deschamps, JJ.A.) | Requête de la demanderesse en récusation des juges de la Cour d'appel rejetée |

|  |  |
| --- | --- |
| Le 22 mars 1993Cour d'appel du Québec(Bisson J.C.A.) | Requête de la demanderesse pour suspendre l'audience en Cour d'appel rejetée |

|  |  |
| --- | --- |
| Le 31 mars 1993Cour suprême du Canada(McLachlin J.) | Requête en suspension de l'audience de l'appel pour permettre à la demanderesse d'interjeter appel de la décision de la Cour d'appel du 5 mars 1993 rejetant sa demande de récusation rejetée |

|  |  |
| --- | --- |
| Le 30 juin 1993Cour d'appel du Québec(LeBel, Tourigny, JJ.C.A.,et Moisan [*ad hoc*] | Appel de la demanderesse rejetée |

|  |  |
| --- | --- |
| Le 25 octobre 1993Cour suprême du Canada | Demande d'autorisation d'appel déposée |

 **Téléphone Guèvremont Inc.**

 **c. (23345)**

 **Le Procureur général du Québec,**

 **Régie des télécommunications du Québec**

 **et André Dufour et Jean-Marc Demers (Qué.)**

**NATURE DE LA CAUSE**

Droit constitutionnel - Droit administratif - Partage des pouvoirs - Compétence - Interprétation - Jugement déclaratoire portant que la Régie n'a pas compétence sur l'intimée - L'entreprise de l'intimée constitue-t-elle une entreprise fédérale aux fins des articles 92(10)*a*) et 91(29) de la *Loi constitutionnelle de 1867*? - Demande d'autorisation d'appel incident pour que, dans l'éventualité où l'appel des appelants serait accueilli, le présent dossier soit retourné à la Cour supérieure du district de Québec afin qu'il soit statué sur les autres moyens de droit administratif que soulevait l'intimée dans sa procédure originale et qui n'ont pas fait l'objet d'une adjudication par les tribunaux d'instance inférieure.

**HISTORIQUE PROCÉDURAL**

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| --- | --- |
| Le 26 juillet 1991Cour supérieure du Québec(Allard, J.C.S.) | Requête en évocation accueillie: La Régie des télécommunications du Québec n'a pas compétence sur l'intimée compte tenu de la *Loi constitutionnelle de 1867* |

|  |  |
| --- | --- |
| Le 8 décembre 1992Cour d'appel du Québec (Chouinard, Rousseau-Houle et Delisle, JJ.C.A.) | Appel rejeté |
| Le 7 janvier 1993Cour suprême du Canada(La Forest J.) | Demande de sursis présentée par le Procureur général du Québec rejetée |
|  |  |
| Le 27 mai 1993Cour suprême du Canada(L'Heureux-Dubé, Sopinka et Gonthier JJ.) | Demande d'autorisation d'appel accordée |

|  |  |
| --- | --- |
| Le 12 novembre 1993Cour suprême du Canada | Demande d'autorisation d'appel incident et de prorogation de délai déposée par l'intimée |

 **Guy Bellefleur, les héritiers de feu Jean-Robert Bellefleur, *et al.***

 **c. (23762)**

 **Le procureur général du Québec (Qué.)**

**NATURE DE LA CAUSE**

Indiens - Droit administratif - Droit de l'environnement - Législation - Interprétation - Contrôle judiciaire - Énergie - Action directe en nullité d'un décret administratif autorisant la réalisation d'un projet hydro-électrique rejetée - Le gouvernement du Québec et le ministre de l'Environnement ont-ils erré en appliquant les art. 31.1 ss. de la *Loi sur la qualité de l'environnement*, L.R.Q., ch. Q-2? - L'étude d'impact environnementale était-elle conforme à la *Loi*? - La procédure de consultation publique réalisée respectait-elle les dispositions de la *Loi*? - La décision arbitraire du ministre de l'environnement de juger "satisfaisante" l'étude d'impact environnementale ouvre-t-elle la voie au contrôle judiciaire de l'erreur manifeste dans l'appréciation des faits? - Lors de la réactivation du dossier, six ans après la consultation officielle et neuf ans après l'avis de projet initial, le promoteur Hydro-Québec avait-il l'obligation de respecter des règles de procédure - Application de la doctrine de l'attente légitime dans la mesure où la réactivation du dossier nécessitait le respect d'une forme d'équité procédurale impliquant une consultation des demandeurs.

**HISTORIQUE PROCÉDURAL**

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| Le 18 janvier 1993Cour Supérieure du Québec(Pidgeon J.C.S.) | Action directe en nullité rejetée |

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| Le 24 août 1993Cour d'Appel du Québec(LeBel, Baudouin et Proulx [dissident] JJ.C.A.) | Appel rejeté |

|  |  |
| --- | --- |
| Le 28 octobre 1993Cour Suprême du Canada | Demande d'autorisation d'appel |

 **Joanna Delitcheva**

 **c. (23788)**

**Sa Majesté la Reine (Ministre de l'emploi et de**

**l'immigration) (C.A.F.)(Qué.)**

**NATURE DE LA CAUSE**

Immigration - Procédure - Appel - Défaut du procureur de la demanderesse de déposer son mémoire devant la Cour d'appel fédérale dans le délai imparti - Est-ce que la décision de la Cour d'appel fédérale accueillant la requête de l'intimée pour rejet d'appel est mal fondée?

**HISTORIQUE PROCÉDURAL**

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| Le 2 août 1991Commission de l'immigration et du statut de réfugié (Davey et Desmarais) | La demanderesse n'est pas une réfugiée |

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| Le 20 janvier 1992Cour d'appel fédérale (Pratte j.c.a.) | Autorisation d'appel accordée en vertu de l'art. 82.3 de la *Loi sur l'immigration* |

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| Le 26 août 1993Cour d'appel fédérale (Hugessen, Létourneau et MacDonald jj.c.a.) | Requête de l'intimée pour rejet d'appel accueillie |

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| Le 28 octobre 1993Cour suprême du Canada | Demande d'autorisation d'appel déposée |

 **Jean-Louis Cousineau et Georges Bourbonnière**

 **c. (23830)**

 **Louis E. Petitpas et Irving Grundman (Qué.)**

**NATURE DE LA CAUSE**

Droit administratif - Droit municipal - Contrôle judiciaire - Brefs de prérogative - Interprétation - Fardeau de preuve - Requête en *quo warranto* visant à déposséder les demandeurs de leur charge de conseiller municipal parce qu'ils ont participé aux délibérations du conseil et influencé le vote sur une question à l'égard de laquelle ils avaient un intérêt - Article 362 de la *Loi sur les élections et référendums dans les municipalités*, L.R.Q., ch E-2.2 - Lorsqu'un conseil municipal examine la question de retenir les services d'un avocat pour représenter un conseiller municipal dépossédé d'une charge, l'intérêt du conseiller porte-t-il sur "des remboursements de dépenses" au sens de l'article 362 de la Loi?

**HISTORIQUE PROCÉDURAL**

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| Le 22 février 1989Cour supérieure du Québec(Marquis J.C.S.) | Requête des intimés en *quo warranto* accueillie |
| Le 4 août 1993Cour d'appel du Québec(Nichols, Fish et Deschamps, JJ.C.A.) | Appel des demandeurs rejeté |

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| Le 28 octobre 1993Cour suprême du Canada | Demande d'autorisation d'appel déposée |

 **Ura Greenbaum**

 **v. (23700)**

 **The Public Curator of Quebec**

 **and**

 **Hanna Greenbaum Engel and Abraham Greenbaum (Qué.)**

**NATURE OF THE CASE**

Administrative law - Procedural law - Appeal - Applicant's de plano appeal on behalf of an incapable person from a judgment authorizing the sale of the incapable's property dismissed summarily on a motion to dismiss for dilatoriness and/or frivolity - Whether the Applicant's fundamental right to a full and fair hearing guaranteed by the Charters was violated - Whether the dismissal without any justifying reasons was arbitrary and discriminatory.

**PROCEDURAL HISTORY**

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| March 4, 1993Superior Court of Quebec(Bélanger J.S.C.) | Respondent authorized to sell three immoveables |

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| May 11, 1993Court of Appeal of Quebec(Vallerand, Deschamps and Delisle JJ.A.) | Respondent's motion for dismissal of the appeal brought by the Applicant granted;Appeal dismissed |

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| September 20, 1993Supreme Court of Canada(Iacobucci J.) | Motion for an extension of time to file an application for leave to appeal to October 22, 1993, granted |

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| October 22, 1993Supreme Court of Canada | Application for leave to appeal filed |

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| **JUDGMENTS ON APPLICATIONS****FOR LEAVE** | **JUGEMENTS RENDUS SUR LES DEMANDES D'AUTORISATION** |

**NOVEMBER 25, 1993 / LE 25 NOVEMBRE 1993**

**23671DALE EDWARD KERTON - v. - BRENDA LEIGH KERTON** (Ont.)

CORAM: The Chief Justice and McLachlin and Major JJ.

