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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Raymonde Gaulin

c. (23793)

**Centre des services sociaux de la Gaspésie et des
Îles de la Madeleine (Qué.)**

Raymond Arseneault

DATE DE PRODUCTION 1.11.1993

Amanda Louise Thomson

Martin G. Tadman

Levine Levene Tadman

v. (23794)

Paul Thomson (Man.)

FILING DATE 2.11.1993

C.A.S.

Trudi L. Brown, Q.C.

Horne Coupar

v. (23796)

J.F.T. (B.C.)

Brian D. Young

McConnan, Bion, O'Connor & Peterson

FILING DATE 1.11.1993

Saul Messinger

Applicant acting for himself

v. (23797)

Bramalea Ltd et al. (Ont.)

Larry M. Najjar

Teplitzky, Colson

FILING DATE 25.10.1993

**DEMANDES D'AUTORISATION
D'APPEL PRODUITES**

NTC Smokehouse Ltd.

David M. Rosenberg

Rosenberg & Rosenberg

v. (23800)

**Her Majesty The Queen in right of the Province
of British Columbia (B.C.)**

S. David Frankel, Q.C.

Dept. of Justice

FILING DATE 20.10.1993

Delgamuukw, also known as Earl Muldoe et al.

Stuart Rush, Q.C.

Rush, Crane, Guenther & Adams

v. (23799)

**Her Majesty The Queen in right of the province
of British Columbia et al. (B.C.)**

Bryan Williams, Q.C.

Swinton & Company

FILING DATE 25.10.1993

Donald and William Gladstone

Marvin R.V. Storrow, Q.C.

Blake, Cassels & Graydon

v. (23801)

Her Majesty The Queen (B.C.)

S. David Frankel, Q.C.

Dept. of Justice

FILING DATE 21.10.1993

Allan Jacob Lewis et al.

Harry A. Slade

Ratcliff & Co.

v. (23802)

Her Majesty The Queen (B.C.)

S. David Frankel, Q.C.

Dept. of Justice

FILING DATE 22.10.1993

Dorothy Marie Van Der Peet

Louise Mandell
Mandell Pinder

v. (23803)

Her Majesty The Queen (B.C.)

S. David Frankel, Q.C.
Dept. of Justice

FILING DATE 25.10.1993

Jerry Benjamin Nikal

Peter R. Grant

v. (23804)

Her Majesty The Queen in right of Canada (B.C.)

S. David Frankel, Q.C.
Dept. of Justice

FILING DATE 25.10.1993

Lawrence Theodore Sowa

S. Katz

v. (23806)

Her Majesty The Queen (Man.)

Greg Lawlor
Manitoba Justice,
Public Prosecutions

FILING DATE 2.11.1993

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

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

NOVEMBER 9, 1993 / LE 9 NOVEMBRE 1993

**CORAM: THE CHIEF JUSTICE LAMER AND CORY AND IACOBUCCI JJ./
LE JUGE EN CHEF LAMER ET LES JUGES CORY ET IACOBUCCI**

Thomas Arthur Foster

v. (23745)

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

NATURE OF THE CASE

Criminal law - Evidence - Right to make full answer and defence - Whether the Court of Appeal erred in applying s. 686(1)(b)(iii) of the *Criminal Code* and effectively denying the Applicant the opportunity of making full answer and defence - Whether the Court of Appeal in concluding that the verdict would necessarily have been the same in effect usurped the function of the jury.

PROCEDURAL HISTORY

December 17, 1990
District Court of Ontario (Perras J.)

Conviction: attempted murder contrary to s. 239 of
the *Criminal Code*, R.S.C. 1985, c. C-46

June 2, 1993
Court of Appeal for Ontario
(Goodman, Krever and Abella JJ.A.)

Appeal dismissed

October 4, 1993
Supreme Court of Canada

Application for leave to appeal filed

Ronald Timpson

v. (23754)

Her Majesty The Queen (F.C.A.)(Ont.)

