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

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

MAY 25, 1993 / LE 25 MAI 1993

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

Her Majesty the Queen

v. (23479)

Brent Blair Brown (Crim.)(Man.)

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Statutes - Interpretation - Offenses - Sentencing - Respondent convicted of robbery, wearing a disguise and using a firearm while committing robbery - Court of Appeal confirming convictions and sentence but allowing appeal on the basis that s. 85(2) of the *Criminal Code* contravened s. 12 of the *Charter* - Whether the Court of Appeal erred in declaring that the words following "or series of events" in s. 85(2) of the *Criminal Code* are contrary to s. 12 of the *Charter*, not demonstrably justified under s. 1 of the *Charter* and of no force and effect - Whether the Court of Appeal erred in misconstruing the scope of s. 85 of the *Criminal Code* as interpreted in earlier cases of the Supreme Court *R. v. Covin*, [1983] 1 S.C.R. 725, and *R. v. Krug*, [1985] 2 S.C.R. 255 - Whether the Court of Appeal erred in misapplying the hypothesis of the "small offender" in determining that s. 85(2) of the *Criminal Code* limited the proscription against cruel and unusual punishment in s. 12 of the *Charter* - Whether the Court of Appeal erred in ruling that, if s. 85(2) did limit the guarantee in s. 12 of the *Charter*, such limit was not demonstrably justified under s. 1 of the *Charter*.

PROCEDURAL HISTORY

April 17, 1991
Court of Queen's Bench of Manitoba
(Barkman J.)

Convictions: Robbery, wearing a disguise while committing robbery and use of a firearm during robbery

January 28, 1993
Court of Appeal for Manitoba
(Scott C.J.M., Philp and Helper J.J.A.)

Appeal against conviction dismissed; Appeal against sentence allowed in part; Declaration that words following "or series of events" in s. 85(2) of the *Criminal Code* are of no force and effect

April 21, 1993
Supreme Court of Canada

Application for leave to appeal filed

The Alberta Union of Provincial Employees and Jim Carmichael

v. (23552)

**Her Majesty the Queen in Right of Alberta and
The Public Service Grievance Appeal Board consisting of
James C. Koshman, Russ M. Purdy and Vern Bartee (Alta.)**

NATURE OF THE CASE

Labour law - Arbitration - Collective agreement - Administrative law - Judicial review - Jurisdiction - Award - Reinstatement - In the absence of a specific provision in a collective agreement imposing a positive obligation on an employer to reinstate an employee to a different position than the one held at the time of the dismissal, is an Adjudication Board without authority to fashion such a remedy?

PROCEDURAL HISTORY

June 17, 1991
Court of Queen's Bench
(Smith J.C.Q.B.A.)

Application for judicial review allowed: Decision of Public Service Grievance Appeal Board set aside

February 25, 1993
Court of Appeal of Alberta
(Fraser C.J.A., Irving and
Coté J.J.A.)

Appeal dismissed

April 23, 1993
Supreme Court of Canada

Application for leave to appeal filed

Russel Schultz

v. (23539)

County of Camrose No. 22 (Alta.)

NATURE OF THE CASE

Procedural law - Torts - Trial - Actions - Trial by jury - Whether the Court of Appeal and the Court of Queen's Bench of Alberta wrongly construed the nature of the substantive right to a jury trial and the onus to be met by one seeking to have that right dispensed with as well as the criteria to be met.

PROCEDURAL HISTORY

October 22, 1992
Court of Queen's Bench of Alberta
(Cawsey J. in chambers)

Order: Actions to be tried without a jury

February 23, 1993
Court of Appeal of Alberta
(Foisy, Irving and Côté, J.J.A.)

Appeal dismissed

April 20, 1993
Supreme Court of Canada

Application for leave to appeal filed

**Carsten Mogens Egedebo, Conny Valby Egedebo and
Sean Egedebo, a Minor by His Guardian ad Litem,
Carsten Mogens Egedebo**

v. (23520)

Dr. Lorne Bueckert and Dr. Richard Stern (B.C.)

NATURE OF THE CASE

Torts - Negligence - Damages - Physicians and surgeons - Standard of care - Applicant Carsten becoming triplegic following the rupture of a congenital vascular malformation of the spinal cord - Action in damages for medical negligence and breach of contract dismissed - Whether the Court of Appeal erred in failing to consider the interrelationship between the standard of care and causation, and in particular the impact of a breach of the standard of care on the ability of the Applicant to prove the issue of causation - Whether the Court of Appeal failed in not considering the interrelationship between *Cook v. Lewis*, [1952] 1 D.L.R. 1, and *Snell v. Farrell*, [1990] 2 S.C.R. 311.

PROCEDURAL HISTORY

July 18, 1991
Supreme Court of British Columbia
(Parrett J.)

Action dismissed

February 10, 1993
Court of Appeal for British Columbia
(Carrothers J.A., Gibbs and Hollinrake J.J.A.)

Appeal dismissed

April 6, 1993
Supreme Court of Canada

Application for leave to appeal filed

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

Her Majesty the Queen

v. (23556)

Gary Roger Lajoie (Crim.)(Ont.)

NATURE OF THE CASE

Criminal law - Evidence - Admissibility of statements - Adequacy of charge to the jury - Complainant making statements after she alleged she was sexually assaulted by the Respondent - Whether the Court of Appeal erred in law in requiring a specific limiting instruction to the jury as to the use which evidence of the fact or the act of complaining could be put - Whether the Court of Appeal erred in law in concluding the evidence in issue may have been used by the jury, in absence of limiting instructions, as a form of self-corroboration - Whether the Court of Appeal erred in law in holding that the trial judge's failure to advise the jury that the evidence in issue could not be used as proof of the truth of the facts stated but was evidence only of the fact that a complaint had been made constituted non-direction amounting to misdirection given that the evidence in issue, which constituted simply evidence of the fact of the complaint and not the contents of the complaint, was incapable of being used for any purpose other than proof of the fact that a complaint had been made - Whether the Court of Appeal erred in law in holding that the proviso in s. 686(1)(b)(iii) had no application.

PROCEDURAL HISTORY

May 31, 1991 Ontario Court (General Division) (Jenkins J.)	Conviction: sexual assault contrary to s. 271(1) of the <i>Criminal Code</i> , R.S.C. 1985, c. C-46
February 23, 1993 Court of Appeal for Ontario (Brooke, Galligan and Labrosse JJ.A.)	Appeal allowed: conviction set aside and new trial ordered
April 23, 1993 Supreme Court of Canada	Application for leave to appeal filed

Vancouver Art Metal Works Ltd.

v. (23548)

Her Majesty the Queen (F.C.A.)(B.C.)

NATURE OF THE CASE

Taxation - Income Tax - Capital gains on sales of Canadian securities - Statutes - Interpretation - Interpretation of the phrase "trader or dealer in securities" in *Income Tax Act* - Did Federal Court of Appeal err in not finding that a trader or dealer in securities is a licensed dealer.

PROCEDURAL HISTORY

April 4, 1991
Federal Court Trial Division
(Jerome A.C.J.)

Determination of question of law: words "trader or dealer in securities" refer to licensed traders

February 18, 1993
Federal Court of Appeal
(Marceau, Létourneau and Robertson JJ.A.)

Appeal allowed: case referred to Trial Division for trial of other issues

April 19, 1993
Supreme Court of Canada

Application for leave to appeal filed

**Abraham Levine and The Corporation
of the Town of Carleton Place**

v. (23557)

Ralph Shaw (In Trust) and Leimerk Farms Limited (Ont.)

NATURE OF THE CASE

Property law - Commercial law - Statutes - Interpretation - Contract - Sale - Agency - Trusts and trustees - Real property - Applicant Levine refusing to acknowledge Agreement of purchase and sale - Respondents' action for specific performance and damages allowed by the Supreme Court of Ontario - Whether the Courts erred in finding that there was no breach of s. 31 of the *Real Estate and Business Brokers Act*, R.S.O. 1980, c. 431, thereby rendering the agreement unenforceable - Whether the trial judge erred in refusing the principle of law as set out in *Yared Realty Ltd. v. Topalovic et al.* (No.1) (1980), 130 D.L.R. (3d) 625 - Whether the trial judge erred in finding that as a bare trustee the Respondent Shaw was not under an obligation to comply with the *Real Estate and Business Brokers Act* - Whether the trial judge erred in finding that the actions of the Respondent Shaw did not give rise to an agency relationship thereby creating the fiduciary obligations of an agent, that is the duty to disclose all material facts within the knowledge of the agent, and thereby rendering the agreement unenforceable.

PROCEDURAL HISTORY

May 4, 1990
Supreme Court of Ontario
(Isaac J.)

Respondents' action for specific performance and damages allowed

February 24, 1993
Court of Appeal
(Houlden J.A., McKinlay and Carthy JJ.A.)

Appeal dismissed

April 28, 1993
Supreme Court of Canada

Application for leave to appeal filed

Irene Greslik

v. (23538)

**The Ontario Legal Aid Plan of
The Law Society of Upper Canada (Ont.)**

NATURE OF THE CASE

Procedural law - Pre-trial procedure - Actions - Appeals - Judicial discretion - Applicant presenting Motion for Judgment - Applicant presenting Motion for Adjournment of Motion for Judgment - Supreme Court of Ontario refusing Motion for Adjournment and dismissing Motion for Judgment - Applicant bringing action for a mandatory injunction prohibiting the distribution of advertising leaflet of the Respondent and for damages - Respondent's motion to dismiss Applicant's claim for delay dismissed by Master - Supreme Court of Ontario, Divisional Court, dismissing Respondent's appeal to dismiss Applicant's action - Supreme Court of Ontario refusing Applicant's motion for an adjournment and dismissing motion for judgment, without reasons - Whether Respondent's leaflet is misleading, false, harmful and contrary to the *Combines Investigation Act* - Whether the Respondent has purposely and unprofessionally delayed the case - Whether the Supreme Court of Ontario erred in refusing the motion for an adjournment - Whether the Supreme Court of Ontario erred by not recording reasons - Whether the Court of Appeal erred in dismissing the appeal.

PROCEDURAL HISTORY

April 17, 1990
Supreme Court of Ontario
(Rosenberg J.)

Order: Applicant's Motion for an adjournment of her Motion for Judgment refused; Motion for Judgment dismissed

February 15, 1993
Court of Appeal for Ontario
(Zuber C.J.O., Labrosse and Abella JJ.A.)