 The application for leave to appeal is dismissed with costs.

 La demande d'autorisation d'appel est rejetée avec dépens.

**NATURE OF THE CASE**

Family law - Statute - Divorce - Custody - Access - Infants - Maintenance - Costs - Joint custody - What is the proper judicial attitude to be brought to custody dispute between separated spouses in terms of custodial and parenting arrangements for children? - What joint custodial arrangements and other shared parenting arrangements for the children of separated spouses are envisaged, or legally permitted, by section 16 of the *Divorce Act*? -What standards, criteria, or guidelines are the provincial courts to consider in determining when joint custody and other shared parenting arrangements of children are appropriate between separated spouses? - In custody disputes, when should costs be awarded against one of the spouses in the proceeding who advances a claim and plan for custody of children?

**23679PHILIP DONOVAN JOHNSON - v. - HER MAJESTY THE QUEEN** (Crim.) (Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

 The application for leave to appeal is dismissed.

 La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Statutes - Offences - Trial - Sentencing - Interpretation - Failure of accused to testify - Section 4(6) of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 - Whether the Court of Appeal erred in ruling that it is permissible for a trial judge to draw an adverse inference from the failure of an accused to testify - Whether the Court of Appeal erred in not concluding that such an adverse inference infringes sections 7, 11(c) and 11(d) of the *Charter* and cannot be justified as a reasonable limitation upon those rights - Whether the Court of Appeal erred in its definition of the nature of the adverse inference and in describing the conditions under which an adverse inference can be drawn - Whether the Court of Appeal erred in not considering whether, as the Court defined permissible and impermissible inferences, the inference employed by the trial judge was the prohibited type which added probative weight to the Crown's case or whether it was the type of inference, legitimate in law, subtracting weight from the strength of the defence's case.

**23669BERNARD HEBERT v. HER MAJESTY THE QUEEN** (Crim.) (Ont.)

CORAM: La Forest, Cory and Iacobucci JJ.

 The application for leave to appeal is dismissed.

 La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Procedural law - Trial - Offenses - Charge to the jury - Applicant convicted on two counts of first degree murder - Whether the trial judge erred by failing to explicitly instruct the jury that a lesser degree of drunkenness than is required to negative the intent to commit murder can still negative planning and deliberation - Whether the trial judge erred by charging the jury that, "it is my view that much of the same evidence that indicates intent can well indicate planning and deliberation", such that it may have left the jury with the impression that planning and deliberation was not something more than mere intent to kill.

**23666K.G.H. v. HER MAJESTY THE QUEEN** (Crim.) (Ont.)

CORAM: La Forest, Cory and Iacobucci JJ.

 The application for an extension of time is granted and the application for leave to appeal is dismissed.

 La demande de prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Offences - Trial - Jury - Incest and sexual assault - Trial judge holding that the playing back of the complainant's testimony was part of the jury's deliberation and not part of the trial -Whether the Court of Appeal for Ontario erred in holding that the exclusion of the Applicant from the courtroom in violation of s. 650 of the *Criminal Code* was a mere "procedural irregularity" which caused no "prejudice" and which could be cured by the application of s. 686(1)(b)(iii) of the *Criminal Code* - Whether the Court of Appeal erred in holding that this was a proper case in which to apply s. 686(1)(b)(iii) of the *Criminal Code*.

**23646HUBERT PIERLOT v. HER MAJESTY THE QUEEN** (Crim.) (P.E.I.)

CORAM: La Forest, Cory and Iacobucci JJ.

 The application for leave to appeal is dismissed.

 La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Taxation - Estates - Jurisdiction - Penal law - Audit - Production of information and documents - Demand of information and documents under s. 231.2(1) of the *Income Tax Act* - Whether the trial court had jurisdiction to try the Applicant - Whether the Court of Appeal erred in law by neglecting to consider the application of s. 231.2(1) of the *Income Tax Act -* Whether the Court of Appeal erred in law by misinterpreting the meaning and application of section 231.6 of the *Income Tax Act*.

**23653CHANDER PRABHA WALIA - v. - GAGAN WALIA AND INSURANCE CORPORATION OF BRITISH COLUMBIA** (B.C.)

CORAM:The Chief Justice and McLachlin and Major JJ.

 The application for re-consideration of the application for leave to appeal is dismissed.

 La demande en vue d'obtenir le réexamen d'autorisation de pourvoi est rejetée.

**NATURE OF THE CASE**

Torts - Vicarious liability - Damages - Motor vehicles - Actions - Applicant injured in a motor vehicle accident while riding as a passenger - Action in damages allowed - Appeal to increase award of damages dismissed - Whether the Court of Appeal for British Columbia erred in law by not allowing the appeal after finding that the trial judge came to the wrong conclusion but was not palpably wrong.

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| **MOTIONS** | **REQUÊTES** |

18.11.1993

Before / Devant: THE REGISTRAR

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| **Motion to extend the time in which to serve and file the respondent's response**Eric Biddle v. (23734)Her Majesty The Queen (Ont.) | **Requête en prorogation du délai de signification et de production de la réponse de l'intimée** |

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**GRANTED / ACCORDÉE** Time extended to November 8, 1993.

18.11.1993

Before / Devant: CORY J.

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| **Motion to extend the time in which to serve and file an application for leave**Darryl C. v. (23852)Her Majesty The Queen (Ont.) | **Requête en prorogation du délai de signification et de production d'une demande d'autorisation** |

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**GRANTED / ACCORDÉE**  Time extended to November 16, 1993.

18.11.1993

Before / Devant: LE JUGE CORY

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| **Requête en prorogation du délai de production de la demande d'autorisation**L'Industrielle-Alliance, Compagnie d'Assurance sur la Vie c. (23824)Réjean Deslauriers et al. (Qué.) | **Motion to extend the time in which to file an application for leave** |

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**ACCORDÉE / GRANTED** Délai prorogé au 15 décembre 1993.

19.11.1993

Before / Devant: THE REGISTRAR

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| **Motion to extend the time in which to serve and file a response in all six applications**Delgamuukw et al. v. (23799)Her Majesty The Queen (B.C.) and betweenNTC Smokehouse Ltd. v. (23800)Her Majesty The Queen (B.C.) and betweenDonald and William Gladstone v. (23801)Her Majesty The Queen (B.C.) and betweenAllan Jacob Lewis, et al. v. (23802)Her Majesty The Queen (B.C.) and betweenDorothy Marie Van Der Peet v. (23803)Her Majesty The Queen (B.C.) and betweenJerry Benjamin Nikal v. (23804)Her Majesty The Queen (B.C.) | **Requête en prorogation du délai de signification et de production d'une réponse relativement aux six demandes** W.G. Burke-Robertson, Q.C., for the Attorney General of British Columbia.Robert Frater, for the Attorney General of Canada.B.A. Crane, Q.C., contra.Consents filed by all other applicants. |
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**GRANTED / ACCORDÉES** Time extended to December 31, 1993.

19.11.1993

Before / Devant: THE REGISTRAR

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| **Motion to extend the time in which to serve and file the appellant's factum**Rejean Gagnon v. (23445)Tina Lucas et al. (Ont.) | **Requête en prorogation du délai de signification et de production du mémoire de l'appelant** |
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**GRANTED / ACCORDÉE** Time extended to December 10, 1993.

19.11.1993

Before / Devant: LE REGISTRAIRE

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| **Requête en prorogation du délai de production d'une réponse**Sa Majesté La Reine c. (23833)Gerald Gosselin (Qué.) | **Motion to extend the time in which to file a response** |
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**GRANTED / ACCORDÉE** Délai prorogé au 10 décembre 1993.

23.11.1993

Before / Devant: L'HEUREUX-DUBÉ J.

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| **Motion to extend the time in which to serve and file an application for leave** Mark Donald Benner v. (23811)The Secretary of State of Canada et al. (F.C.A.) | **Requête en prorogation du délai de signification et de production d'une demande d'autorisation** |
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**GRANTED / ACCORDÉE** Time extended to November 9, 1993.

23.11.1993

Before / Devant: LA FOREST J.