NATURE OF THE CASE

Taxation - Statutes - Assessment - Appeal - Interpretation - Deduction of farming losses where chief source of income is not farming - Construction of s. 31(1) of the *Income Tax Act*, R.S.C. 1952, c. 148, as amended - *William Moldovan v. Her Majesty The Queen*, [1978] 1 S.C.R. 480, considered.

PROCEDURAL HISTORY

June 12, 1985
Tax Court of Canada (Bonner, J.T.C.C.)

Applicant's appeal from two assessments dismissed

May 12, 1987
Federal Court of Canada,
Trial Division (Cullen J.)

Applicant's appeal allowed

June 17, 1993
Federal Court of Appeal
(Head, Marceau and MacGuigan, JJ.A.)

Respondent's appeal allowed

October 14, 1993
Supreme Court of Canada

Application for leave to appeal filed

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

Colin Lewery

v. (23775)

The Governing Council of the Salvation Army in Canada (N.B.)

NATURE OF THE CASE

Labour law - Procedural law - Applicant's position as "officer" of the Respondent Salvation Army terminated - Applicant bringing action in damages for unlawful dismissal - Whether the Court of Appeal erred in deciding that there is no requirement for a hearing where there is an admitted breach of the Orders and Regulations - Whether the Court of Appeal erred in determining that the Applicant was not an employee of the Salvation Army - Status of religious officers within their organizations and the discretion granted by the courts to religious organizations in the interpretation of their own internal regulations.

PROCEDURAL HISTORY

August 17, 1992
Court of Queen's Bench of New Brunswick
(Savoie J.)

Action in damages for unlawful dismissal dismissed

June 21, 1993
Court of Appeal for New Brunswick
(Hoyt C.J.N.B., Ayles and Ryan JJ.A.)

Appeal dismissed

October 21, 1993
Supreme Court of Canada

Application for leave to appeal filed

Sidney L. Jaffe and Ruth Jaffe

v. (23755)

**Joe C. Miller, II, Metropolitan Toronto
Condominium Corporation No. 539, Daniel J. Kear,
Frances L. Giles, Hank M. Snow, Jr., William Hatch,
Louis R. Stark, Clyde E. Shoemaker, Stephen L. Boyles,
Accredited Surety & Casualty Co., Terrence Schmidt,
Charles W. Grant, Patricia Silver, The Attorney General
of the State of Florida, Board of Risk Management,
Ormark Enterprises Limited, Putnam County Florida,
Smith, Handler, Smith, Werner, Jacobowitz & Fried P.A.
Kelly Smith, Charles Baird, Garry Keller, Bonnie Allender,
John Eubanks, Timm Johnsen, Glenn E. Norris (Ont.)**

NATURE OF THE CASE

Torts - Damages - State immunity - Application of *The State Immunity Act*, R.S.C. 1985, c. S-18 - Whether the Court of Appeal erred in law when it held that the s. 6 exception to the general grant of immunity in the *State Immunity Act* applied only to causes of action that arose after the proclamation of that statute - Whether the Court of Appeal erred in law when it held that a foreign state is immune from liability in proceedings relating to law enforcement activities conducted in Canada, which injure Canadians in violation of international law and Canadian law - Whether the Court of Appeal erred when it failed to conclude that the illegal kidnapping and false imprisonment of the Applicant continued up and until his release from Florida prison - Whether the Court of Appeal misapprehended the facts when it held that the pleadings did not disclose the identity of those persons who engaged in the conspiracy to kidnap the Applicant.