Appeal dismissed

April 16, 1993
Supreme Court of Canada

Application for leave to appeal filed

**CORAM: L'HEUREUX-DUBÉ, SOPINKA AND GONTHIER JJ. /
LES JUGES L'HEUREUX-DUBÉ, SOPINKA ET GONTHIER**

Nasser Hirbod

v. (23565)

Her Majesty the Queen (Crim.)(Qué.)

NATURE OF THE CASE

Criminal law - Procedural law - Jurisdiction - Appeals - Applicant convicted on one count of conspiracy and one count of trafficking in a narcotic by Court of Quebec - Application for release from custody pending appeal allowed by the Court of Appeal for Quebec - Court of Quebec adjourning sentencing pending judgment on appeal from convictions - Court of Appeal for Quebec granting Respondent's Motion to Order the Imposition of Sentence - Whether the Court of Appeal for Quebec is a statutory Court whose jurisdiction in criminal matters is limited to that prescribed by the *Criminal Code* or other relevant federal legislation - Whether the Court of Appeal possesses the superintending and reforming powers of a Superior Court of original jurisdiction - Whether the Court of Appeal had jurisdiction to grant the motion on which the judgment under appeal was rendered.

PROCEDURAL HISTORY

October 26, 1992 Court of Quebec (Provost J.)	Convictions: 1 count of conspiracy and 1 count of trafficking in a narcotic
November 11, 1992 Court of Appeal for Quebec (Beauregard J.A.)	Application for release from custody pending appeal allowed
February 9, 1993 Court of Quebec (Provost J.)	Sentencing adjourned pending judgment on appeal from convictions
April 5, 1993 Court of Appeal for Quebec (McCarthy J.A., Vallerand and Mailhot JJ.A.)	Respondent's Motion to Order the Imposition of Sentence granted
April 23, 1993 Supreme Court of Canada	Application for leave to appeal filed

Trust Général Inc.

c. (23484)

Sydney Wolofsky, Kenneth Wolofsky et Peter Wolofsky (Qué.)

NATURE DE LA CAUSE

Droit commercial - Procédure - Appel - Immeubles - Vente - Courtiers - Mandat - Demanderesse, courtier en immeubles, détenant mandat des intimés de trouver un acheteur pour immeubles - Intimés refusant de donner suite à offre d'achat par acheteur trouvé par la demanderesse - Intimés acceptant et exécutant offre d'achat supérieure sans payer la commission de la demanderesse - Action de la demanderesse pour la commission de \$1 million accueillie - La Cour d'appel, en se substituant au juge de première instance dans l'appréciation de la preuve, est-elle allée à l'encontre de son rôle de tribunal d'appel? - Le jugement de la Cour d'appel remet-il en question le principe que le courtier a droit au paiement de sa commission s'il présente, conformément à son mandat, un acheteur et que la transaction n'est pas conclue en raison du fait du vendeur? - Le jugement de la Cour d'appel a-t-il l'effet de modifier la pratique du courtage immobilier? - Le jugement de la Cour d'appel remet-il en question le principe qu'une partie à un contrat a l'obligation de négocier de bonne foi?

HISTORIQUE PROCÉDURAL

Le 27 janvier 1988 Cour supérieure du Québec (Meyer j.c.s.)	Action pour commission de \$1 million accueillie
Le 8 février 1993 Cour d'appel du Québec (Nichols, Chouinard [dissident] et Fish j.c.a.)	Appel accueilli
Le 13 avril 1993	Demande d'autorisation d'appel déposée

Cour suprême du Canada

**Procureur général du Québec,
Marc-Yvan Côté et Réjean Cantin**

c. (23563)

**Claude Vanier, Gérard Cournoyer, Raymond Morissette,
Robert Langlois, Jean-Jacques Césaire et Gérard Viau**

et

**L'Hôpital Louis-H. Lafontaine,
René Deschamps, Pierre Rollin,
Le Curateur public du Québec,
Le Comité des bénéficiaires de l'Hôpital Louis-H. Lafontaine (Qué.)**

NATURE DE LA CAUSE

Droit administratif - Législation - Contrôle judiciaire - Compétence - Interprétation - Abus de pouvoir - Contestation de la décision du ministre de la Santé et des Services sociaux d'assumer l'administration provisoire de l'hôpital Louis-H. Lafontaine en application de l'article 163 de la *Loi sur les services de santé et les services sociaux*, L.R.Q., ch. S-5 - Quelle est la norme de contrôle judiciaire d'une décision d'un ministre d'assumer l'administration provisoire d'un centre hospitalier en application de la loi?

HISTORIQUE PROCÉDURAL

Le 13 mars 1991
Cour supérieure du Québec
(Grenier J.C.S.)

Requête des intimés en jugement déclaratoire
accueillie en partie

Le 5 mars 1993
Cour d'appel du Québec
(Tyndale, Chevalier [*ad hoc*]
et Moisan [*ad hoc*], J.J.C.A.)

Appel rejeté

Le 3 mai 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Les Entreprises Raymond Denis Inc.

c. (23494)

Procureur général du Québec et Ville de Val-Bélair (Qué.)

NATURE DE LA CAUSE

Droit administratif - Droit municipal - Droit de l'environnement - Législation - Injonction interlocutoire - Droits acquis - Dans les cas où un exploitant d'une carrière-sablière prétend détenir des droits acquis, écartant de ce fait la nécessité d'obtenir un certificat d'autorisation pour l'exploitation de son entreprise, le juge à qui l'on demande l'octroi d'une injonction interlocutoire visant à faire cesser l'exploitation de l'entreprise, doit-il examiner la balance des inconvénients? - Application de l'article 22 de la *Loi sur la qualité de l'environnement*, L.R.Q., ch. Q-2.

HISTORIQUE PROCÉDURAL

Le 23 mai 1991
Cour supérieure du Québec
(Larouche J.C.S.)

Requête des intimés en injonction interlocutoire
rejetée

Le 5 mars 1993
Cour d'appel du Québec
(Bisson, J.C.Q., Tourigny
et Moisan [*ad hoc*], J.J.C.A.)

Appel des intimés accueilli

Le 3 mai 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

MAY 21, 1993 / LE 21 MAI 1993

CIBA-GEIGY CANADA LTD. - and - **APOTEX INC.** - AND BETWEEN - **CIBA-GEIGY CANADA LTD.** -
and - **NOVOPHARM LIMITED** (Ont.) (22251-22252)

CORAM: La Forest, L'Heureux-Dubé, Gonthier, Iacobucci and Major JJ.

The application by the appellant Ciba-Geigy Canada Ltd. for re-hearing on the question of costs is granted.

La requête de l'appelante Ciba-Geigy Canada Ltd. visant à obtenir une nouvelle audition sur la question des dépens est accordée.

MAY 27, 1993 / LE 27 MAI 1993

22971 JOHN ANTHONY HOOGENRAAD - v. - JOHN IANNONE (B.C.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Procedural law - Actions - Damages - Evidence - Claim for damages for injuries sustained in a motor vehicle accident - Past loss of income - Respondent's claim based on unreported income - Challenge to past wage loss award founded upon *maxim ex turpi causa non oritur actio* - Whether taking unreported income into account in calculating past wage loss is to allow recovery which ought to be barred on the grounds of public policy.

23343 THE UNITED STATES OF AMERICA - v. - MR. PIERRE DOYER (Que.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

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.

23321 QUOC DUNG TRAN - v. - HER MAJESTY THE QUEEN (Crim.) (N.S.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Procedural law - Trial - Evidence - Defence - Identification - Applicant, a native of Viet Nam, was convicted on a charge of sexual assault by the County Court of Nova Scotia - Applicant appealing conviction on grounds that identification was flawed and that deficiencies in the translation of evidence deprived him of the right to be actually present at his trial - Court of Appeal for Nova Scotia dismissing appeal from conviction - Whether the Court of Appeal erred in law by holding that failure to provide the Applicant with translation of all of the evidence and of the entire trial did not deny the Applicant his right to be present throughout the trial and of his right to make full answer and defence.

23384 REGINA - v. - ROBERT LORNE HEYWOOD (B.C.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Statutes - Offenses - Interpretation - Respondent convicted of sexual assault charged with offence under s. 179(1)(b) of the *Criminal Code* - Provincial Court of British Columbia holding that s. 179(1)(b) contrary to ss. 7 and 11(d) of the *Charter* but a reasonable limit under s. 1 - Provincial Court convicting Respondent - Supreme Court of British Columbia dismissing Respondent's appeal - Court of Appeal for British Columbia allowing Respondent's appeal - Whether the Court of Appeal erred in the meaning given to the word "loitering" in s. 179(1)(b) of the *Criminal Code* - Whether the Court of Appeal erred in holding that lack of provision for notice is a constitutional defect of s. 179(1)(b) and that s. 19 of the *Criminal Code* did not apply - Whether the Court of Appeal erred in assuming or finding that s. 179(1)(b) violated ss. 7 and 11(d) of the *Charter* - Whether the Court of Appeal erred in

finding that s. 179(1)(b) was not a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society within the meaning of s. 1 of the *Charter*.

22964LARRY CARLSTON - v. - HER MAJESTY THE QUEEN (Crim.) (N.B.)

CORAM:The Chief Justice and McLachlin and Major JJ.

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

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Appeal - Statement to undercover police officer - Voir dire - Applicant seeking to withdraw his guilty pleas on the grounds that his rights under ss. 7 and 10(b) of the *Charter* were denied - Whether the New Brunswick Court of Appeal erred in law in holding that the trial judge did not err in holding that the statements obtained from the Applicant by the undercover police officer were admissible and that there was no violation of the Applicant's rights under s. 7 and s. 10(b) of the *Charter* - Whether the Court of Appeal erred in law in holding that the Applicant failed to establish any valid ground for the withdrawal of his guilty pleas - Whether or not the state can use undercover police officers when attempting to obtain admissions from a person who is in custody regarding other criminal matters without giving that person the option to remain silent and his right to retain and instruct counsel without delay.

23387JAMES DONALD WILLIAMS - v. - HER MAJESTY THE QUEEN (Crim.) (Ont.)

CORAM:The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Right to retain and instruct counsel under s. 2(c)(ii) of the *Canadian Bill of Rights* and s. 10(b) of the *Charter* - Applicant charged with refusing without a reasonable excuse to provide a breath sample contrary to s. 254(5) of the *Criminal Code* - Whether the majority of the Court of Appeal erred in law in holding that the infringement of an accused person's right to retain and instruct counsel within s. 2(c)(ii) of the *Canadian Bill of Rights* and s. 10(b) of the *Charter* does not provide a "reasonable excuse" or a common law defence for failing or refusing to provide as breath sample under s. 254(5) of the *Criminal Code*.