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| **Motion to extend the time in which to serve an file an application for leave**Walter Francis Gillespie v. (22771)Her Majesty The Queen (N.B.) | **Requête en prorogation du délai de signification et de production d'une demande d'autorisation**Heather Perkins-McVey, for the motion.Henry S. Brown, Q.C., contra. |

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**RESERVED / EN DÉLIBÉRÉ**

23.11.1993

Before / Devant: THE REGISTRAR

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| **Motion to extend the time in which to serve and file the case on appeal and the appellant's factum**Karl Thomas Galaske v. (23109)Erich Stauffer et al. (B.C.) | **Requête en prorogation du délai de signification et de production du dossier d'appel et du mémoire de l'appelant** |

**GRANTED / ACCORDÉE**

23.11.1993

Before / Devant: THE REGISTRAR

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| **Motion to extend the time in which to serve and file the respondent's factum**Douglas James Whittle v. (23466)Her Majesty The Queen (Ont.) | **Requête en prorogation du délai de signification et de production du mémoire de l'intimée** |

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**GRANTED / ACCORDÉE** Time extended to November 19, 1993.

23.11.1993

Before / Devant: THE REGISTRAR

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| **Motion to extend the time in which to serve and file the respondent's factum**Her Majesty The Queen v. (23253)Native Women's Association of Canada et al. (F.C.A.) | **Requête en prorogation du délai de signification et de production du mémoire de l'intimée** |

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**GRANTED / ACCORDÉE** Time extended to January 17, 1994.

23.11.1993

Before / Devant: L'HEUREUX-DUBÉ J.

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| **Motion to extend the time in which to serve and file a respondent's factum**Karl Thomas Galaske v. (23109)Erich Stauffer et al. (B.C.) | **Requête en prorogation du délai de signification et de production du mémoire d'un intimé**Henry S. Brown, Q.C., for the motion.Consent filed by the appellant.Michael J. Sobkin, contra. |

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**RESERVED / EN DÉLIBÉRÉ**

23.11.1993

Before / Devant: LA FOREST J.

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| **Motion to withdraw as a party** Hubert Pierlot v. (23646)Her Majesty The Queen (P.E.I.) | **Requête en vue de se retirer comme partie**  |

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**DISMISSED / REJETÉE**

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| **NOTICES OF APPEAL FILED SINCE LAST ISSUE** | **AVIS D'APPEL PRODUITS DEPUIS LA DERNIÈRE PARUTION** |

24.11.1993

**Roger Jan Richer**

 v. (23812)

**Her Majesty The Queen (Crim.)(Alta.)**

**AS OF RIGHT**

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| **WEEKLY AGENDA** | **ORDRE DU JOUR DE LA** **SEMAINE** |

**AGENDA for the week beginning November 29, 1993.**

**ORDRE DU JOUR pour la semaine commençant le 29 novembre 1993.**

Date of Hearing/ Case Number and Name/

Date d'audition NO. Numéro et nom de la cause

29/11/9321The United States of America v. Pierre Doyer (Crim.)(Qué.)(23343)

29/11/9341Donald Moran v. Her Majesty The Queen (Crim.)(Ont.)(23326)

30/11/9313Mobil Oil Canada, Ltd. et al. v. Canada-Newfoundland Offshore Petroleum Board (Nfld.)(22948)

01/12/9310Air Products Canada Ltd. et al. v. Gunter Schmidt, in his personal capacity and on behalf of the beneficiaries of Stearns Catalytic Ltd., et al. (Alta.) - AND BETWEEN - Gunter Schmidt, in his personal capacity and on behalf of the beneficiaries of the Stearns Catalytic v. Air Products Canada Ltd. et al. (Alta.)(23047, 23057)

02/12/93 3Attorney General of Canada v. The Attorney General of British Columbia (B.C.)(22758)

03/12/93 7Karl Thomas Galaske, an infant suing by his Guardian ad Litem Elizabeth Moser v. Erich Stauffer et al. and between Karl Thomas Galaske, an infant suing by his guardian ad litem, Elizabeth Moser v. Erich Stauffer et al. (B.C.)(23109)

03/12/9345Her Majesty The Queen v. Eugene Paul Power (Crim.)(Nfld.)(23566)

 **NOTE:**

This agenda is subject to change. Hearing dates should be confirmed with Process Registry staff at (613) 996-8666.

Cet ordre du jour est sujet à modification. Les dates d'audience devraient être confirmées auprès du personnel du greffe au (613) 996-8666.

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| **SUMMARIES OF THE CASES** | **RÉSUMÉS DES AFFAIRES** |

**23343 THE UNITED STATES OF AMERICA v. MR. PIERRE DOYER**

*Canadian Charter of Rights and Freedoms* - Criminal law - International law - Interpretation -Statutes - Extradition - Offenses - Respondent indicted in the United States on one count of engaging in a continuing criminal enterprise and fourteen counts relating to drug offenses - Superior Court of Quebec ordering extradition of the Respondent and issuing a warrant of committal - Respondent's application for a writ of *habeas corpus* with *certiorari* in aid and remedy pursuant to s. 24(1) of the *Charter* dismissed by the Superior Court - Court of Appeal of Quebec allowing appeal in part - Whether the Court of Appeal erred in holding that the committal of the Respondent for purposes of extradition in order that he might stand trial on a charge of continuing criminal enterprise should be quashed as that crime was not an extraditable crime.

On January 31, 1990, the Respondent was indicted on fifteen counts before the United States District Court, Middle District of Florida, Fort Meyers Division. The indictment charged one count of continuing criminal enterprise pursuant to s. 848 of Title 21, *United States Code*, one count of conspiracy to import marijuana, one count of conspiracy to possess marijuana with intent to distribute, six counts of importing marijuana and six counts of possession of marijuana with intent to distribute. On February 27, 1990, a warrant of arrest was issued against the Respondent. On December 17, 1990, Downs J. of the Superior Court of Quebec ordered the extradition and the committal of the Respondent in order that he stand trial on all counts in the indictment. On December 18, 1990, the Respondent made an application for a writ of *habeas corpus* with *certiorari* in aid and for remedy pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*. On February 1, 1991, Pinard J. of the Superior Court dismissed the Respondent's application. On October 9, 1992, the Court of Appeal for Quebec allowed the appeal in part, quashing the committal on the first count but confirming it on the other fourteen counts.

Origin of the case: Quebec

File No.: 23343

Judgment of the Court of Appeal: October 9, 1992

Counsel: Nancy Boillat and James L. Brunton for the Appellant

 Lawrence Corriveau for the Respondent

**23343LES ÉTATS-UNIS D'AMÉRIQUE c. M. PIERRE DOYER**

*Charte canadienne des droits et libertés* - Droit criminel - Droit international - Interprétation -Législation - Extradition - Infractions - Intimé faisant l'objet aux États-Unis d'un chef d'accusation lui reprochant de se livrer en permanence à des activités criminelles et de quatorze chefs d'accusation se rapportant à des infractions relatives aux stupéfiants - La Cour supérieure du Québec a ordonné l'extradition de l'intimé et a délivré un mandat d'incarcération - La Cour supérieure du Québec a également rejeté la demande présentée par l'intimé en vue d'obtenir un bref d'*habeas corpus* avec *certiorari* auxiliaire et réparation en conformité avec le par. 24(1) de la *Charte* -La Cour d'appel du Québec a accueilli l'appel en partie - La Cour d'appel a‑t‑elle commis une erreur en concluant que l'incarcération de l'intimé à des fins d'extradition pour qu'il puisse subir son procès sous une accusation d'activités criminelles continues devrait être annulée puisqu'il ne s'agit pas là d'un crime donnant lieu à extradition.

Le 31 janvier 1990, l'intimé a été formellement accusé sous quinze chefs devant la Cour de district des États-Unis (Division de Fort Meyers du district du centre de la Floride). Un chef d'accusation portait sur les activités criminelles continues conformément à l'art. 848 du titre 21 du *United States Code*, un deuxième sur un complot en vue de l'importation de marihuana, un troisième sur un complot en vue de la possession de marihuana dans le but d'en faire le trafic, six autres sur l'importation de marihuana et les six derniers sur la possession de marihuana dans le but d'en faire le trafic. Le 27 février 1990, un mandat d'arrestation a été délivré contre l'intimé. Le 17 décembre 1990, le juge Downs de la Cour supérieure du Québec a ordonné l'extradition et l'incarcération de l'intimé pour qu'il puisse subir son procès sous tous les chefs de l'acte d'accusation. Le 18 décembre 1990,l'intimé a présenté une demande en vue d'obtenir un bref d'*habeas corpus* avec *certiorari* auxiliaire et réparation en conformité avec le par. 24(1) de la *Charte canadienne des droits et libertés*. Le 1er février 1991, le juge Pinard de la Cour supérieure a rejeté la demande de l'intimé. Le 9 octobre 1992, la Cour d'appel du Québec a accueilli l'appel en partie et annulé l'incarcération relativement au premier chef d'accusation mais l'a entérinée en ce qui concerne les quatorze autres chefs.