PROCEDURAL HISTORY

July 11, 1990 Supreme Court of Ontario (Sutherland J.)	Motion by moving Respondents to have action dismissed on the ground of state immunity allowed
June 17, 1993 Ontario Court of Appeal (Houlden, Finlayson and Carthy JJ.A.)	Appeal dismissed
October 18, 1993 Supreme 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**

The Toronto-Dominion Bank

v. (23752)

**United Brotherhood of Carpenters and Joiners of America,
Local 785, Ontario Labour Relations Board, Attorney
General of Canada and Attorney General of Ontario (Ont.)**

NATURE OF THE CASE

Constitutional - Labour law - Labour relations - Division of powers - Grievance filed alleging that Applicant violated collective agreement in performing, or subcontracting work, on construction site of bank building - Applicant raising constitutional objection on the ground that its entire operation falls under federal jurisdiction - Respondent Board holding that construction of bank building falls under provincial jurisdiction and declaring that it has jurisdiction to deal with the grievance - Whether the Courts erred in holding that Provincial labour relations legislation was constitutionally applicable to any of the Applicant's operation - Whether the Courts erred in failing to hold that the provisions of the *Canada Labour Code* were not superseded by Provincial labour relations legislation in their application to some operations of the Applicant.

PROCEDURAL HISTORY

March 17, 1993
Ontario Court of Justice (General Division)
(Divisional Court) (Southey, Campbell and
Dunnett JJ.)

Application for judicial review dismissed

June 14, 1993
Court of Appeal for Ontario
(A.C.J., Robins and Doherty JJ.A.)

Motion for an Order granting leave to appeal
dismissed

October 12, 1993
Supreme Court of Canada

Application for leave to appeal filed

5.11.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to adjourn the hearing of the appeal

Her Majesty The Queen

v. (23115)

Robert Howard Burns (B.C.)

Requête pour ajourner l'audition de l'appel

Henry S. Brown, Q.C., for the motion.

W.G. Burke-Robertson, Q.C., contra.

Robert Houston, Q.C., for the appellant in R. v. Mohan.

Heather Perkins-McVey, for the respondent in R. v. Mohan.

GRANTED / ACCORDÉE Will be heard on December 10, 1993.

5.11.1993

Before / Devant: LA FOREST J.

VIDEO CONFERENCE (Winnipeg)

Motion for a stay of proceedings

Amanda Louise Thomson

v. (23794)

Paul Thomson (Man.)

Requête en suspension des procédures

Martin G. Tadman, for the motion.

Jack A. King, contra.

GRANTED / ACCORDÉE

The following is ordered:

UPON APPLICATION of the Applicant for an order staying the Order of the Court of Appeal for Manitoba which order required the immediate return to Scotland of MATTHEW PAUL THOMSON pending the determination of the application for leave to appeal, and if granted, the appeal to the Supreme Court of Canada;

AND HAVING READ the material filed and having heard counsel for the parties;

It is hereby ordered that:

1. The stay is granted pending the disposition of the application for leave to appeal and if leave to appeal is granted, until the appeal is determined. The disposition of the matter, both for the application for leave to appeal and if applicable, for the appeal, is to be dealt with on an expedited basis.

5.11.1993

Before / Devant: LE JUGE LA FOREST

Requête en vue de surseoir à l'exécution

Motion for a stay of execution

George Weldon Adams

c. (23615)

Sa Majesté La Reine (Qué.)

GRANTED / ACCORDÉE

9.11.1993

Before / Devant: LA FOREST J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY/PAR:Canadian Council of Refugees

David Matas, for the motion.

IN/DANS:Her Majesty The Queen in right of Canada
and the Minister of Employment
and Immigration

Brian R. Evernden, for the appellants.

v. (23361)

Reza (Ont.)

Consent filed by the respondent.

GRANTED IN PART / ACCORDÉE EN PARTIE:

The intervener may file a factum not exceeding twenty pages, but will not present oral argument unless called upon to do so at the hearing of the appeal.

9.11.1993

Before / Devant: LA FOREST J.

Motion for a stay of execution

Requête en vue de surseoir à l'exécution

Cynthia Ann Bruneau

Henry S. Brown, Q.C., for the motion.

v. (23791)

Marcel Joseph Bruneau (Alta.)