23398MARY TATARYN - v. - EDWARD JAMES TATARYN, Executor named in the Will of Alex Tataryn, a.k.a. Alex Tataryn and Alexander Tataryn, deceased (B.C.)

CORAM:The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Property law - Family law - Wills - Variation - Maintenance - Whether Court of Appeal failed to provide for widow appropriately in varying will - Whether it is just and equitable, under dependants' relief legislation to provide a widow with a life estate in the family assets where she contributed to their acquisition on an equal basis with her husband - What is the appropriate approach to be taken by the courts in dealing with such claims - Should the approach be examined in light of values expressed in recent matrimonial property and spousal support cases.

23375 DAUPHIN PLAINS CREDIT UNION LIMITED - v. - THE TORONTO-DOMINION BANK (Man.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Commercial law - Banks and banking operations - Bills of exchange - Contract - *Bills of Exchange Act*, R.S.C., 1985, c. B-4 - Restitution - Money paid in pursuance of illegal or void contracts - Holder in due course - Claims against wrongdoers - Did the Court of Appeal err in failing to interpret Section 165(3) of the *Bills of Exchange Act*, because the judgment substantially restricts the application of the protection afforded banks and credit unions when accepting cheques for deposit, even where such acceptance is entirely innocent? - Whether the Court of Appeal erred in failing to deal with the question of the claim for constructive trust - Whether the Court of Appeal erred in failing to deal with the question of fraud tainting the Agrifinance cheque.

23386 NORMAN WALTER RILEY - v. - HER MAJESTY THE QUEEN (Crim.) (Ont.)

CORAM: The Chief Justice and McLachlin and Major 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 - Procedural law - Trial - Appeal - Defence - Applicant convicted of sexual assault on C., a 13 year old girl, and J., a 6 year old girl, of threatening to cause bodily harm and of possessing a weapon dangerous to the public peace - Court of Appeal dismissing appeal against convictions but allowing appeal against sentence from the conviction of sexual assault on J. and reducing sentence to one year - Whether the Court

of Appeal erred in holding that the trial judge correctly exercised his discretion in refusing to allow C. to be cross-examined with respect to a prior false allegation of sexual assault against Roswell that resulted in an acquittal, thus prejudicing the Applicant in making full answer and defence contrary to ss. 7 and 11(d) of the *Charter* - Whether the Court of Appeal erred in holding that the trial judge did not err in refusing to allow Roswell to testify for the defence as to the prior false allegations of sexual misconduct made by C. against him, thus prejudicing the Applicant in making full answer and defence contrary to ss. 7 and 11(d) of the *Charter* - Whether the Court of Appeal erred in holding that, even if the trial judge's ruling was in error, that this was an appropriate case for applying the curative proviso found in s. 686(1)(b)(iii) of the *Criminal Code*, R.S.C. 1985, c. C-46.

23414 WILMOT ESTATES LTD. - v. - NORTH AMERICAN LIFE ASSURANCE COMPANY (Man.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Property Law - The *Interest Act* - Mortgages - Financing of mortgages - Mortgage renewals - Interest rates - Extensions of interest rates - Whether Court of Appeal erred in determining that there was an agreement to pay interest at 14.5% per annum.

23403 CANADIAN BROADCASTING CORPORATION and THE NATIONAL FILM BOARD OF CANADA - v. - LUCIEN DAGENAI, LÉOPOLD MONETTE, JOSEPH DUGAS and ROBERT RADFORD, and JOHN NEWTON SMITH and THOMSON NEWSPAPERS COMPANY LIMITED (Ont.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Administrative law - Prerogative writs - Injunction - Broadcasting - Right of an accused to a fair trial v. Freedom of expression - Applicant CBC restrained from broadcasting "The Boys of St Vincent" until the completion of the criminal trials of the Respondents - Whether prior restraint on the publication of a work of fiction can ever be justified as a reasonable limit on the "freedom of expression and freedom of the press and other media communication" guaranteed by s. 2(b) of the *Charter* on the basis of speculation about its possible impact in the future on potential jurors in future criminal trials - Whether the procedural foundations of an impartial jury trial considered by this Court to be effective to neutralize publicity about matters outside the courtroom in *Regina v. Vermette*, [1988] 1 S.C.R. 985, for purposes of denying a stay of proceedings, are to be considered by this Court as ineffective for purposes of a prior restraint order as granted by the Ontario Court of Appeal. Whether the prior restraint order was disproportionate to the

"incremental" threat posed by the broadcast to a fair and impartial trial and therefore was not justified within the meaning of s. 1 of the *Charter*.

23385HER MAJESTY THE QUEEN - v. - MELVIN LORNE MASON (Crim.) (N.S.)

CORAM:The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Statutes - Interpretation - Offenses - Evidence - Respondent convicted of sexual assault - Appeal Division allowing Respondent's appeal - Whether the Court of Appeal erred in ruling that the Respondent was not exercising his position of authority when he sexually assaulted the complainant - Whether the Court of Appeal erred in the interpretation of the legal meaning of exercise of authority in s. 265(3)(d) of the *Criminal Code* - Whether the Court of Appeal erred by not ruling, pursuant to s. 265(3)(d), that the complainant submitted or did not resist the sexual assault by reason of exercise of authority by the Respondent - Whether the Court of Appeal erred in holding that absence of consent by the complainant could not be inferred from the circumstances - Whether the Court of Appeal erred in that it misconstrued the legal meaning of consent - Whether the Court of Appeal erred in holding that the Applicant had not proved lack of consent beyond a reasonable doubt - Whether the Court of Appeal erred in holding that there was no evidence of lack of consent - Whether the Court of Appeal erred in that it misconstrued the meaning in law of s. 686(1)(a)(i) of the *Criminal Code*, thereby exceeding its jurisdiction under s. 686(1)(a)(i) by setting aside the conviction.

23459ALFONSO IAFOLLA - v. - HER MAJESTY THE QUEEN (Alta.)

CORAM:The Chief Justice and McLachlin 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 - *Canadian Charter of Rights and Freedoms* - Procedural law - Offenses - Evidence - Court of Queen's Bench of Alberta convicting Applicant of one count of forgery and one count of uttering a forged document under ss. 367(1) and 368(1)(a) of the *Criminal Code*, R.S.C. 1985, c. C-46 - Court of Appeal for Alberta dismissing appeal against convictions - Whether the Court of Appeal erred in dismissing the appeal in that there is uncertainty across the Courts of Appeal in Canada regarding the elements of intention to cause prejudice or deceive someone in committing a forgery and uttering a forged document - Whether the trial judge, in failing to comment on the credibility of witnesses whose evidence contradicted evidence on which he relied in convicting the Applicant, infringed the Applicant's rights under ss. 7 and 11(d) of the *Charter* - Whether the Court of Appeal erred in dismissing the appeal in that the trial judge erred in law respecting the element of intention required for uttering a forged document under s. 368 of the *Criminal Code*.

23475S.(M) - v. - S.(P.L) and THE ATTORNEY GENERAL OF BRITISH COLUMBIA (B.C.)

CORAM:The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed with costs to the Attorney General of British Columbia.

La demande d'autorisation d'appel est rejetée avec dépens au Procureur général de la Colombie-Britannique.

NATURE OF THE CASE

Family law - *Canadian Charter of Rights and Freedoms* - Criminal law - Custody - Access - Respondent obtaining custody of infant children born of incestuous relationship - Applicant seeking to overturn custody order and to challenge the validity of criminal law relating to incest - Were Applicant's *Charter* rights infringed? - Should Applicant have been granted custody of or access to his children?

23504 DAVID EDWARD FAIRFIELD - v. - HER MAJESTY THE QUEEN (Crim.) (B.C.)

CORAM:The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Evidence - Police - Admissibility of statements - Voluntariness of incriminating statement made to police - Whether the Court of Appeal erred in law in finding that the trial judge had applied the correct principles when determining the voluntariness of the Applicant's statement.

**23469 CANADIAN NORTHERN SHIELD - v. - INSURANCE CORPORATION OF BRITISH COLUMBIA - and
- FRASER VALLEY TAXI CABS LTD., and WHITE ROCK SOUTH SURREY TAXI LTD.**
(B.C.)

CORAM:The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Torts - Insurance - Motor vehicles - Causation - Insurance liability coverage - Taxi passenger expelled from taxi and subsequently killed when struck by an oncoming motor vehicle - Whether claim made against the taxi company arose out

of the ownership, use or operation of a motor vehicle so as to fall within the liability coverage provided by the Respondent and be excluded from the liability coverage of the Applicant.

23349 MONTANA BAND, Chief Leo Cattleman, Marvin Buffalo, Rema Rabbit, Carl Rabbit and Darrell Strongman, suing on their own behalf and on behalf of all other members of the Montana Indian Band, all of whom reside on the Montana Reserve No. 139 in the Province of Alberta - v. - HER MAJESTY THE QUEEN and SAMSON BAND, Chief Victor Buffalo and Larron Northwest, Roland Littlepoplar, Dolphus Buffalo, Frank Buffalo, Raymond Lightning, Stan Crane, Lawrence Saddleback, Todd (Chester) Buffalo, Arnup Louis, Lester B. Nepoose, Jim Omeasoo, and Robert Swampy, Councillors of the Samson Band, sued on their own behalf and on behalf of the members of the Samson Band of Indians and ERMINESKIN BAND, Chief Eddie Littlechild and Ken Cutarm, Gerry Ermineskin, John Ermineskin, Lester Fraynn, Brian Lee, Gordon Lee, Arthur Littlechild, Richard Littlechild, Emily Minde, Lawrence Rattlesnake, Curtis Ermineskin and Maurice Wolfe, Councillors of the Ermineskin Band, sued on their behalf and on behalf of the members of the Ermineskin Band of Indians (F.C.A.) (Ont.)

CORAM: La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is dismissed with costs, but except for disbursements, there shall be only one set of costs.

La demande d'autorisation d'appel est rejetée avec dépens, mais, sauf en ce qui concerne les débours, il n'y aura qu'un mémoire de frais.

NATURE OF THE CASE

Indians - Procedural law - Surrender of Reserve by Montana Band and members of Applicants' Bands who originated from Reserve - Montana band claiming that surrender is void - Respondent issuing Third Party notices to Applicants - Federal Court, Trial division, dismissing Applicants' application for an Order striking out the Third Party Notices - Federal Court of Appeal dismissing appeals - Whether the Federal Court of Appeal erred in holding that the third party notices were within the jurisdiction of the Federal Court - Whether the Federal Court of Appeal erred in holding that the third party notices should not be struck for failing to disclose a reasonable cause of action - Whether the Federal Court of Appeal erred in holding that the third party notices should not be struck for constituting a departure from previous pleadings - Whether the Federal Court of Appeal erred in determining that the third party notices were based on "federal law".