Origine de la cause: Québec

No du greffe: 23343

Arrêt de la Cour d'appel: le 9 octobre 1992

Avocats: Nancy Boillat et James L. Brunton pour l'appelant

 Lawrence Corriveau pour l'intimé

**23326DONALD MORAN v. HER MAJESTY THE QUEEN**

Criminal law - Offences - Evidence - Sexual assault - Cross-examination by counsel for the Appellant of the complainant's mother - Evidence bolstering the credibility of the complainant - Oath-helping.

 The Appellant was charged with sexual assault, contrary to s. 271 of the *Criminal Code*. The complainant was the step-daughter of the Appellant and was 16 years of age at the time of the trial. Her mother had separated from her natural father when the complainant was very young and the appellant moved in with her mother and herself when she was seven years of age.

 The complainant testified that on twelve different occasions when she was between nine and thirteen years of age, the appellant committed various sexual assaults upon her. In her evidence, she was able to recount four incidents. When the complainant was 15 years old, conflict arose between the Appellant and the complainant over her relationship with a boy named "Dave". The Appellant set the rules in the house and forbade her to see Dave. In the result, the complainant ran away three times in order to be with Dave. The first time was overnight; the second time for 4 or 5 days; the third time was for two weeks. On the third occasion, she was apprehended by the police and was about to be returned home when she made her allegations against the Appellant for the first time to a person in authority. The complainant was sent to live in a foster home. She ran away to be with her boyfriend. After the Appellant was charged and out of the house, the complainant returned home and was able to do as she pleased. The Appellant denied all of the complainant's allegation of sexual assault.

 In cross-examination by counsel for the Crown, the mother was asked whether she believed the complainant's allegations. Her answer was to the effect that she loved them both and didn't know what to believe. The question followed a lengthy series of questions to the effect that, because the mother allowed the complainant to return home after the charge was laid against the Appellant, the mother must have accepted the allegations as being true as it would have been intolerable for her to live with someone who had falsely accused her husband. In his address to the jury, Crown counsel stated that the complainant's mother "believed her daughter", although the evidence indicated that she did not know what to believe.

 The jury found the Appellant guilty as charged. The Court of Appeal for Ontario granted leave to appeal to the Appellant but dismissed his appeal against conviction, Finlayson J.A. dissenting. The Appellant appeals as of right before this Court. The appeal raises the following issues:

1.Whether the majority of the Court of Appeal for Ontario erred in law in holding that the evidence elicited in cross-examination of the defence witness did not amount to inadmissible opinion evidence as to the veracity of the complainant?

2.Whether the majority of the Court of Appeal for Ontario further erred in law in holding that no substantial wrong was occasioned thereby?

Origin of the case:Ontario

File No.:23326

Judgment of the Court of Appeal:November 6, 1992

Counsel:Bruce Duncan for the Appellant

Jocelyne Speyer for the Respondent

**23326DONALD MORAN c. SA MAJESTÉ LA REINE**

Droit criminel - Infractions - Témoignage - Agression sexuelle - Contre-interrogatoire de la mère de la plaignante par l'avocat de l'appelant - Témoignage rehaussant la crédibilité de la plaignante - Témoignage justificateur.

L'appelant a été accusé d'agression sexuelle, en vertu de l'art. 271 du *Code criminel*. La plaignante était la belle-fille de l'appelant et était âgée de 16 ans au moment du procès. La plaignante était encore très jeune quand sa mère s'était séparée de son père naturel et avait sept ans lorsque l'appelant avait emménagé avec elle et sa mère.

La plaignante a témoigné que l'appelant avait commis diverses agressions sexuelles à son égard à douze reprises, alors qu'elle avait entre neuf et treize ans. Au cours de son témoignage, elle a pu narrer quatre incidents. Vers 15 ans, la plaignante est entrée en conflit avec l'appelant, concernant ses rapports avec un garçon prénommé «Dave». L'appelant fixait les règles à suivre dans la maison et il lui a interdit de voir Dave. Conséquemment, la plaignante a fugué trois fois pour retrouver Dave. Sa première fugue a duré une nuit, la deuxième, 4 ou 5 jours et la troisième, deux semaines. Au cours de sa troisième fugue, elle a été interpellée par la police et elle était sur le point d'être renvoyée chez elle lorsqu'elle a formulé les allégations contre l'appelant pour la première fois à une personne en situation d'autorité. La plaignante a été envoyée dans un foyer nourricier. Elle s'en est enfuie pour être avec son petit ami. Une fois l'appelant inculpé et sorti de la maison, la plaignante est retournée chez elle et elle pouvait agir à sa guise. L'appelant a nié toutes les allégations de la plaignante.

En contre-interrogatoire, le substitut du procureur général a demandé à la mère si elle croyait les allégations de la plaignante. Elle a répondu qu'elle les aimait tous deux et qu'elle ne savait que croire. La question faisait suite à une longue série de questions sur le fait que la mère devait avoir cru que les allégations étaient vraies, car elle avait permis à la plaignante de revenir à la maison une fois l'accusation portée contre l'appelant, alors qu'il lui aurait été intolérable de vivre avec quelqu'un qui aurait accusé faussement son mari. Au cours de son exposé au jury, le substitut du procureur général a mentionné que la mère de la plaignante [TRADUCTION]«croyait sa fille», même si son témoignage indiquait qu'elle ne savait que croire.

Le jury a reconnu l'appelant coupable de l'infraction reprochée. La Cour d'appel de l'Ontario a accordé l'autorisation à l'appelant d'interjeter appel, mais a rejeté son appel contre la déclaration de culpabilité, le juge Finlayson étant dissident. L'appelant interjette appel de plein droit devant la présente Cour. L'apppel soulève les questions suivantes:

1.La majorité de la Cour d'appel de l'Ontario a-t-elle commis une erreur de droit lorsqu'elle a statué que le témoignage obtenu au cours du contre-interrogatoire du témoin de la défense n'équivalait pas à un témoignage d'opinion inadmissible sur la véracité de la plainte?

2.La majorité de la Cour d'appel de l'Ontario a-t-elle commis une erreur de droit lorsqu'elle a conclu à l'absence d'injustice grave?

Origine: Ontario

No de greffe: 23326

Arrêt de la Cour d'appel: Le 6 novembre 1992

Avocats: Bruce Duncan, pour l'appelant

 Jocelyne Speyer, pour l'intimée

**22948MOBIL OIL CANADA LTD. et al. v. CANADA-NEWFOUNDLAND OFFSHORE PETROLEUM BOARD**

Administrative law - Statutes - Interpretation - Judicial review - Prerogative writs - Natural justice - *Audi alteram partem* - Offshore oil and gas exploration - Issuance of oil and gas exploration interests - *Canada-Newfoundland Atlantic Accord Implementation Act*, S.C. 1988, c. 28 - Whether the Applicants, as applicants for a significant discovery area declaration, were entitled to a hearing before the Respondent - Whether the Court of Appeal erred in its interpretation of Federal-Provincial legislation regulating offshore oil and gas exploration and in particular the declaration of significant discovery area affecting exploration areas offshore the province of Newfoundland - Whether the Court of Appeal incorrectly bifurcated the decision-making process of making a significant discovery area declaration.