Alan Hirsch, contra.

RESERVED / EN DÉLIBÉRÉ

9.11.1993

Before / Devant: LA FOREST J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY/PAR:Women's Legal Education and Action Fund
(LEAF)

IN/DANS:Her Majesty The Queen

v. (23385)

Melvin Lorne Mason (N.S.)

GRANTED / ACCORDÉE

9.11.1993

Before / Devant: LE REGISTRAIRE

**Requête en prorogation du délai de production du
mémoire de l'intimée**

**Motion to extend the time in which to file the
respondent's factum**

Le Syndicat de l'enseignement de Champlain et al.

c. (23188)

La Commission scolaire régionale de Chambly (Qué.)

ACCORDÉE / GRANTED

9.11.1993

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and
file the respondents' factum**

**Requête en prorogation du délai de signification
et de production du mémoire des intimés**

Karl Thomas Galaske, an infant suing by his guardian
ad litem, Elizabeth Moser

v. (23109)

Eric Stauffer et al. (B.C.)

GRANTED / ACCORDÉE Time extended to November 12, 1993

**NOTICES OF APPEAL FILED SINCE
LAST ISSUE**

4.11.1993

James Egan et al.

v. (23636)

**Her Majesty The Queen in right of Canada
(F.C.A.)(B.C.)**

5.11.1993

Walter Pozniak

v. (23642)

Her Majesty the Queen (Ont.)

5.11.1993

Joseph Apsassin et al.

v. (23516)

**Her Majesty The Queen in right of Canada as
represented by the Department of Indian Affairs
and Northern Development and the Director of
the Veterans Land Act (F.C.A.)(Ont.)**

10.11.1993

Tonino Stellato

v. (23454)

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

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

9.11.1993

Her Majesty The Queen

v. (23608)

Mathew Oommen (Alta.)

29.10.1993

Alexander Krasniuk

v. (23808)

Her Majesty The Queen (Crim.)(Man.)

AS OF RIGHT

9.11.1993

Steven Levis

v. (23809)

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

AS OF RIGHT

10.11.1993

Non-Labour Lien Claimants

v. (23549)

**Her Majesty The Queen in right of Canada as
represented by the Minister of National
Revenue-Taxation (Sask.)**

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

02.11.1993

CORAM:La Forest, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Granville Savings and Mortgage Corporation

W.S. Gange, for the appellant.

v. (23210)

Fraser G. Campbell et al. (Man.)

Richard W. Schwartz, for the respondents.

LA FOREST J. -- The Court is ready to render Judgment now. Justice Cory will read the Judgment of the Court.

LE JUGE LA FOREST -- La Cour est prête à rendre jugement séance tenante, lequel sera lu par le juge Cory.

CORY J. (orally for the Court) -- The appellant is a mortgage company and the respondents are members of a law firm.

LE JUGE CORY (oralement au nom de la Cour) -- L'appelante est une société de prêts hypothécaires et les intimés font partie d'un cabinet d'avocats.

The appellant was requested to lend money on a mortgage to be given by Mr. Smith, a client of the respondents. The appellant agreed to lend the money. It confirmed this in a letter to the respondents setting out some nine conditions to the disposition of the mortgage funds particularly that the mortgage would be a first charge on the property of Smith.

On a demandé à l'appelante de prêter une somme qui serait garantie par hypothèque consentie par M. Smith, un client des intimés. L'appelante a accepté de prêter la somme demandée. Elle a confirmé cela par lettre envoyée aux intimés, dans laquelle elle a assorti la disposition des fonds garantis par hypothèque de quelque neuf conditions, dont celle que l'hypothèque constitue une charge de premier rang sur le bien de M. Smith.

We agree with the finding of the trial Judge that the respondents were retained by the appellant to act on its behalf to obtain a first charge. There was ample evidence to properly support that finding.