23323 GORNERGRAT DEVELOPMENTS LIMITED, SEAN S. AKI and SOICHIRO YAMAMOTO - v. - RYAN ROAD DEVELOPMENTS INC. (Ont.)

CORAM: La Forest, Cory and Iacobucci 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

Property law - Statutes - Interpretation - Agreements of purchase and sale - Whether there was a breach of s. 49(21) of *Planning Act, 1983*, S.O. 1983, c. I, s. 4.

23432 REVEREND BROTHER MICHAEL A. BALDASARO - v. - THE LAW SOCIETY OF UPPER CANADA
(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 - *Canadian Charter of Rights and Freedoms* - Procedural law - Actions - Appeals - Ontario Court, General Division, ordering that the Applicant's trial proceed on November 10, 1992 - Court of Appeal for Ontario ordering that the Applicant not be permitted to file any further applications until completion of trial - Whether the Courts violated the Applicant's constitutional rights, bringing the administration of justice into disrepute.

23431 SISTER JO-ANNE YVONNE TUCKER AND REVEREND BROTHER WALTER A. TUCKER - 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 - *Canadian Charter of Rights and Freedoms* - Procedural law - Actions - Appeals - Applicants charged with drug offenses - Provincial Court of Ontario committing Applicants to stand trial - Supreme Court of Ontario dismissing Applicants' application attacking their committal to stand trial - District Court of Ontario refusing to quash the committal and staying proceedings pending disposition of appeal - Court of Appeal for Ontario dismissing appeal - Court of Appeal dismissing second appeal - Supreme Court of Canada dismissing applications for leave to appeal of both appeals - Ontario Court, General Division, dismissing Applicants' application claiming that the Court has no jurisdiction and ordering that the Applicants' trial proceed on February 15, 1993 - Court of Appeal for Ontario dismissing application to quash decision of the Ontario Court (General Division) and ordering that the Applicants not be permitted to file any further applications until completion of trial - Whether the Courts violated the Applicants' constitutional rights, bringing the administration of justice into disrepute.

23464 HER MAJESTY THE QUEEN - v. - 311326 ALBERTA LTD. AND THOMAS O. DAVIS (Crim.) (Alta.)

CORAM:La Forest, Cory and Jacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Taxation - Section 231.2(1) of the *Income Tax Act*, - Whether the Court of Appeal erred in holding that an inquiry into the collection of outstanding tax liability does not constitute a serious and genuine inquiry into tax liability within the meaning of the *James Richardson and Sons Ltd. v. M.N.R.* case, [1984] 1 S.C.R. 614 - Whether the Court of Appeal erred in holding that requirements issued for the purpose of obtaining information as to the collection of outstanding tax liability are not issued for a purpose relating to the administration or enforcement of the *Income Tax Act*.

**23363 CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1159 - v. - RESTIGOUCHE SENIOR
CITIZEN'S HOME INC. (N.B.)**

CORAM:La Forest, Cory and Jacobucci 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

Labour law - Statutes - Interpretation - Arbitration - Collective agreement - Employee dismissed without explanation - Arbitration Board allowing Applicant's grievance - Court of Queen's Bench of New Brunswick allowing application for judicial review and quashing Arbitrator's decision - Court of Appeal for New Brunswick dismissing appeal - Whether a matter respecting the interpretation, application, administration or alleged violation of a Collective Agreement can be removed from the statutory requirement of Arbitration, and whether an Arbitrator has the authority to consider void any provision of a Collective Agreement which precludes access to Arbitration provisions established for the resolution of differences arising under a Collective Agreement - Whether the majority of the Court of Appeal erred in finding that the Arbitration Tribunal wrongfully held that the matter of the discharge of a probationary employee was an arbitrable matter under s. 55 of the *Industrial Relations Act*, R.S.N.B. (1973), c. I-4 - Whether the Court of Appeal for New Brunswick erred in adopting and confirming the decision of the trial judge that there was no rational basis for the decision of the Arbitration Tribunal.

**23352 CANADIAN BROADCASTING CORPORATION - v. - NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES AND TECHNICIANS (Ont.)**

CORAM:La Forest, Cory and Jacobucci 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

Labour law - Statutes - Interpretation - Arbitration - Collective agreement - Whether substituting new equipment for old while using the same technology constitutes technological change pursuant to ss. 51 to 55 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 - Type of wording required in the agreement to effect the exemption provided at s. 51(2) of the *Code* - Whether the "wrong question" test set out in *Metropolitan Life Insurance Co. v. I.U.O.E., Local 796*, [1970] S.C.R. 425, is applicable - Whether the Court of Appeal erred in not finding an error in the Divisional Court's judgment - Whether the Court of Appeal erred in not finding that the Divisional Court had erred when it substituted its own interpretation of article 35A - Did the Arbitrator give a patently unreasonable construction to article 35A? - Whether the Court of Appeal erred in holding that the Applicant is bound both by article 35A and by the technological provisions of the *Code*.

23200JOHN N. LAXTON, O.C., BARRISTER AND SOLICITOR PRACTISING IN PARTNERSHIP IN THE FIRM OF LAXTON, PIDGEON & COMPANY AND THE SAID LAXTON, PIDGEON & COMPANY - v. - COMMONWEALTH INVESTORS SYNDICATE LTD. (B.C.)

CORAM:La Forest, Cory and Iacobucci 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

Commercial law - Barristers and solicitors - Contracts - Interpretation - Contingency fee agreement - Respondent applying to cancel agreement pursuant to s. 99 of the *Barristers and Solicitors Act*, R.S.B.C. 1979, c. 26 and clause 10 of the agreement - Supreme Court of British Columbia holding that agreement is fair and remitting matter for determination on the issue of reasonableness - Court of Appeal for British Columbia dismissing appeal - Applicants' application for judgment dismissing the Respondent's action dismissed by the Supreme Court - Court of Appeal dismissing appeal - Whether the Court of Appeal erred in holding that the rights that the Respondent sought to pursue were not inconsistent rights - Whether the Court of Appeal erred in holding that issuance of a writ and settlement did not constitute election - Whether the Court of Appeal erred in holding that only the Trustee could raise the issue of double recovery - Whether the Court of Appeal erred in holding that the Respondent could challenge fairness and reasonableness under clause 10 of the agreement, notwithstanding election.

23406LOIS CORMIER and GUY CORMIER - v. - IAN ROBERT DIXON and DONALD R. CLARK (N.B.)

CORAM:La Forest, Cory and Iacobucci 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

Procedural law - Actions - Civil Procedure - Limitations - Rules of Court of New Brunswick - Striking out of pleading on basis it showed no reasonable cause of action - Whether the Court of Appeal of New Brunswick erred in striking the pleading or claim on the grounds that there was no reasonable cause of action disclosed - Whether Court of Appeal of New Brunswick erred in not permitting an amendment to a pleading which disclosed a reasonable cause of action.

23287CHARLES R. BELL LIMITED - v. - HER MAJESTY THE QUEEN (F.C.A.) (Nfld.)

CORAM:La Forest, Cory and Jacobucci 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

Taxation - Assessment - Applicant receiving \$300,000.00 following the termination of distributorship agreements - Applicant deducting amount as capital payment - Minister of National Revenue holding that amount is income payment - Federal Court, Trial Division dismissing Applicant's appeal - Federal Court of Appeal dismissing Applicant's appeal - Whether the Federal Court, Trial Division, and the Federal Court of Appeal erred in holding that the test in *Commissioners of Inland Revenue v. Fleming & Co. (Machinery) Ltd.* (1951), 33 T.C. 57 (Ct. of Sess.) applies to the entire business and undertaking of the Applicant rather than to the separate operating division of the Applicant which carried on the business of distributing products of Outboard Marine Corporation Ltd. and which was materially crippled and ultimately destroyed by the surrender of the rights and advantages on cancellation of the distributorship agreements granted to the Applicant by Outboard Marine Corporation Ltd.

23356SA MAJESTÉ DU CHEF DU QUÉBEC - v. - ONTARIO SECURITIES COMMISSION, COMMITTEE FOR THE EQUAL TREATMENT OF ASBESTOS MINORITY SHAREHOLDERS and SOCIÉTÉ NATIONALE DE L'AMIANTE (Ont.)

CORAM:La Forest, Cory and Jacobucci 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

Procedural law - Administrative law - Actions - Jurisdiction - Crown - Respondent Securities Commission issuing Notice of Hearing to examine transactions entered into by the Applicant - Extent of jurisdiction of Ontario tribunal to inquire into and make orders in respect of conduct of Quebec government outside of Ontario that has only incidental effects within Ontario - Does Quebec have Crown immunity from the *Securities Act*, R.S.O. 1980, c. 466 in relation to this transaction?

23314DAVID MURRAY-AUDAIN - v. - MARY JANE JACKSON (Ont.)

CORAM:La Forest, Cory and Jacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Property law - Constructive trust - Family law - Procedural law - Whether Court of Appeal erred in failing to consider or to follow precedents - Whether trial judge exhibited signs of bias - Whether Respondent converted Applicant's property - Whether there was a constructive trust, or in the alternative, an equitable mortgage - Whether Respondent discharged burden of proving defence of repayment.

**23317 JOHN LEONARD - v. - GARY NICHOLLS, INSPECTOR & JOHN SHOVELLER, CHIEF OF POLICE
& NIAGARA REGIONAL BOARD OF COMMISSIONERS OF POLICE** (Ont.)

CORAM:La Forest, Cory and Jacobucci JJ.

The application for extension of time is granted. The application for leave to appeal is dismissed with costs.

La demande de prorogation de délai est accordée. La demande d'autorisation d'appel est rejetée avec dépens.

NATURE OF THE CASE

Torts - Negligence - Professional negligence - Breach of statutory duty - Whether the Court of Appeal erred in finding that s. 11 of the *Public Authorities Protection Act*, R.S.O. 1980, c. 406 had been contravened.

**23408 ADITYA VARMA - v. - CANADA LABOUR RELATIONS BOARD, CANADA POST CORPORATION
and THE CANADIAN UNION OF POSTAL WORKERS** (F.C.A.) (Ont.)

CORAM:La Forest, Cory and Jacobucci JJ.

The application for leave to appeal is dismissed with costs to The Canadian Union of Postal Workers.