The Appellants are interest owners in a portion of the continental shelf off Newfoundland. The Appellant Mobil Oil Canada, Ltd. is the operator responsible for exploration and lands administration. The Respondent Board is a statutory body established under s. 9 of the *Canada Newfoundland Atlantic Accord Implementation (Newfoundland) Act*, S.N. 1986, c. 37 and complementary legislation enacted by the Newfoundland House of Assembly. It issues exploration licenses, declares significant discovery areas (SDA's), grants production licenses and also convenes and administers the Oil and Gas Committee. The administration of the *Canada Oil and Gas Production and Conservation Act*, R.S.C. 1985,, c. 0-7 was vested in a body with responsibility for advising the Minister, known as the Canada Oil and Gas Lands Administration (COGLA). In 1982, the Appellants drilled a well on the lands covered by an exploration licence. In 1984, it asked the Minister to make a significant discovery declaration comprising the well and surrounding areas. The Minister declared the well to be a significant discovery, with the SDA to consist of the well and the 11 surrounding sections. The Appellant Mobil asked him to review the matter and exercise his discretion to include 30 sections in the SDA as previously agreed to. The Minister refused to alter the 1986 declaration. The Appellants applied for a writ of *certiorari* which was dismissed by the Federal Court Trial Division. The Appellants applied to the Chairman of the Respondent for another SDA which included lands excluded from the 1986 declaration. The Chairman wrote back that the application could not be brought before the Board for consideration because no additional well has been drilled. The Appellants opposed the Chairman's recommendation and initiated proceedings in the Supreme Court of Newfoundland for *certiorari* to quash the letter of the Chairman of the Respondent dismissing the 1990 application and further requested an order in the nature of *mandamus* to require the Respondent to consider the 1990 application and to do so in accordance with the mandatory procedures prescribed by s. 124 of the Federal *Act*. The trial judge held that the Appellants had not received a proper hearing before the Board and that an order of *certiorari* would lie in respect of the Board's refusal to consider the Appellants' application. He held further, that the Appellants were entitled to an order of *mandamus* directing the Board to accept the application and to deal with it "in the manner prescribed by the *Act*". The Respondent appealed to the Court of Appeal which confirmed the Appellants' entitlement to have its application dealt with but excluded its recourse to the Committee until the Respondent concluded a significant discovery existed.

Origin of the case:Newfoundland

File No:22948

Judgment of the Court of Appeal:February 11, 1992

Counsel:Stewart McKelvey Stirling for the Appellants

Stikeman, Elliott for the Respondent

**22948MOBIL OIL CANADA LTD. et autres c. L'OFFICE CANADA-TERRE‑NEUVE DES HYDROCARBURES EXTRACÔTIERS**

Droit administratif - Lois - Interprétation - Contrôle judiciaire -Brefs de prérogative - Justice naturelle - *Audi alteram partem* - Prospection extracôtière d'hydrocarbures - Octroi de titres de prospections d'hydrocarbures - *Loi de mise en oeuvre de l'Accord atlantique Canada-Terre‑Neuve*, L.C. 1987, ch. 3 - Les requérantes, qui ont demandé une déclaration de périmètre de découverte importante, avaient‑elles droit à une audience devant l'intimé? - La Cour d'appel a‑t‑elle commis une erreur dans son interprétation de la loi provinciale‑fédérale réglementant la prospection extracôtière d'hydrocarbures et en particulier la déclaration de périmètre de découverte importante visant les périmètres de prospection au large de Terre‑Neuve? - La Cour d'appel a‑t‑elle irrégulièrement esquivé le processus décisionnel qui consiste à faire une déclaration de périmètre de découverte importante?

Les appelantes sont détentrices de titres visant une partie du plateau continental au large des côtes de Terre‑Neuve. L'appelante Mobil Oil Canada Ltd. est chargée de la prospection et de l'administration des terres. L'Office intimé est un organisme statutaire constitué en vertu de l'art. 9 de la *Canada Newfoundland Atlantic Accord Implementation (Newfoundland) Act*, S.N. 1986, ch. 37 et de lois complémentaires adoptées par l'Assemblée législative de Terre‑Neuve. Il délivre des permis de prospection, déclare des périmètres de découverte importante (PDI), octroie des licences de production, et convoque et gère le Comité des hydrocarbures. L'application de la *Loi sur la production et la conservation du pétrole et du gaz*, L.R.C. (1985), ch. O‑7 a été conférée à un organisme appelé Administration du pétrole et du gaz des terres du Canada (APGTC), dont la tâche consiste à conseiller le ministre. En 1982, les appelantes ont foré un puits sur les terres visées par le permis de prospection. En 1984, elles ont demandé au ministre de faire une déclaration de découverte importante visant le puits et les territoires adjacents. Le ministre a déclaré que le puits était une découverte importante, le PDI s'étendant également à 11 sections adjacentes. L'appelante Mobil lui a demandé de revoir le dossier et d'exercer son pouvoir discrétionnaire afin d'inclure 30 sections dans le PDI, comme il avait été convenu antérieurement. Le ministre a refusé de modifier la déclaration de 1986. Les appelantes ont demandé la délivrance d'un bref de *certiorari*, qu'a refusé la Section de première instance de la Cour fédérale. Elles ont demandé au président de l'intimé un second PDI visant les terres exclues de la déclaration de 1986. Le président a répondu par écrit que la demande ne pouvait être soumise à l'Office pour examen puisque aucun autre puits n'avait été foré. Les appelantes se sont opposées à la recommandation du président et ont entamé des procédures à la Cour suprême de Terre‑Neuve en vue d'obtenir un *certiorari* annulant la lettre du président de l'intimé, par laquelle il rejetait la demande de 1990, et une ordonnance qui s'apparente à un *mandamus*, contraignant l'intimé à considérer la demande de 1990 en conformité avec les procédures obligatoires prévues à l'art. 124 de la *Loi* fédérale. Le juge de première instance a conclu que les appelantes n'avaient pas bénéficié d'une audience régulière devant l'Office et que le bref de *certiorari* viserait le refus de l'Office de considérer la demande des appelantes. Il a en outre déterminé que les appelantes avaient droit à une ordonnance de *mandamus* contraignant l'Office à accepter la demande et à la considérer «de la manière prévue dans la *Loi*». L'intimé a interjeté appel à la Cour d'appel, qui a confirmé le droit des appelantes à un examen de leur demande, en excluant toutefois leur recours au Comité jusqu'à ce que l'intimé ait conclu qu'une découverte importante a été faite.

Origine :Terre-Neuve

No du greffe :22948

Arrêt de la Cour d'appel :le 11 février 1992

Avocats :Stewart McKelvey pour les appelantes

Stikeman, Elliott pour l'intimé

**23047/23057AIR PRODUCTS CANADA LTD. ET AL. v. GUNTER SCHMIDT IN HIS PERSONAL CAPACITY AND ON BEHALF OF THE BENEFICIARIES OF THE STEARNS CATALYTIC LTD. PENSION PLANS - AND BETWEEN - GUNTER SCHMIDT IN HIS PERSONAL CAPACITY AND ON BEHALF OF THE BENEFICIARIES OF THE STEARNS CATALYTIC LTD. PENSION PLANS V. AIR PRODUCTS CANADA LTD. ET AL.**

Labour law - Pensions - Trusts - Contracts - Entitlement to surplus in employee defined benefit pension plans, which had been terminated by sale of company - Nature of an employer's funding obligation.

In 1983, Stearns-Roger Canada Ltd. (Stearns) merged with Catalytic Enterprises Ltd. (Catalytic) to form Stearns Catalytic Ltd. (Stearns Catalytic). At the time of the amalgamation, Stearns and Catalytic each had defined benefit employee pension plans and each had an actuarial surplus in their respective pension plans. Upon the amalgamation, the pension plans of Stearns and Catalytic, which govern the disposition of the surplus funds, were amalgamated in the Stearns Catalytic plan. In 1988, the plans were terminated by the sale of Air Products Canada Ltd. (Air Products), the successor to Stearns Catalytic.

In February, 1988 a petition was filed by Air Products requesting a declaration of Air Products' entitlement to the surplus in the pension fund. An originating notice of motion was filed by Gunter Schmidt, an employee of Air Products, and its predecessors, in his personal capacity and on behalf of certain beneficiaries of the pension plans, requesting a declaration that beneficiaries are entitled to the surplus and directing that an audit be conducted and an actuary be appointed and based on the findings of auditor and actuary that the Court approve payment of the surplus to the beneficiaries. An amended originating notice of motion was filed by Schmidt requesting that the amount used by the company to take a premium holiday, was paid out of the pension surplus in error and directing Air Products to return this amount to the beneficiaries. The Chambers judge ordered that the surplus in the Catalytic fund belonged to the employees and that the surplus in the Stearns pension fund belonged to the employer.

A notice of appeal was filed by Air Products seeking, *inter alia*, a reversal of the Chambers judge order that the surplus in the Catalytic fund belonged to the employees. A notice of cross-appeal was also filed by Schmidt seeking a reversal of the order that the surplus in the Stearns pension fund belonged to the employer. The Court of Appeal of Alberta dismissed the appeal and the cross-appeal.