Nous souscrivons à la conclusion du juge de première instance selon laquelle l'appelante a retenu les services des intimés pour qu'ils obtiennent, en son nom, une charge de premier rang. Il y avait assez d'éléments de preuve pour bien justifier cette conclusion.

There was clearly a special relationship existing between the appellant and respondents. Indeed this was conceded by the respondents. It follows that the respondents were required to exercise their special skills on behalf of the appellant.

Il existait clairement un rapport spécial entre l'appelante et les intimés. En fait, les intimés ont reconnu cela. Il s'ensuit que les intimés devaient exercer leurs compétences spéciales au nom de l'appelante.

The respondents argue that the appellant did not rely upon them. This contention cannot be accepted. It is true that the appellant did not specifically request the respondents to protect their interest. Nevertheless, the correspondence makes it clear that the appellant was relying upon the respondents to ensure that their mortgage was a first charge on the property. The respondents did not do so. They were thus negligent and in breach of their

Les intimés font valoir que l'appelante ne s'en remettait pas à eux. Cette prétention ne saurait être acceptée. Il est vrai que l'appelante n'a pas demandé expressément aux intimés de protéger ses intérêts. Néanmoins, il ressort nettement de la correspondance que l'appelante comptait sur les intimés pour assurer que son hypothèque serait une charge de premier rang sur le bien en cause. Les intimés ne l'ont pas fait. Ils ont ainsi fait preuve de

duty to the appellant.

In the circumstances presented by this case, the respondents as lawyers had clear options open to them. They could have attempted to secure a first charge for the appellant by obtaining postponement of the judgments against their client Smith. They were well aware at all material times of these outstanding judgments. If they could not obtain a postponement they should have advised the appellant. Alternatively, they could have refused to act for the appellant so that it could have retained other solicitors to act on its behalf.

What was not open to the respondents was to act for the appellant and fail to advise them of the potential problems that could arise from the existing judgments against Smith.

The respondents are then liable to the appellant for the damages flowing from the breach of their duty. Those damages included the costs incurred in the law suits brought by the appellant seeking to maintain the priority of their charge. These were the only damages seriously contested by the respondents.

In light of these conclusions it is not necessary for us to consider the issue of fiduciary duty although the trial Judge may well have been correct in finding that there was as well a fiduciary duty owed by the respondents to the appellant.

In the result, the appeal will be allowed, the Order of the Court of Appeal set aside and the Judgment at trial restored. The appellant will have its costs of these proceedings throughout.

négligence et ont manqué à leur obligation envers l'appelante.

Dans les circonstances de la présente affaire, les intimés disposaient, en tant qu'avocats, de choix clairs. Ils auraient pu tenter d'obtenir une charge de premier rang pour l'appelante au moyen du report des jugements contre leur client Smith. Ils connaissaient bien, en tout temps pertinent, l'existence de ces jugements pendants. Ils auraient dû, le cas échéant, aviser l'appelante de l'impossibilité d'obtenir un report. Subsidiairement, ils auraient pu refuser d'agir pour l'appelante de sorte que celle-ci aurait pu retenir les services d'autres avocats pour la représenter.

Ce que les intimés ne pouvaient faire, c'était agir pour l'appelante sans l'aviser des problèmes que pourraient poser les jugements déjà prononcés contre M. Smith.

Les intimés sont donc responsables envers l'appelante des dommages résultant du manquement à leur obligation. Ces dommages comprennent les coûts des procédures judiciaires que l'appelante a engagées dans le but de maintenir la priorité de sa charge. Ce sont là les seuls dommages que les intimés ont contestés sérieusement.

Compte tenu de ces conclusions, il n'est pas nécessaire que nous examinions la question de l'obligation fiduciaire même si le juge de première instance peut bien avoir eu raison de conclure que les intimés avaient également une obligation fiduciaire envers l'appelante.