La demande d'autorisation d'appel est rejetée avec dépens en faveur du Syndicat des postiers du Canada.

NATURE OF THE CASE

Administrative law - Judicial review - s. 28 application - Extension of time - Whether Court of Appeal erred in failing to grant extension of time on second s. 28 application - Whether Court of Appeal erred in finding that the Applicant had no arguable case.

23288 FLOYD EDWARD ROSEBUSH - v. - HER MAJESTY THE QUEEN (Crim.) (Alta.)

CORAM:La Forest, Cory and Jacobucci 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 - Narcotics - Did the Court of Appeal for the Province of Alberta err in ruling that an Authorization to intercept private communications should be granted for the purpose of obtaining independent confirmatory or corroborative evidence already being obtained by other investigative procedures? - Did the Court of Appeal for the Province of Alberta err in its application of Section 686 of the *Criminal Code* to the problems that arose with the jurors during the course of the trial, keeping in mind the provisions of Section 7 of the *Charter of Rights and Freedoms*?

23312 HER MAJESTY THE QUEEN - v. - ROSS NELSON MATHESON (Crim.)

CORAM:La Forest, Cory and Jacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Right to counsel - Whether the Court of Appeal erred in law in holding that the caution made pursuant to s. 10(b) of the *Charter* was inadequate and failed to properly inform the Respondent of his right to duty counsel through the Provincial Legal Aid Plan as mandated by the Supreme Court of Canada in *R. v. Brydges*, [1990] 1 S.C.R. 190, notwithstanding the fact that at the date of the offence there was no system of duty counsel available in the Province of Prince Edward Island - Whether the Court of Appeal erred in law in holding that the evidence pertaining to the refusal of the breathalyzer demand should be excluded pursuant to s. 24(2) of the *Charter of Rights and Freedoms*.

23267 TOUCHE ROSS & CO. - v. - HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AND THE SUPERINTENDENT OF BROKERS (B.C.)

CORAM:La Forest, Cory and Jacobucci 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

Tort - Negligence - Procedural law - Actions - Duty of care - Liability of public regulatory authorities for economic loss - Does the Superintendent of Brokers owe a duty of care to those suffering loss as a result of their actions - Duty of Superintendent to accountants preparing financial statements later included in a prospectus - Does Applicant have cause of action against Respondents?

23268STEPHEN KRIPPS AND OTHERS - v. - HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AND THE SUPERINTENDENT OF BROKERS (B.C.)

CORAM:La Forest, Cory and Jacobucci 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

Tort - Negligence - Procedural law - Actions - Duty of care - Liability of public regulatory authorities for economic loss - Whether the British Columbia Court of Appeal erred in law in sustaining the learned Trial Judge's dismissal of the Plaintiffs' claim against the Defendants, Her Majesty the Queen in Right of the Province of British Columbia and The Superintendent of Brokers on the basis that the said Defendants owed no duty of care to the Applicants.

23207THE T. EATON CO. LIMITED - v. - GEORGE PRINCE, FAYE BROWN, WILLIAM CHARLTON, FRED CACKETTE, AVRIL ROY and DARALEE RICHMOND (B.C.)

CORAM:La Forest, Cory and Jacobucci 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

Commercial law - Contracts - Damages - Respondent becoming totally disabled following termination of contract of employment with the Applicant - Supreme Court of British Columbia holding that reasonable notice was given to Respondents - Supreme Court of British Columbia granting disability benefits to Respondent but not for period during which disability occurred - Court of Appeal for British Columbia allowing Respondent's appeal - Whether an employer, without breaching the contract of employment, can terminate the contract by giving reasonable working notice of termination or by giving the employee a reasonable sum of money in lieu of notice - Whether the Court of Appeal erred in awarding damages for loss of disability benefits for a disability which occurred after the employment was terminated, but before the end of the period that would have constituted reasonable notice, when the employer had terminated him and had paid the employee a proper sum in lieu of notice.

23178CYRIL PATRICK PROSPER - v. - HER MAJESTY THE QUEEN (Crim.) (N.S.)

CORAM:La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms, s. 10(b), 24 - Criminal law - Defence - Respondent charged with failing the breathalyzer contrary to s. 253(b) of the *Criminal Code*, R.S.C. 1985, c. C-46, and with impaired driving contrary to s. 253(a) of the *Criminal Code* - Respondent unable to contact a legal aid lawyer or afford a lawyer - Respondent acquitted by the Provincial Court of Nova Scotia - Applicant's appeal allowed - Whether an appeal lies to the Supreme Court of Canada under s. 691(2)(a) of the *Criminal Code*.

23402 CHEVRON STANDARD LIMITED and CHEVRON CANADA RESOURCES LIMITED - v. - GLADYS DEMARS, of the Postal District of Westhope, in the State of North Dakota, one of the United States of America, Housewife, as Administratrix of the Estate and Effects of WILLIAM JENNINGS HILL, formerly of the Postal District of Westhope, in the State of North Dakota, one of the United States of America, Retired Farmer, Deceased (Man.)

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

Property law - Estoppel - Unjust enrichment - Mines and minerals - Real rights 0 Power of attorney - Lease - Land titles - Estate by estoppel - Trusts - Damages - Power of attorney granted by mentally incompetent person - Lease of mineral rights given by attorney - Whether Court of Appeal erred in holding power of attorney and lease void - Whether Court of Appeal erred concerning estoppel, estate by estoppel, constructive trusts, damages.

23361 HER MAJESTY THE QUEEN IN RIGHT OF CANADA and THE MINISTER OF EMPLOYMENT AND IMMIGRATION - v. - REZA (Ont.)

CORAM:La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Constitutional law - *Canadian Charter of Rights and Freedoms* - Administrative law - Courts - Jurisdiction - Interpretation - Availability of concurrent jurisdiction - Whether a provincial superior court has a discretion to decline to exercise its

jurisdiction to hear a constitutional challenge brought under the *Charter of Rights and Freedoms* ("Charter") to sections of the *Immigration Act* where Parliament has provided by means of the *Federal Court Act* and the *Immigration Act* a comprehensive scheme for immigration law which contemplates that immigration matters will be dealt with by the Federal Court of Canada - Whether a provincial superior court has a discretion to decline to exercise its jurisdiction to hear a *Charter* challenge to sections of the *Immigration Act* where all the issues which the Respondent raises are issues which he could have raised in his initial judicial proceedings before the Federal Court of Canada - Whether a provincial superior court has concurrent jurisdiction to review the decision of a federal board, commission or tribunal in every case where a *Charter* issue is raised or is the jurisdiction of a provincial superior court limited to hearing those cases which involve only an express challenge to the constitutionality of a federal statute or regulation.

23276STEINBERG INC. c. SOCIÉTÉ DES ALCOOLS DU QUÉBEC (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Couronne - Droit commercial - Droit administratif - Législation - Créancier et débiteur - Interprétation - Jugements et ordonnances - Application de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. (1985), ch. C-36, à un mandataire de la Couronne - La Couronne ou ses mandataires sont-ils soumis aux dispositions de la *Loi sur les arrangements avec les créanciers* (L.A.C.C.) par application de la théorie de la déduction nécessaire et/ou de la théorie de la complémentarité? - Sont-ils soumis aux ordonnances de sursis prononcées par un tribunal?

23238PROMAFIL CANADA LTÉE c. MUNSINGWEAR, INC. (C.A.F.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit des biens - Marques de commerce - Action en radiation en vertu du par. 18(1) de la *Loi sur les marques de commerce* pour défaut de caractère distinctif ou pour abandon - L'adoption d'une marque dans une forme différente de celle qui fait l'objet d'un enregistrement constitue-t-elle emploi de cette marque enregistrée? - Du non-emploi volontaire d'une marque dans sa forme enregistrée, peut-on conclure à son abandon? - Le critère pour déterminer des conséquences de modifications à une marque sur l'identité de celle-ci est-il celui de l'américaine "same continuing commercial impression", celui de la réminiscence imparfaite du consommateur moyen retenu par la Cour d'appel ou celui de l'altération du caractère distinctif que prévoit la Convention de Paris? - Lorsque l'interprétation de la preuve est le seul point en litige, une cour d'appel peut-elle, en l'absence d'une erreur manifeste et dominante, du juge de première instance, intervenir pour substituer ses vues personnelles à celles du juge de première instance?

23310 VICTORIA HENRIETTA CARATUN v. VICTOR CARATUN (Ont.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier 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 - Division of property - Divorce - Support - Whether the Court of Appeal erred in failing to hold that the Respondent's licence to practise dentistry is property within the meaning of s. 4(1) of the *Family Law Act* - Did the Court of Appeal err in failing to enter a judgment in favour of the petitioner in the amount of \$79,673.00 representing the equalization payment owing to the petitioner once it was determined that the petitioner's interest in the licence, prior to equalization, was \$30,000.00? - Did the Court of Appeal err in concluding that if it had determined that the professional licence was property, then it would have been appropriate to order an unequal division of net family property pursuant to s. 5(6) of the *Family Law Act*?

23331 FARM CREDIT CORPORATION v. GILLES ROGER DUPUIS and ROLAND ARTHUR DUPUIS (Sask.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier 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

Administrative law - Commercial law - Statutes - Property law - Mortgage - Interpretation - Contractual relations between secured lenders and farmers - Whether the legislature intended to deny a secured lender of farm land the right to enforce a mortgage against the homestead when the mortgagee elects to proceed to the foreclosure order stage against the non-homestead land alone - Whether the Court of Appeal in the majority decision erred in law by holding that section 26(2) of *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S 17.1, does not apply unless the homestead land was included in the foreclosure action - Whether the Court of Appeal in the majority decision erred in law in giving no effect or meaning to an amendment to section 26(2) of *The Saskatchewan Farm Security Act* made on July 17, 1989 - Whether the Court of Appeal in the majority decision erred by referring or linking operationally section 44 of *The Saskatchewan Farm Security Act* in interpreting the meaning and effect of section 26 of the same Act - Whether the provisions of Part II of *The Saskatchewan Farm Security Act* are invalid or inoperative as they relate to Farm Credit Corporation on constitutional grounds.