This is an appeal by Air Products Canada Ltd., William M. Mercer Limited, Confederation Life Insurance Company and T.J. Westley with respect to the Court of Appeal's judgment interpreting the terms of the Catalytic defined benefit pension plan and interpreting the 1983 Air Products defined benefit pension plan (File No. 23047). This is also an appeal by Schmidt from the judgment of the Court of Appeal of Alberta denying the former Stearns employees a share in the surplus to be distributed from the Stearns Catalytic Pension Plans (File No. 23057).

Origin of the case: Alberta

File No: 23047/23057

Court of Appeal judgment: April 10, 1992

Counsel: Denis O'Connor, Q.C., Anne C. Corbett and Barry L. Glaspell for the Air Products et al.

Aleck Trawick for Gunter Schmidt in his personal capacity and on behalf of the former beneficiaries of the Stearns-Roger Canada Ltd. Pension Plan

Neil C. Wittmann, Q.C., and Kenneth J. Warren for the former beneficiaries of the Catalytic Enterprises Ltd. Pension Plan

**23047/23057 AIR PRODUCTS CANADA LTD. ET AL. c. GUNTER SCHMIDT, EN SON NOM PERSONNEL ET AU NOM DES BÉNÉFICIAIRES DES RÉGIMES DE PENSIONS DE STEARNS CATALYTIC LTD. ET GUNTER SCHMIDT, EN SON NOM PERSONNEL ET AU NOM DES BÉNÉFICIAIRES DES RÉGIMES DE PENSIONS DE STEARN CATALYTIC LTD. C. AIR PRODUCTS CANADA LTD. ET AL.**

Droit du travail -- Pensions - Fiducie - Contrats -- Droit au surplus de régimes de pensions d'employés abolis par la vente de la société -- Nature de l'obligation de contribuer de l'employeur.

En 1983, Stearns-Rogers Canada Ltd. (Stearns) a fusionné avec Catalytic Enterprises Ltd. (Catalytic) pour former Stearns Catalytic Ltd. (Stearns Catalytic). Au moment de la fusion, Stearns et Catalytic avaient chacune des régimes de pension d'employés et chacune avait un surplus actuariel dans ses régimes de pensions respectifs. Au moment de la fusion, les régimes de pensions de Stearns et de Catalytic, qui définit la manière de disposer des fonds excédentaires, ont été fusionnés en un régime de Stearns Catalytic. En 1988, les régimes ont été abolis par la vente d'Air Products Canada Ltd. (Air Products), la remplaçante de Stearns Catalytic.

En février 1988, Air Products a déposé une requête par laquelle elle demandait un jugement déclaratoire confirmant son droit au surplus du fonds de pension. Gunter Schmidt, employé d'Air Products et de ses sociétés antérieures, a déposé un avis de requête introductive d'instance, à titre personnel et au nom de certains bénéficiaires des régimes de pension, dans lequel il demandait un jugement déclaratoire confirmant que les bénéficiaires ont droit au surplus, ordonnant une reddition de compte, la nomination d'un actuaire, et, selon les constatations faites par l'actuaire et le vérificateur, approuvant le paiement du surplus aux bénéficiaires. Schmidt a produit un avis modifié de requête introductive d'instance par lequel il demande une ordonnance affirmant que le montant prélevé par la société à titre d'exonération de primes a été retiré du fonds de pension par erreur et exigeant d'Air Products qu'elle remette cette somme aux bénéficiaires. Le juge en chambre a statué que le surplus du régime de Catalytic appartenait aux employés et que celui du régime de Stearns appartenait à l'employeur.

Air Products a déposé un avis d'appel par lequel elle demande, entre autres choses, la cassation de l'ordonnance du juge en chambre selon laquelle le surplus du régime de pensions de Catalytic appartenait aux employés. Schmidt a déposé un avis d'appel incident demandant la cassation de l'ordonnance statuant que le surplus du régime de pensions de Stearns appartenait à l'employeur. La Cour d'appel de l'Alberta a rejeté l'appel et l'appel incident.

Il y a pourvoi de la part d'Air Products Canada Ltd., William M. Mercer Limited, Confederation Life Insurance Company et T.J. Wesley, à l'encontre de l'arrêt de la Cour d'appel interprétant les conditions du régime de pensions d'employés de Catalytic et du régime de pensions d'employés de 1983 d'Air Products (no du greffe 23047). Il y a aussi pourvoi par Schmidt à l'encontre de l'arrêt de la Cour d'appel de l'Alberta refusant aux anciens employés de Stearns le droit à une part du surplus du régime de pensions de Stearns Catalytic (no du greffe 23057).

Origine : Alberta

Nos du greffe: 23407/23507

Date de l'arrêt 10 avril 1992

Avocats:Denis O'Connor, c.r., Anne C, Corbett et Barry L. Glaspell pour Air Products et al.

Aleck Trawick pour Gunter Schmidt, en son nom personnel et pour le compte des anciens bénéficiaires du régime de pensions de Stearns-Roger Canada Ltd.

Neil C. Wittmann, c.r., et Kenneth J. Warren pour le compte des anciens bénéficiaires du régime de pensions de Catalytic Enterprises Ltd.

**22758THE ATTORNEY GENERAL OF CANADA v. THE ATTORNEY GENERAL OF BRITISH COLUMBIA**

Constitutional law - Statutes - Administrative law - Jurisdiction - Canada agreeing to provide railway service between Victoria and Nanaimo, British Columbia as a condition of British Columbia entering confederation - Whether Canada is required to maintain railway in perpetuity - If Parliament has the power to terminate service, how is that power to be exercised? - Was Order in Council terminating service made without jurisdiction?

In 1990, the Governor in Council made an Order-in-Council, pursuant to his power under s. 64 of the *National Transportation Act*, S.C. 1987, c. 34, to terminate passenger rail service between Nanaimo and Courtenay, British Columbia. The Province of British Columbia challenged this decision in two separate petitions.

The Province first petitioned for a declaration that Parliament had a perpetual obligation to maintain the rail service, arguing that Canada's obligation to build the rail service was contained in Term 11 of the 1871 *Terms of Union* which sets out Canada's agreement to construct a railway connecting the British Columbia coast with the Canadian railway as a consideration for British Columbia entering Confederation. Negotiations to work out details of this project followed the Terms of Union, and concluded with the Settlement Agreement of 1883. Appended to this agreement was the agreement of the Dunsmuir Syndicate to build and continuously operate a railway to be built on Vancouver Island. The Settlement Agreement was embodied in federal and provincial statutes, which both recite the agreement in the "whereas" clauses. The railway was completed and has been in operation since 1886.

The Province's second petition challenged the order-in-council directing the termination on the basis that it was *ultra vires* the Governor in Council. The *Railway Act, 1985*, R.S.C., 1985, c. R-3, contains a mechanism for determining whether a rail line is uneconomic and for the subsequent abandonment of the operation. In 1984, in response to an application from Via Rail and the E. & N. Railway for permission to discontinue passenger service from Victoria to Courtenay, the Railway Transport Committee of the Canadian Transport Commission, (now the National Transportation Agency) ordered that the service be maintained pending the next five year review of the service. The five year review did not take place. In 1990, the impugned order-in-council was made.

The Respondent's two petitions were allowed, in separate decisions, by the Supreme Court of British Columbia. The Appellant appealed to the Court of Appeal for British Columbia, which allowed the appeals to the extent that it held that the obligation was subject to the right to terminate the rail service with the Province's agreement.

Origin of the case: British Columbia

File No.: 22758

Judgment of the Court of Appeal: October 4, 1991

Counsel: John C. Tait for the Appellant

 George Copley and Patrick O'Rourke for the Respondent

**22758LE PROCUREUR GÉNÉRAL DU CANADA c. LE PROCUREUR GÉNÉRAL DE LA COLOMBIE-BRITANNIQUE**

Droit constitutionnel - Législation - Droit administratif - Compétence - Le Canada a accepté de fournir un service ferroviaire entre Victoria et Nanaimo (Colombie-Britannique) comme condition pour l'entrée de la Colombie-Britannique dans la Confédération - Le Canada est-il tenu de maintenir à perpétuité le service ferroviaire? - Si le Parlement a le pouvoir de mettre fin au service, de quelle façon ce pouvoir doit-il être exercé? - Le décret qui a mis fin au service a-t-il été pris sans compétence?

En 1990, le gouverneur en conseil a pris un décret, en vertu du pouvoir qui lui est conféré par l'art. 64 de la *Loi sur les transports nationaux*, L.C. 1987, ch. 34, pour mettre fin au transport de passagers par rail entre Nanaimo et Courtenay (Colombie-Britannique). La province de la Colombie-Britannique a contesté cette décision dans deux requêtes distinctes.