En définitive, le pourvoi est accueilli, l'ordonnance de la Cour d'appel est annulée et le jugement de première instance est rétabli. L'appelante a droit à ses dépens dans toutes les cours.

5.11.1993

CORAM: The Chief Justice Lamer and L'Heureux-Dubé, Sopinka, Gonthier, McLachlin, Iacobucci and Major JJ.

Her Majesty The Queen

I.S. MacGregor, Q.C., J.P. Malette, Q.C. and David
E. Spiro, for the appellant.

v. (22924)

Albert D. Friedberg (F.C.A.)(Ont.)

Barry S. Wortzman, Q.C., Martin L. O'Brien, Q.C.
and Thomas McRae, for the respondent.

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

Nature of the case:

Taxation - Assessment - Statutes - Interpretation -
Speculative trading in futures contracts - If more than
one accounting method is consistent with generally
accepted accounting principles and the income tax
law neither requires nor proscribes the use of any
particular accounting method, is the taxpayer entitled
to his choice of method for purposes of computing
income from the business under s. 9 of the *Income Tax
Act* or must he choose that method which is
appropriate to the business and which most nearly
accurately reflects his income from the business for
the year? - If the taxpayer must choose that method
which most accurately reflects his income position, is
that method one which permits the accounting for the
loss leg of a spread transaction separate from and
independent of the corresponding gain leg of that
transaction?

Nature de la cause:

Droit fiscal - Évaluation - Lois - Interprétation -
Transactions spéculatives sur des contrats éventuels
- Si plus d'une méthode de comptabilité est
conforme aux principes de comptabilité
généralement reconnus et que le droit fiscal n'exige
ni n'interdit l'utilisation d'une méthode comptable en
particulier, le contribuable peut-il choisir une
méthode aux fins du calcul du revenu tiré d'une
entreprise aux termes de l'art. 9 de la *Loi de l'impôt
sur le revenu* ou doit-il choisir la méthode qui
convient à l'entreprise et qui représente de la façon
la plus précise possible son revenu tiré d'une entreprise
pour l'année? - Si le contribuable doit choisir la
méthode qui représente de la façon la plus précise
possible sa position en matière de revenu, cette
méthode permet-elle de tenir compte des pertes
découlant d'une opération commerciale échelonnée
de manière distincte et indépendante des gains
réalisés dans le cadre de cette opération?

5.11.1993

CORAM: Les juges L'Heureux-Dubé, Sopinka, Gonthier, Cory et Iacobucci

Sa Majesté La Reine

Claude Provost, pour l'appelant.

c. (23355)

Serge Brassard (Crim.)(Qué.)

Yvan Lerner, pour l'intimé.

LE JUGE L'HEUREUX-DUBÉ (oralement au nom
de la Cour) -- Cet appel nous vient de plein droit.

L'HEUREUX-DUBÉ J. (orally for the Court) -- This
is an appeal as of right.

Nous ne sommes pas d'accord avec la majorité de la Cour d'appel en ce qui concerne l'effet du consentement de l'intimé à nombre d'ajournements des procédures. En l'absence de preuve que ces consentements représentent un acquiescement devant l'inévitable, ces consentements équivalent à une renonciation ou, provenant de l'accusé, lui sont imputables.

Compte tenu de ce qui précède et en l'absence de preuve de préjudice particulier autre que celui lui résultant du délai, appliquant les principes dégagés dans l'arrêt *Morin c. Sa Majesté la Reine* [1992] 1 R.C.S., 771, nous sommes d'accord avec Madame le juge Mailhot, dissidente, que le délai dont on se plaint ici n'était pas déraisonnable dans les circonstances.

En conséquence, l'appel est accueilli, les jugements de la Cour du Québec et de la Cour d'appel sont infirmés, l'arrêt des procédures cassé et le dossier est retourné à la Cour du Québec pour qu'il y soit procédé sur l'accusation.