23330 FARM CREDIT CORPORATION v. MARTIN WALTER DUPUIS and ANN MARIE DUPUIS (Sask.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier 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

Administrative law - Commercial law - Statutes - Property law - Mortgage - Interpretation - Contractual relations between secured lenders and farmers - Whether the legislature intended to deny a secured lender of farm land the right to enforce a mortgage against the homestead when the mortgagee elects to proceed to the foreclosure order stage against the non-homestead land alone - Whether the Court of Appeal in the majority decision erred in law by holding that section 26(2) of *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S 17.1, does not apply unless the homestead land was included in the foreclosure action - Whether the Court of Appeal in the majority decision erred in law in giving no effect or meaning to an amendment to section 26(2) of *The Saskatchewan Farm Security Act* made on July 17, 1989 - Whether the Court of Appeal in the majority decision erred by referring or linking operationally section 44 of *The Saskatchewan Farm Security Act* in interpreting the meaning and effect of section 26 of the same Act - Whether the provisions of Part II of *The Saskatchewan Farm Security Act* are invalid or inoperative as they relate to Farm Credit Corporation on constitutional grounds.

22750 LES BÂTIMENTS FAFARD INC./FAFARD BUILDING SYSTEM INC., BÂTIMENT FAFARD INTERNATIONAL INC., FIB-FAB LTÉE, JULES FAFARD, GILLES LECLAIR ET JOSÉE BOUTHOT C. SA MAJESTÉ LA REINE, PROCUREUR GÉNÉRAL DU CANADA, L'HONORABLE ELMER MCKAY, MONSIEUR LE JUGE CHARLES HOGUE, MADAME LE JUGE GISÈLE COUTURE, GILBERT CACCIA, M. CARRIÈRE, ANDRÉ CAMILLIERI, L.S.P. DION, B. CARRÉ, P. FLUET, C. MERCIER, J.G. RÉMILLARD, GILLES LÉONARD, D. BLAIN, M. DUVAL, Y. LACOSTE, G. MORIN, F. SAVARD, E. DUPONT, A. BOULET, M. RIVARD, L. DAVID, M. BISSONNETTE, J.P. DESBIENS, A. GRIFFIN, C. CÔTÉ, D. RACINE, A. RIVARD, D. HOULE, A. BOULET, G. VITA, Y. BOULANGER, C. PAUL, P. ARSENAULT, M. RÉGIMBALD, L. GAGNON, P. GAUTHIER, A. FAUTEUX, GUY PICARD, H. LÉBOEUF, D. GERMAIN, J.R. ANCTIL, J.G. NADEAU ET CLÉMENT CÔTÉ
(Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Saisie - Interprétation - Mandats de perquisition délivrés par suite de violations de la *Loi sur la taxe d'accise*, S.R.C. 1970, ch. E-13 - Quel est le critère approprié pour l'exercice par la Cour supérieure de son pouvoir de surveillance et de contrôle à l'encontre de perquisitions autorisées par mandats émis par un juge de paix en vertu de l'article 487 du *Code criminel*, L.R.C. (1985), ch. C-46, dans le contexte d'une requête en *certiorari* et pour réparations en vertu de l'article 24 de la *Charte* pour violations des droits constitutionnels garantis par les articles 7 et 8 de

la *Charte* - Qu'en est-il de la validité constitutionnelle de l'article 487 *C. cr.* eu égard aux exigences des articles 7 et 8 de la *Charte*, compte tenu de l'arrêt *Hunter c. Southam Inc.*, [1984] 2 R.C.S. 145.

23350 SOCIÉTÉ RADIO-CANADA c. MONSIEUR LE JUGE STEPHEN CUDDIHY, LE PROCUREUR GÉNÉRAL DU QUÉBEC, MONSIEUR RENÉ FORTIN, MONSIEUR RICHARD BÉGIN, MONSIEUR PIERRE LAMARBRE ET LE MINISTRE DE LA SÉCURITÉ PUBLIQUE (Crim.) (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit criminel - Saisie - Législation - Interprétation - Perquisition dans les locaux d'un média - Saisie de cassettes filmées lors de la crise d'Oka - Caractère privé des objets saisis - Obligation des policiers lors d'une demande de détention des biens saisis en vertu de l'art. 490(1) *C.cr.* - Application de l'art. 490(2) qui vise la prolongation de la détention des biens.

23345 LE PROCUREUR GÉNÉRAL DU QUÉBEC, RÉGIE DES TÉLÉCOMMUNICATIONS DU QUÉBEC et ANDRÉ DUFOUR et JEAN-MARC DEMERS c. TÉLÉPHONE GUÈVREMONT INC. (Qué.)

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

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

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*?

23404 D^F ANDRÉ FERLAND c. D^{TS} RICHARD LACHANCE, PIERRE LEMELIN et SERGE PIGEON, ÈS QUALITÉ DE MEMBRES DU COMITÉ DE DISCIPLINE, et D^{TS} SOHEIL EID, MICHEL DUNBERRY, GHASSAN KIWAN, JEAN-PIERRE BOUCHER, JEAN-LUC DUCHARME, JULES MARTIN et M. MAURICE BLAIS, ÈS QUALITÉ DE MEMBRES DU COMITÉ EXÉCUTIF DU CONSEIL DES MÉDECINS, DENTISTES et PHARMACIENS, et JACQUES BEAUPRÉ, LUCILLE BIENVENUE, MAURICE BOURASSA, MARTIN LABRIE, JACQUES LEFEBVRE, ANDRÉ LESSARD, GERMAIN ROBERGE, PIERRE BOISSONNEAU, JEAN-PAUL PELLETIER, MAURICE BLAIS, D^F SOHEIL EID et D^F SERGE PIGEON, ÈS

**QUALITÉ DE MEMBRES DU CONSEIL D'ADMINISTRATION DU CENTRE
HOSPITALIER RÉGIONAL DE LANAUDIÈRE et CENTRE HOSPITALIER RÉGIONAL
DE LANAUDIÈRE** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit administratif - Procédure - Procédure civile - Droit des professions - Médecins et chirurgiens - Brefs de prérogative - Contrôle judiciaire - Compétence - *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12 - La violation des règles de justice naturelle constitue-t-elle un défaut ou un excès de juridiction au sens du premier alinéa de l'article 846 du *Code de procédure civile*, compte tenu notamment de l'article 23 de la *Charte québécoise*? - La Cour d'appel du Québec a-t-elle commis une erreur en concluant que même si la violation des règles de justice naturelle constituait un défaut ou un excès de compétence, la Cour supérieure conservait le pouvoir discrétionnaire de refuser l'évocation lorsque le jugement entrepris était susceptible d'appel - L'appel qui ne suspend pas l'exécution de la décision d'un tribunal inférieur est-il un "recours approprié" justifiant la Cour supérieure d'user de son pouvoir discrétionnaire pour refuser l'évocation en cas de défaut ou d'excès de compétence?

**23419 EMMANUEL Y. OSEI-TWUM v. FRANCIS WILLIAMS, CYNTHIA WILLIAMS, DENISE WILLIAMS
and ANDREW WILLIAMS, minors by their litigation guardian, FRANCIS WILLIAMS** (Ont.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Torts - Negligence - Actions - Conflict of laws - Motor vehicle liability insurance - Choice of law rules which govern in actions brought in one province as a result of tort committed in another province - Whether laws of the province of Ontario, where applicant and respondents lived at time of accident, are applicable to cause of action rather than laws of province in which accident occurred (Quebec) - Whether laws of the province of Ontario apply only if actions of applicant are punishable according to Quebec laws - Whether laws of Quebec apply to cause of action regardless of whether actions of applicant were punishable according to Quebec laws.

**23417 VILLE DE LAVAL, VILLE D'ANJOU, VILLE D'OUTREMONT, VILLE MONT-ROYAL, VILLE DE
MONTREAL-NORD, VILLE DE BEACONSFIELD, VILLE CÔTE ST-LUC, VILLE DE
POINTE-CLAIRE, VILLE DE VERDUN, VILLE LASALLE, VILLE DE VARENNES, VILLE
DE SAINT-BRUNO DE MONTARVILLE c. VILLE DE MONTRÉAL** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Procédure - Procédure civile - Contrôle judiciaire - Législation - Interprétation - Requête pour jugement déclaratoire des demandresses rejetée par la Cour supérieure du Québec - Appel rejeté par la Cour d'appel du Québec - Est-ce que la Cour d'appel a erré en droit en confondant le pouvoir de contrôle judiciaire de la Cour supérieure avec le pouvoir de modification ou de régulation qui est confié par le législateur à la Commission municipale par l'art. 64.4 de la *Loi sur la qualité de l'environnement*, L.R.Q. 1977, c. Q-2 - Est-ce que la Cour d'appel a erré en droit en statuant que les art. 64.1 à 64.11 de la *Loi sur la qualité de l'environnement*, qui est une loi d'ordre public, sont nécessairement incompatibles avec les art. 244.1 à 244.10 de la *Loi sur la fiscalité municipale*, L.R.Q. 1977, c. F-2.1 - Est-ce que la Cour d'appel a erré en droit en décidant que l'art. 454 du *Code de procédure civile* exige non pas un affidavit au soutien de la requête, mais autant d'affidavit qu'il y a de parties qui se sont jointes à la requête.

23445 RÉJEAN GAGNON and CYRVILLE LAVOIE v. TINA LUCAS and JUSTIN GAGNON, by their litigation guardian, HEATHER GAGNON, and HEATHER GAGNON personally (Ont.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Torts - Conflict of laws - Negligence - Motor vehicles - Jurisdiction - The right of Ontario residents to be compensated by an Ontario court for personal injuries occasioned to them in an automobile collision in Québec - Whether the fact that the defendant to a crossclaim resided in the place of the wrong, although all parties to the main action reside in the *forum*, renders the case distinguishable from *McLean v. Pettigrew*, [1945] S.C.R. 62 - Whether in an action concerning a tort in a province other than the province of the forum, the forum Court should apply a choice of law that satisfies the double actionability test originally enunciated in *Phillipps v. Eyre*; (1970), L.R. 6 Q.B. 1 (Ex. Ch.).

23453 GELCO EXPRESS LIMITED v. THE TORONTO-DOMINION BANK (Ont.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier 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

Commercial law - Contract law - Damages - Insurance - Estoppel - Respondent entering into transportation agreement with Applicant for the transport of documents from its branches to its Toronto head office - Respondent claiming damages from the loss of two bags of non-negotiable banking documents - Supreme Court of Ontario dismissing Respondent's action - Court of Appeal for Ontario allowing Respondent's appeal - Whether the Court of Appeal for Ontario erred in its judgment.

23196GARY PETER KNOPP - v. - HER MAJESTY THE QUEEN (Crim.) (Alta.)

CORAM:La Forest, Cory and Jacobucci JJ.

The application for reconsideration of the application for leave to appeal is dismissed.

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

23311GEORGE LAWRENCE NEILL - v. - HER MAJESTY THE QUEEN (Crim.) (Alta.)