La province a d'abord demandé un jugement déclaratoire portant que le Parlement avait une obligation perpétuelle de maintenir le service ferroviaire sur le fondement que l'obligation du Canada de construire le chemin de fer était contenue dans le terme 11 des *Conditions de l'Union* de 1871 qui prévoit l'engagement du Canada à construire un chemin de fer reliant la côte de la Colombie-Britannique au réseau de chemin de fer canadien à titre de contrepartie à l'entrée de la Colombie-Britannique dans la Confédération. Des négociations pour régler les détails de ce projet ont suivi les Conditions de l'Union et se sont terminées par l'accord de règlement de 1883. L'engagement du Dunsmuir Syndicate de construire et d'exploiter continuellement un chemin de fer sur l'Île de Vancouver a été annexé à cet accord. L'accord de règlement a été enchâssé dans les lois fédérale et provinciale, qui reprennent l'accord dans les clauses introductives. Le chemin de fer a été terminé en 1886 et est exploité depuis ce temps.

La deuxième demande contestait le décret qui a ordonné la cessation du service sur le fondement qu'il ne relevait pas de la compétence du gouverneur en conseil. La *Loi de 1985 sur les chemins de fer*, L.R.C. (1985), ch. R-3, contient un mécanisme permettant de déterminer la rentabilité d'une ligne de chemin de fer et la pertinence de l'abandon de celle-ci. En 1984, en réponse à une demande de Via Rail et de E. & N. Railway en vue d'obtenir l'autorisation de mettre fin au service de transport de passagers de Victoria à Courtenay, le Comité des transports par chemin de fer de la Commission canadienne des transports (maintenant l'Office national des transports) a ordonné le maintien du service en attendant le prochain examen quinquennal du service. L'examen quinquennal n'a pas eu lieu. En 1990, le décret contesté a été pris.

Les deux demandes de l'intimé ont été accueillies dans des décisions distinctes de la Cour suprême de la Colombie-Britannique. L'appelant a interjeté appel à la Cour d'appel de la Colombie-Britannique qui a accueilli les appels dans la mesure où elle a conclu que l'obligation était assujettie au droit de mettre fin au service ferroviaire avec l'accord de la province.

Origine : Colombie-Britannique

No du greffe : 22758

Arrêt de la Cour d'appel : Le 4 octobre 1991

Avocats : John C. Tait pour l'appelant

 George Copley et Patricia O'Rourke pour l'intimé

**23109KARL THOMAS GALASKE, AN INFANT SUING BY HIS GUARDIAN *AD LITEM*,ELIZABETH MOSER v. ERICH STAUFFER ET AL. - AND BETWEEN - KARL THOMAS GALASKE, AN INFANT SUING BY HIS GUARDIAN *AD LITEM*, ELIZABETH MOSER v. ERICH STAUFFER ET AL.**

Torts - Negligence - Motor vehicles - Contributory negligence - Liability - Principle of duty -Duty of care - Duty of care between driver and child passenger with respect to the use of a seat belt

In August 1985, a vehicle owned by the Respondent, Florence Horvath, and driven by the Respondent, Erich Stauffer, collided with another vehicle owned by the Respondent Bourgoin Contracting Ltd. and driven by the Respondent Columcille Damien O'Donnell who admitted, at trial, sole liability for the accident. The Appellant, Karl Thomas Galaske, then eight years of age, was sitting in the front seat between his father, the Respondent Peter Helmut Galaske, and the Respondent Stauffer. The Appellant and his father were not wearing the available seat belt assembly.

As a result of the accident, all three occupants of the vehicle driven by the Respondent Stauffer were ejected from the vehicle. The Respondent Peter Galaske suffered injuries resulting in his death. The infant Appellant suffered serious and disabling injuries. The Respondent Erich Stauffer suffered injuries of some consequence. Three actions were commenced which actions were ordered to be tried at the same time. At the beginning of the trial, counsel applied to have the issue of the liability of the Respondent Stauffer severed and determined before the main trial proceeded. The trial judge allowed the application and the trial proceeded before him on that basis. Evidence adduced at trial indicated that the Respondent Stauffer had been involved in three prior incidents involving seat belt infractions. The trial judge held that the Respondent Stauffer was not liable and dismissed the action against him.

The Appellant appealed to the Court of Appeal for British Columbia which dismissed the appeal.

The appeal raises the following issues.

1.Does the driver of a motor vehicle owe a child passenger a duty of care, namely, to take steps to ensure that the child is safely buckled up in the seat belt provided for him.

2.If there is such a duty of care, is that duty displaced if the child's father is in the motor vehicle at the same time.

3.Even if drivers generally owe no duty to ensure a child passenger is safely bucked up where a parent is also in the motor vehicle, was the Respondent Stauffer, who was involved in three prior incidents involving seat belts infraction, under such a duty.

4.Does a finding of a breach of the provisions of Section 217(6) of the *Motor Vehicle Act*, R.S.B.C. 1979, Chapter 288, constitute *prima facie* proof of negligence thereby giving the Appellants a right of recovery merely on proof of breach.

Origin of the case: British Columbia

File No: 23109

Court of Appeal judgment: May 7, 1992

Counsel: Romano F. Guisti for the Appellants

 Avon M. Mersey for the Respondents Stauffer and Horvath

 Dennis J. Daley for the Respondents O'Donnell and Bourgoin Contracting Ltd.

 Peter D. Messner, Q.C., for the Respondent Mala Galaske

**23109KARL THOMAS GALASKE, MINEUR REPRÉSENTÉ PAR SA TUTRICE *AD LITEM* ELIZABETH MOSER, c. ERICH STAUFFER ET AUTRES - ET ENTRE - KARL THOMAS GALASKE, MINEUR REPRÉSENTÉ PAR SA TUTRICE *AD LITEM* ELIZABETH MOSER, c. ERICH STAUFFER ET AUTRES**

Responsabilité délictuelle - Négligence - Véhicules automobiles - Négligence contributive -Responsabilité - Principe de l'obligation - Obligation de diligence - Obligation de diligence du conducteur envers le passager en bas âge relativement à l'utilisation de la ceinture de sécurité

En août 1985, un véhicule appartenant à l'intimée Florence Horvath et conduit par l'intimé Erich Stauffer est entré en collision avec un autre véhicule appartenant à l'intimée Bourgoin Contracting Ltd. et conduit par l'intimée Columcille Damien O'Donnell, qui, au procès, a reconnu être la seule responsable de l'accident. L'appelant, Karl Thomas Galaske, alors âgé de huit ans, était assis sur le siège avant entre son père, l'intimé Peter Helmut Galaske, et l'intimé Stauffer. Ni l'appelant ni son père ne portaient la ceinture de sécurité à leur disposition.

À la suite de l'accident, les trois occupants du véhicule conduit par l'intimé Stauffer ont été éjectés du véhicule. L'intimé Peter Galaske a subi des blessures qui ont entraîné son décès. Le mineur appelant a subi des blessures graves qui l'ont rendu infirme. L'intimé Erich Stauffer a subi des blessures d'une certaine importance. Trois actions ont été intentées, et il a été décidé qu'elles seraient jugées en même temps. Au début du procès, les avocats ont demandé que la question de la responsabilité de l'intimé Stauffer soit jugée à part avant la tenue du procès principal. Le juge de première instance a accueilli la demande et le procès s'est instruit ainsi devant lui. Il est ressorti de la preuve présentée au procès que l'intimé Stauffer avait déjà été impliqué dans trois accidents comportant des infractions relatives au port de la ceinture de sécurité. Le juge de première instance a conclu que l'intimé Stauffer n'était pas responsable et a rejeté l'action intentée contre lui.

L'appelant a interjeté appel auprès de la Cour d'appel de la Colombie-Britannique, qui a rejeté l'appel.

L'appel soulève les questions suivantes:

1.Le conducteur d'un véhicule automobile est‑il tenu envers un passager en bas âge à une obligation de diligence, c'est‑à‑dire de prendre les mesures nécessaires pour que l'enfant soit bien attaché au moyen de la ceinture de sécurité prévue pour lui?

2.S'il existe une telle obligation de diligence, celle‑ci change‑t‑elle si le père de l'enfant se trouve dans le véhicule automobile au même moment?

3.Même si les conducteurs ne sont pas tenus en général de s'assurer que le passager en bas âge est bien attaché lorsque l'un des parents se trouve également dans le véhicule automobile, l'intimé Stauffer, qui avait déjà été impliqué dans trois accidents comportant des infractions relatives au port de la ceinture de sécurité, était‑il astreint à une telle obligation?