We do not agree with the majority of the Court of Appeal as to the effect of the consents by the respondent to a number of the adjournments of the proceedings. In the absence of any evidence that these consents to acquiescence in the inevitable, the consents constituted waiver or, as actions of the accused, were attributable to him.

Taking this into account and the absence of evidence of prejudice other than such as might be inferred from the delay, and applying the principles and guidelines in *R. v. Morin* [1992] 1 S.C.R. 771, we agree with the conclusion of Mailhot J.A. that the delay herein was not unreasonable under the circumstances.

Consequently, the appeal is allowed, the judgments of the Court of Quebec and the Court of Appeal are reversed, the stay of proceedings is quashed and the file is returned to the Court of Quebec for trial.

8.11.1993

CORAM: La Forest, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Montague Brown

v. (22946)

Her Majesty The Queen in right of the province of British Columbia as represented by the Minister of Transportation & Highways (B.C.)

and between

Patrick Owen Swinamer

v. (22915)

Attorney General of Nova Scotia representing Her Majesty the Queen in Right of the Province of Nova Scotia.

John N. Laxton, Q.C., and Robert Gibbens, for the appellant Montague Brown.

Derrick J. Kimball, Nash T. Brogan and Heidi Foshay Kimball, for the appellant Patrick Owen Swinamer.

William A. Pearce, Q.C. and Thomas H. MacLachlan, for the respondent Her Majesty The Queen in Right of the Province of B.C.

Jonathan Davies, for the respondent the A.G. of Nova Scotia.

I.G. Whitehall, Q.C. and Donald J. Rennie, for the intervener the A.G. of Canada.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Torts - Negligence - Highways - Standard of care - Tort liability of a government agency - Interpretation of *Just v. The Queen in Right of British Columbia*, [1989] 2 S.C.R. 1228 - Whether the Court of Appeal erred in applying the Crown immunity doctrine as developed by the Supreme Court of Canada in *Just v. The Queen in Right of British Columbia* - Whether the Court of Appeal erred in determining that misfeasance and nonfeasance were surrogates for operational and policy decisions in dealing with the Crown immunity doctrine.

Nature de la cause:

Responsabilité civile - Négligence - Norme de diligence - Responsabilité délictuelle d'un organisme du gouvernement - Interprétation de l'arrêt *Just c. La Reine du chef de la Colombie-Britannique*, [1989] 2 R.C.S. 1228 - La Cour d'appel a-t-elle commis une erreur lorsqu'elle a appliqué la doctrine de l'immunité de la Couronne élaborée par la Cour suprême dans l'arrêt *Just c. La Reine du chef de la Colombie-Britannique*? - La Cour d'appel a-t-elle commis une erreur lorsqu'elle a déterminé que la négligence dans l'accomplissement d'un acte et l'inexécution d'un acte remplaçaient les décisions en matière d'opérations et de politique dans le traitement de la doctrine de l'immunité de la couronne?

9.11.1993

CORAM: The Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Her Majesty The Queen

v. (23063)

Chikmaglur Mohan (Crim.)(Ont.)

Jamie C. Klukach, for the appellant.

Brian H. Greenspan and Sharon E. Lavine, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Offences - Physicians and surgeons - Evidence - Sexual assault - *Voir dire* - Admissibility of the expert's evidence - Respondent doctor convicted of four counts of sexual assault, contrary to s. 246 (now s. 271) of the *Criminal Code*, R.S., c. C-34 - Trial judge excluding the expert evidence as character evidence not falling within the proper sphere of expert evidence.

Nature de la cause:

Droit criminel - Infractions - Médecins et chirurgiens - Preuve - Agression sexuelle - Voir dire - Recevabilité du témoignage de l'expert - Le médecin intimé a été déclaré coupable de quatre chefs d'accusation d'agression sexuelle, contrevenant ainsi à l'art. 246 (maintenant l'art. 271) du *Code criminel*, L.R., ch. C-34 - Le juge du procès a rejeté le témoignage de l'expert comme une preuve de réputation qui ne s'inscrit pas dans le cadre d'un témoignage d'expert.