CORAM:La Forest, Cory and Jacobucci JJ.

The application for reconsideration of the application for leave to appeal is dismissed.

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

MOTIONS

REQUÊTES

14.5.1993

Before / Devant: MAJOR J.

Motion to extend the time in which to serve and file a factum in response

Darren Lyle Tapaquon

v. (22926)

Her Majesty The Queen (Sask.)

Requête en prorogation du délai de signification et de production d'un mémoire en réponse

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to May 21, 1993.

17.5.1993

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file a factum

The Corporation of the City of Peterborough

v. (22787)

Kenneth Ramsden (Ont.)

Requête en prorogation du délai de production d'un mémoire

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to May 6, 1993

17.5.1993

Before / Devant: GONTHIER J.

Motion to file an amended factum

Her Majesty the Queen

v. (22660)

D.O.L. (Man.)

Requête en vue de produire un mémoire modifié

I.G. Whitehall, Q.C. and Kimberly Prost, for the motion.

Henry S. Brown, Q.C., contra.

GRANTED / ACCORDÉE

18.5.1993

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file an intervenor's factum

Requête en prorogation du délai de production du mémoire d'un intervenant

BY/PAR: Pacific Physicians for Life Society and Pro Life Society of B.C.

With the consent of the parties.

IN/DANS: Sue Rodriguez

v. (23476)

Attorney General of Canada et al. (B.C.)

GRANTED / ACCORDÉE

19.5.1993

Before / Devant: LE JUGE GONTHIER

Requête en prorogation du délai imparti pour déposer un avis d'appel

Motion to extend the time in which to file a notice of appeal

Valery Fabrikant

Michel Ouellette, pour la requête.

c. (23589)

Sa Majesté La Reine (Qué.)

Stella Gabino, contra.

DÉFÉRÉE AUX JUGES SAISIS D'UNE ÉVENTUELLE DEMANDE POUR PERMISSION D'EN APPELER

19.5.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to state a constitutional question

Requête pour énoncer une question constitutionnelle

International Longshoremen's and Warehousemen Union et al.

With the consent of the parties.

v. (23306)

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

GRANTED / ACCORDÉE

1. Does the *Maintenance of Ports Operations Act, 1986* contravene s. 7 of the *Canadian Charter of Rights and Freedoms*?
2. If the answer to question 1 is in the affirmative, does the *Maintenance of Ports Operations Act, 1986* constitute a reasonable limit on the right to life, liberty and security of the person within the meaning of section 1 of the *Canadian Charter of Rights and Freedoms*?
3. Does the *Maintenance of Ports Operations Act, 1986* contravene s. 2(d) of the *Canadian Charter of Rights and Freedoms*?
4. If the answer to question 3 is in the affirmative, does the *Maintenance of Ports Operations Act, 1986* constitute a reasonable limit on the right to freedom of association within the meaning of section 1 of the *Canadian Charter of Rights and Freedoms*?

1. La *Maintenance of Ports Operations Act, 1986* contrevient-elle à l'art. 7 de la *Charte canadienne des droits et libertés*?
2. Si la réponse à la première question est affirmative, la *Maintenance of Ports Operations Act, 1986* constitue-t-elle une limite raisonnable au droit que chacun possède à la vie, à la liberté et à la sécurité de sa personne au sens de l'article premier de la *Charte canadienne des droits et libertés*?
3. La *Maintenance of Ports Operations Act, 1986* contrevient-elle à l'al. 2d) de la *Charte canadienne des droits et libertés*?
4. Si la réponse à la troisième question est affirmative, la *Maintenance of Ports Operations Act, 1986* constitue-t-elle une limite raisonnable au droit à la liberté d'association au sens de l'article premier de la *Charte canadienne des droits et libertés*?

20.5.1993

Before / Devant: THE REGISTRAR

Motion for acceptance of memorandum of argument on leave to appeal over 20 pages

Her Majesty The Queen

v. (23555)

Michael Pawlowski (Ont.)

DISMISSED / REJETÉE

Requête en acceptation d'un mémoire de demande d'autorisation de plus de 20 pages

With the consent of the parties.

20.5.1993

Before / Devant: GONTHIER J.

Motion for directions

Her Majesty The Queen

v. (23075)

David Angelo Grant (B.C.)

Demande pour obtenir des directives

With the consent of the respondent.

GRANTED / ACCORDÉE

25.5.1993

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the case on appeal

Robert Rowbotham and David Roblin

v. (23300 / 23302)

Her Majesty The Queen (Ont.)

Requête en prorogation du délai de signification et de production du dossier d'appel

With the consent of the parties.

GRANTED / ACCORDÉE

25.5.1993

Before / Devant: THE REGISTRAR

Motion for acceptance of memorandum of argument on leave to appeal over 20 pages

Robert Lee Ford

v. (23486)

Her Majesty The Queen (B.C.)

Requête en acceptation d'un mémoire de demande d'autorisation de plus de 20 pages

With the consent of the parties.

GRANTED / ACCORDÉE

12.5.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion on behalf of the respondent in 22542 for the relief set out in the order below

Sharon-Leigh Murphy et al.

v. (22542)

Frederick Welsh (Ont.)

and between

Lorna Stoddard

v. (22601)

Wanda Watson et al. (Ont.)

Requête présentée au nom de l'intimé, dans 22542, en vue d'obtenir le redressement énoncé dans l'ordonnance ci-dessous

Avec le consentement des parties.

GRANTED / ACCORDÉE

1. IT IS ORDERED that the respondent, Frederick Welsh, is hereby granted status as an intervener in Stoddard v. Watson at the hearing of which latter appeal the said respondent is permitted to make oral submissions of one hour based on the argument set forth in his factum filed in the case of Murphy v. Welsh.
2. AND IT IS FURTHER ORDERED that the appellants, Sharon-Leigh Murphy and Jamie Murphy are hereby granted status as interveners in Stoddard v. Watson at the hearing of which latter appeal the said appellants are permitted to make oral submissions of one hour based on the argument set forth in their factum filed in the case of Murphy v. Welsh.
3. AND IT IS FURTHER ORDERED that, at the hearing of the appeal in Stoddard v. Watson, the interveners, Hastings, Charlebois, Feltmate Fur and Delibato, are permitted to make oral submissions limited to ten minutes in total based upon the argument set forth in their factum filed in Murphy v. Welsh.
4. AND IT IS FURTHER ORDERED that the Court will hear argument on the 31st day of May, 1993 on all issues in both appeals except for the constitutional questions stated by the Chief Justice on April 29, 1993 in Muphy v. Welsh.

26.5.1993

Before / Devant: THE REGISTRAR

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

Frank Garratt Palmer

v. (23421)

Robert S. George Gray et al. (B.C.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to May 20, 1993

26.5.1993

Before / Devant: LE JUGE GONTHIER

Requête en prorogation du délai pour déposer une demande en autorisation

Mario Lussier

c. (23535)

Sa Majesté La Reine (Qué.)

Motion to extend the time in which to file an application for leave

Avec le consentement des parties.

ACCORDÉE / GRANTED Délai prorogé au 10 juin 1993.

26.5.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion for an order permitting to file a supplementary argument

Hudson's Bay Company

v. (23006)

Howard I. Wetston et al. (Ont.)

Requête en vue d'obtenir une ordonnance autorisant le dépôt d'un moyen supplémentaire

REFERRED AND THE FOLLOWING IS ORDERED:

1. THIS COURT ORDERS that the applicant be permitted to file a supplementary memorandum of argument as set out in Exhibit "B" to the Affidavit of Paul Schabas;

2. THIS COURT ORDERS that the respondents be permitted to file a supplementary memorandum of argument within fourteen days of the date of this Order;

3. THIS COURT ORDERS that there be no order as to costs.

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

25.5.1993

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

Darren Lyle Tapaqon

Norman H. Bercovich, for the appellant.

v. (22926)

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

Michael M. Vass, for the respondent.

Bernard Laprade and Peter Lamont, for the
intervener the A.G. of Canada.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Evidence - Offences - Procedural law -
Pre-trial procedure - Statutes - Interpretation -
Preliminary inquiry - Section 574 (1) and 577(b) and
(c) of the *Criminal Code*, R.S.C. 1985, c. C-46
- Crown prosecutor's authority to prefer an indictment
alleging an offence after the presiding judge at the
preliminary inquiry has committed the accused for
trial on a lesser offence - Whether the Court of Appeal
erred in its interpretation of s. 577 of the *Code*.

Nature de la cause:

Droit criminel - Preuve - Infractions - Droit de la
procédure - Procédure préalable au procès - Lois -
Interprétation - Enquête préliminaire - Articles
574(1) et 577(b) et (c) du *Code criminel*, L.R.C.
(1985), ch. C-46 - Pouvoir du substitut du procureur
général de présenter un acte d'accusation à l'égard
d'une infraction après que le juge président à
l'enquête préliminaire a renvoyé l'accusé pour subir
son procès relativement à une infraction moindre -
La Cour d'appel a-t-elle interprété erronément
l'art. 577 du *Code*?

25.5.1993

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

James Harbottle

Clayton Ruby and Paul Burstein, for the appellant.

v. (23037)

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

Lucy Cecchetto, for the respondent.

THE CHIEF JUSTICE (orally) --

LE JUGE EN CHEF (oralement) --

We need not hear from you, Ms. Cecchetto.
The appeal is dismissed, with reasons to follow.

Il ne sera pas nécessaire de vous entendre,
Me Cecchetto. Le pourvoi est rejeté avec motifs à
suivre.

26.5.1993

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

Allard Contractors Ltd.

v. (22829)

**The Corporation of the District of Coquitlam et al.
(B.C.)**

William S. Berardino, Q.C., Charles F. Willms and Helen H. Low, for the appellants.

Paul T. McGivern, James M. Lepp and Loreen M. Williams, for the respondent the Corp. of the District of Coquitlam.

E.C. Chiasson, Q.C. and S.S. Antle, for the respondent the Corp. of the District of Maple Ridge.

Linda J. Wall, for the intervener the A.G. of Canada.

George H. Copley, for the intervener the A.G. of B.C.

Michel Yves Hélie, for the intervener the A.G. for Ontario.

Monique Rousseau, pour l'intervenant le procureur général du Québec.

Nolan D. Steed, for the intervener the A.G. of Alberta.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Constitutional law - Division of powers - Municipal corporations - Taxation - Municipal by-laws imposing fees for gravel removal - Whether fees constitute indirect taxation - Whether the power granted to the provinces under section 92A(4) of the *Constitution Act, 1867*, is delegable to municipal corporations - Whether the power granted to the provinces under section 92A(4) of the *Constitution Act, 1867*, is delegable to municipal corporations is power delegable without restriction.