4.Si la Cour conclut qu'il y a eu manquement aux dispositions du paragraphe 217(6) de la *Motor Vehicle Act*, R.S.B.C. 1979, chapitre 288, cela constitue‑t‑il une preuve *prima facie* d'une négligence qui donnerait alors aux appelants le droit d'être indemnisés sur simple preuve du manquement?

Origine : Colombie-Britannique

No du greffe: 23109

Arrêt de la Cour d'appel: le 7 mai 1992

Avocats: Romano F. Guisti pour les appelants

 Avon M. Mersey pour les intimés Stauffer et Horvath

 Dennis J. Daley pour les intimés O'Donnell et Bourgoin Contracting Ltd.

Peter D. Messner, c.r., pour l'intimée Mala Galaske

**23566 HER MAJESTY THE QUEEN v. EUGENE PAUL POWER**

Criminal law - Procedural law - Statutes - Interpretation - Evidence - Appeals - Respondent charged with one count of impaired driving causing death and two counts of impaired driving causing bodily harm - Supreme Court of Newfoundland, Trial Division, concluding that Respondent's rights under s. 10 of the *Charter* were violated and excluding breathalyser evidence - Whether the majority of the Court of Appeal, having concluded that the trial judge erred in ruling inadmissible evidence which was highly probative, erred in holding that s. 686(4) of the *Criminal Code* provides a Court of Appeal with a discretion as to whether or not to order a new trial in such circumstances. April 6, 1993

The Respondent was involved in a motor vehicle accident in which a passenger died and another two were injured. The Respondent, who had been driving, was charged with one count of impaired driving causing death and two counts of impaired driving causing bodily harm. The Respondent provided the police with two samples of his breath. At trial, the Respondent objected to the admissibility of the results of the breath samples on the ground that the police had violated his rights under s. 10 of the *Charter*. A *voir dire* was held and the evidence was excluded under s. 24(2) of the *Charter* because the advice given by the police to the Respondent of his right to counsel was tainted in that the Respondent was not advised of the reasons for his detention at the time the breath samples were given. The Respondent was acquitted and the Appellant appealed on the ground that the analysis of the breath samples should have been admitted into evidence. The Court of Appeal dismissed the appeal from acquittal, the majority concluding that, even if the trial judge erred in excluding evidence which was highly probative, a new trial should not be ordered under s. 686(4) of the *Criminal Code*. The Court held that it had a discretion as to whether or not to order a new trial. Goodridge C.J.N., dissenting, held that the provisions of s. 686(4) of the *Criminal Code* were mandatory and that s. 686(4) required the Court to order a new trial.

Origin of the case: Newfoundland

File No.: 23566

Judgment of the Court of Appeal: April 6, 1993

Counsel: Wayne Gorman for the Appellant

 David Orr for the Respondent

**23566SA MAJESTÉ LA REINE c. EUGENE PAUL POWER**

Droit criminel - Droit de la procédure - Lois - Interprétation - Preuve - Appels - L'intimé a été poursuivi relativement à une accusation de conduite avec facultés affaiblies ayant causé la mort et à deux accusations de conduite avec facultés affaiblies ayant causé des lésions corporelles - La Section de première instance de la Cour suprême de Terre-Neuve a jugé qu'il y avait eu violation des droits garantis à l'intimé par l'art. 10 de la *Charte* et a écarté la preuve fondée sur l'alcootest - En concluant, à la majorité, que le juge de première instance avait commis une erreur en considérant comme inadmissibles des éléments de preuve qui étaient fort probants, la Cour d'appel a‑t‑elle commis une erreur en statuant que le par. 686(4) du *Code criminel* confère à une cour d'appel un pouvoir discrétionnaire quant à savoir s'il faut ordonner ou non la tenue d'un nouveau procès dans ces circonstances.

L'intimé a été impliqué dans un accident de la route dans lequel un passager est décédé et deux autres ont été blessés. L'intimé, qui avait consommé de l'alcool, a été poursuivi relativement à une accusation de conduite avec facultés affaiblies ayant causé la mort et à deux accusations de conduite avec facultés affaiblies ayant causé des lésions corporelles. L'intimé a fourni deux échantillons d'haleine aux policiers. Au procès, il s'est opposé à ce que les résultats de l'analyse des échantillons d'haleine soient admis en preuve pour le motif que les policiers avaient violé les droits que lui garantit l'art. 10 de la *Charte*. À la suite d'un voir-dire, la preuve a été écartée en vertu du par. 24(2) de la *Charte* parce que les conseils que les policiers ont donnés à l'intimé au sujet de son droit d'avoir recours à l'assistance d'un avocat ont été viciés du fait que l'intimé n'a pas été informé des motifs de sa détention à l'époque où il a fourni les échantillons d'haleine. L'intimé a été acquitté et l'appelante a interjeté appel pour le motif que l'analyse des échantillons d'haleine aurait dû être admise en preuve. La Cour d'appel a rejeté l'appel formé contre l'acquittement et a conclu, à la majorité, que, même si le juge de première instance avait commis une erreur en écartant des éléments de preuve qui étaient fort probants, il n'y avait pas lieu d'ordonner la tenue d'un nouveau procès aux termes du par. 686(4) du *Code criminel*. La Cour a jugé qu'elle jouissait du pouvoir discrétionnaire d'ordonner ou non la tenue d'un nouveau procès. Le juge Goodridge, dissident, a estimé que les dispositions du par. 686(4) du *Code criminel* étaient obligatoires et exigeaient de la Cour qu'elle ordonne la tenue d'un nouveau procès.

Origine: Terre-Neuve

No du greffe: 23566

Arrêt de la Cour d'appel: le 6 avril 1993

Avocats: Wayne Gorman pour l'appelante

 David Orr pour l'intimé

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| **DEADLINES: MOTIONS**  | **DÉLAIS: REQUÊTES** |

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| **BEFORE THE COURT:**Pursuant to Rule 23.1 of the *Rules of the Supreme Court of Canada*, the following deadlines must be met before a motion before the Court can be heard: | **DEVANT LA COUR:**Conformément à l'article 23.1 des *Règles de la Cour suprême du Canada*, les délais suivants doivent être respectés pour qu'une requête soit entendue par la Cour: |
| **Motion day : December 6, 1993**Service : November 15, 1993Filing : November 22, 1993Respondent : November 29, 1993 | **Audience du : 6 décembre 1993**Signification : 15 novembre 1993Dépot : 22 novembre 1993Intimé : 29 novembre 1993 |

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| **BEFORE A JUDGE OR THE REGISTRAR:** | **DEVANT UN JUGE OU LE REGISTRAIRE:** |

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| Pursuant to Rule 22 of the *Rules of the Supreme Court of Canada*, a motion before a judge or the Registrar must be filed not later than three clear days before the time of the hearing.Please call (613) 996-8666 for further information. | Conformément à l'article 22 des *Règles de la Cour suprême du Canada*, une requête présentée devant un juge ou le registraire doit être déposée au moins trois jours francs avant la date d'audition.Pour de plus amples renseignements, veuillez appeler au (613) 996-8666. |

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| **SUPREME COURT REPORTS** | **RECUEIL DES ARRÊTS DE LA COUR SUPRÊME** |

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| **THE STYLES OF CAUSE IN THE PRESENT TABLE ARE THE STANDARDIZED STYLES OF CAUSE (AS EXPRESSED UNDER THE "INDEXED AS" ENTRY IN EACH CASE).****Judgments reported in [1993] 2 S.C.R., Part 7** Haig *v.* Canada; Haig *v.* Canada (Chief Electoral Officer), [1993] 2 S.C.R. 995Murphy *v.* Welsh; Stoddard *v.* Watson, [1993] 2 S.C.R. 1069Ramsden *v.* Peterborough (City), [1993] 2 S.C.R. 1084 | **LES INTITULÉS UTILISÉS DANS CETTE TABLE SONT LES INTITULÉS NORMALISÉS DE LA RUBRIQUE "RÉPERTORIÉ" DANS CHAQUE ARRÊT.****Jugements publiés dans [1993] 2 R.C.S., partie 7**Haig *c.* Canada; Haig *c.* Canada (Directeur général des élections), [1993] 2 R.C.S. 995Murphy *c.* Welsh; Stoddard *c.* Watson, [1993] 2 R.C.S. 1069Ramsden *c.* Peterborough (Ville), [1993] 2 R.C.S. 1084 |
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