10.11.1993

CORAM: The Chief Justice Lamer and L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Major JJ.

Yves Lépine

David E. Harris, for the appellant Yves Lepine.

v. (23026)

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

Robert W. Hubbard and Scott K. Fenton, for the respondent.

and between

Leonard Farinacci

Frank Addario, for the appellant Leonard Farinacci.

v. (23059)

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

and between

Kenneth Jeffreys

James Lockyer, for the appellant Kenneth Jeffreys.

v. (23061)

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

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Procedural law - Trial - Defence - Evidence - Appellants convicted on counts of conspiracy to traffic in drugs - District Court of Ontario dismissing application to cross-examine "sub-affiants" of information to obtain wiretap authorizations - District Court of Ontario dismissing *Wilson* application - District Court of Ontario dismissing application to exclude evidence - Court of Appeal dismissing appeals - Whether the Court of Appeal for Ontario erred in ruling that the trial judge did not err in refusing application to call police officers as witnesses on the wiretap *voir dire* and in refusing to order production of documents and material relevant to the validity of the judicial authorizations - Whether the Court of Appeal erred in refusing to reverse the ruling of the trial judge that evidence obtained after an unreasonable search on the Appellant Farinacci's residence ought not to be excluded - Whether the Court of Appeal erred in not ruling that the trial judge should have found that intercepted communications of the Appellant Jeffreys were unlawfully intercepted and inadmissible in evidence.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Droit de la procédure - Procès - Défense - Preuve - Les appelants ont été déclarés coupables à l'égard de chefs d'accusation de complot de trafic de stupéfiants - La Cour de district de l'Ontario a rejeté la requête visant le contre-interrogatoire des «souscripteurs d'affidavit» qui avaient fourni des renseignements aux fins des autorisations d'interception de communications privées - La Cour de district de l'Ontario a rejeté la demande de type *Wilson* - La Cour de district de l'Ontario a rejeté une demande d'exclusion d'éléments de preuve - La Cour d'appel de l'Ontario a rejeté les appels - La Cour d'appel de l'Ontario a-t-elle commis une erreur en statuant que le juge de première instance n'avait pas commis d'erreur en refusant de faire droit à la requête visant à faire témoigner les policiers dans le cadre du voir-dire concernant l'interception de communications privées et en refusant d'ordonner la production de documents et de matériel se rapportant à la validité des autorisations judiciaires? - La Cour d'appel a-t-elle commis une erreur en refusant d'infirmier la décision du juge de première instance qu'il ne devrait pas y avoir exclusion des éléments de preuve obtenus par suite d'une perquisition abusive dans la résidence de l'appellant

Farinacci? - La Cour d'appel a-t-elle commis une erreur en ne statuant pas que le juge de première instance aurait dû conclure que les communications de l'appelant Jeffreys avaient été illégalement interceptées et se trouvaient en conséquence inadmissibles en preuve?

WEEKLY AGENDA

**ORDRE DU JOUR DE LA
SEMAINE**

AGENDA for the week beginning November 15, 1993.

ORDRE DU JOUR pour la semaine commençant le 15 novembre 1993.

<u>Date of Hearing/ Date d'audition</u>	<u>NO.</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
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The Court is not sitting this week

La Cour ne siège pas cette semaine

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.

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

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:

Motion day : December 6, 1993

Service : November 15, 1993

Filing : November 22, 1993

Respondent : November 29, 1993

BEFORE A JUDGE OR THE REGISTRAR:

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.

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:

Audience du : 6 décembre 1993

Signification : 15 novembre 1993

Dépot : 22 novembre 1993

Intimé : 29 novembre 1993

DEVANT UN JUGE OU LE REGISTRAIRE:

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.