Nature de la cause:

Droit constitutionnel – Partage des compétences – Corporations municipales – Taxation – Règlements municipaux imposant des droits pour l'extraction de gravier – Les droits constituent-ils de la taxation indirecte? – La compétence accordée aux provinces en vertu du par. 92A(4) de la *Loi constitutionnelle de 1867* peut-elle être déléguée aux corporations municipales? – La compétence accordée aux provinces en vertu du paragraphe 92A(4) de la *Loi constitutionnelle de 1867* peut-elle être déléguée aux corporations municipales sans restriction?

27.5.1993

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

Attorney General of Canada

v. (22961)

Richard Sauvé

and between

Her Majesty The Queen

v. (22962)

Walter Stanley Belczowski (Ont.)

I.G. Whitehall, Q.C. and S.D. Clarke, for the appellant.

Harvey M. Groberman, for the intervener the A.G. of British Columbia.

Fergus J. O'Connor and R. Peter Napier, for the respondent Richard Sauvé.

Richard A. Stroppel, for the respondent Walter Stanley Belczowski.

DISMISSED WITH COSTS / REJETÉ AVEC DÉPENS

Nature of the case:

Canadian Charter of Rights and Freedoms - Civil rights - Right to vote - Federal legislation prohibiting inmates of prisons from voting in elections - Whether rights of inmates under s. 3 of the *Charter* are thereby infringed - Applicability of s. 1 of the *Charter*.

Nature de la cause:

Charte canadienne des droits et libertés - Libertés publiques - Droit de vote - Loi fédérale retirant le droit de vote aux prisonniers - Y a-t-il violation des droits reconnus aux prisonniers par l'art. 3 de la *Charte*? - Applicabilité de l'article premier de la *Charte*.

**PRONOUNCEMENTS OF APPEALS
RESERVED**

**JUGEMENTS RENDUS SUR LES
APPELS EN DÉLIBÉRÉ**

Reasons for judgment are available

Les motifs de jugement sont disponibles

Judgment rendered April 29, 1993 / Jugement rendu le 29 avril 1993

***** REVISED *****

***** RÉVISÉ *****

22399 VINCENT HALL v. JEAN HEBERT, ALSO KNOWN AS JOSEPH JEAN CLAUDE HEBERT (B.C.)

CORAM: La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Iacobucci JJ.

The appeal is allowed, the order of the Court of Appeal is set aside and the trial judgment is restored but varied to provide for an equal division of liability, with costs here and in the courts below, Sopinka J. dissenting.

Le pourvoi est accueilli, l'ordonnance de la Cour d'appel est infirmée et le jugement de première instance est rétabli avec modification toutefois prévoyant le partage de la responsabilité à parts égales, avec dépens devant notre Cour et dans les juridictions inférieures. Le juge Sopinka est dissident.

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning May 31, 1993.

ORDRE DU JOUR pour la semaine commençant le 31 mai 1993.

<u>Date of Hearing/ Date d'audition</u>	<u>NO.</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
31/05/93	27	Lorna Stoddard v. Wanda Watson (Ont.)(22601)
01/06/93	4	The Corporation of the City of Peterborough v. Mr. Kenneth Ramsden (Ont.)(22787)
01/06/93	29	A.D. v. Her Majesty The Queen (Crim.)(Ont.)(23216)
02/06/93 03/06/93	to/au 25	Her Majesty The Queen v. Imre Finta (Crim.)(Ont.)(23023)
03/06/93	22	Her Majesty The Queen v. Paul Benjamin Davy (Crim.)(Ont.)(22808)
04/06/93	21	Artell Developments Ltd. v. 677950 Ontario Ltd. (Ont.)(23116)
04/06/93	3	James Charles Thornton v. Her Majesty The Queen (Crim.)(Ont.)(22312)

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.

22601 LORNA STODDARD v. WANDA WATSON AND TILDEN RENT-A-CAR

Canadian Charter of Rights and Freedoms - Procedural law - Limitation of actions - Statutes - Interpretation - Whether an infant injured in a motor vehicle accident is entitled to the benefit of s. 47 of the *Limitations Act*, R.S.O. 1980, c. 240 - Whether the words "subject to" in s. 180(1) of the *Highway Traffic Act*, R.S.O. 1980, c. 198, serve to exclude operation of statutes of general application in favour of infants and those under legal disability, such as the *Limitations Act* - Whether s. 15 of the *Charter* requires an interpretation of statutes to allow those with personal characteristics such as infants and others under legal disability to be treated differently than adults with no disability in order to avoid inequality before the law applicable to remedies.

On November 24, 1984, the Appellant was injured in a motor vehicle accident. The Appellant was an infant at the time of the accident, her date of birth being July 3, 1967. The Appellant's solicitors failed to commence proceedings within two years of the date of the accident pursuant to s. 180(1) of the *Highway Traffic Act*, R.S.O., c. 198. An action was brought on February 18, 1987, which was within two years of the Appellant attaining the age of majority. The Respondents admitted liability for the accident but submitted that the action was barred pursuant to s. 180(1) of the *Highway Traffic Act*. Osborne J. of the Supreme Court of Ontario allowed the Appellant's action. The Respondents appealed to the Court of Appeal for Ontario. The appeal was heard together with another appeal, *Murphy v. Welsh*, also on appeal to the Supreme Court of Canada, file 22542. The Court of Appeal allowed the appeal and dismissed the action.

Origin of the case: Ontario

File No.: 22601

Judgment of the Court of Appeal: May 10, 1991

Counsel: W.L.N. Somerville Q.C. and R.B. Bell for the Appellant
Lipman, Zener & Waxman for the Respondents

22601 LORNA STODDARD c. WANDA WATSON ET TILDEN RENT-A-CAR

Charte canadienne des droits et libertés - Droit de la procédure - Prescription d'actions - Lois - Interprétation - Un mineur victime d'un accident de véhicule à moteur au cours duquel il subit des blessures a-t-il droit au bénéfice de l'art. 47 de la *Loi sur la prescription des actions*, L.R.O. 1980, ch. 240? - Les mots «sous réserve» du par. 180(1) du *Code de la route*, L.R.O. 1980, ch. 198, permettent-ils de soustraire les mineurs et les incapables à l'application de lois d'application générale, comme la *Loi sur la prescription d'actions*? - L'article 15 de la *Charte* requiert-il une interprétation des lois qui permette aux personnes ayant des caractéristiques particulières, comme les mineurs et les incapables, d'être traités différemment des adultes capables afin d'éviter que le droit en matière de réparations ne s'applique pas également à tous?

Le 24 novembre 1984, l'appelante a subi des blessures au cours d'un accident de véhicule à moteur. Née le 3 juillet 1967, elle était alors mineure. Les procureurs de l'appelante n'ont pas, conformément au par. 180(1) du *Code de la route*, L.R.O. 198, introduit d'instance dans les deux ans de la date de l'accident. Le 18 février 1987, soit dans les deux ans suivant la majorité de l'appelante, ils ont intenté une action. Reconnaisant leur responsabilité relativement à l'accident, les intimés ont toutefois soutenu que l'action était prescrite en vertu du par. 180(1) du *Code de la route*. Le juge Osborne de la Cour suprême de l'Ontario a accueilli l'action de l'appelante. Les intimés ont interjeté appel à la Cour d'appel de l'Ontario, qui a entendu l'appel en même temps qu'un autre, *Murphy c. Welsh*, également en appel devant la Cour suprême du Canada, n° du greffe 22542. La Cour d'appel a accueilli l'appel et rejeté l'action.

Origine :Ontario

N° du greffe :22601

Arrêt de la Cour d'appel Le 10 mai 1991

Avocats :W.L.N. Somerville, c.r., et R.B. Bell pour l'appelante
Lipman, Zener & Waxman pour les intimés

22787 THE CORPORATION OF THE CITY OF PETERBOROUGH v. KENNETH RAMSDEN

Canadian Charter of Rights and Freedoms - Civil rights - Municipal law - Freedom of expression - City by-law prohibiting the placing of advertisements on public property - Constitutional validity of the by-law - Whether there is a constitutionally protected right to affix posters to public property - Applicability of section 1 of the *Charter* - *R. v. Committee for the Commonwealth of Canada*, [1991] 1 S.C.R. 139.

In 1937, the City of Peterborough enacted by-law 3270 which prohibited the placement of posters on trees or transmission poles. The by-law was amended in 1982 by the addition of words "on any public property" in three places, and it now reads as follows:

"1. No bill, poster, sign or other advertisement of any nature whatsoever shall be placed on or caused to be placed on any public property, or placed on or attached to or caused to be placed or attached to any tree situate on any public property within the limits of the City of Peterborough or any pole, post, stanchion or other object which is used for the purpose of carrying the transmission lines of any telephone, telegraph or electric power company situate on any public property within the limits of the City of Peterborough." [emphasis added]

The Respondent placed posters announcing an upcoming performance of his musical group on utility poles in Peterborough and was charged, under the *Provincial Offences Act*, with infringing the by-law. In the lower courts, the Respondent admitted the offences, but took the position that the by-law was unconstitutional. He was convicted by a Justice of the Peace, and his subsequent appeal, on an agreed statement of facts, to the Provincial Court was dismissed. His further appeal to the Court of Appeal for Ontario was allowed. His convictions were set aside and acquittals were entered.

Origin of the case: Ontario

File No.: 22787

Judgment of the Court of Appeal: October 22, 1991

Counsel: J.H. Wigley and R.A. Maxwell for the Appellant
Peter R. Jervis for the Respondent

22787 LA CORPORATION DE LA VILLE DE PETERBOROUGH c. KENNETH RAMSDEN

Charte canadienne des droits et libertés - Libertés publiques - Droit municipal - Liberté d'expression - Règlement municipal interdisant l'affichage d'annonces publicitaires sur une propriété publique - Constitutionnalité du règlement - La Constitution protège-t-elle le droit d'apposer des affiches sur une propriété publique? - Applicabilité de l'article premier de la *Charte* - *R. c. Comité pour la République du Canada*, [1991] 1 R.C.S. 139.

En 1937, la ville de Peterborough a adopté le règlement 3270, qui interdisait d'apposer des affiches sur les arbres ou les poteaux portant des lignes de transmission. Le règlement a été modifié en 1982 par l'ajout des mots «sur toute propriété publique» à trois endroits et il est maintenant libellé ainsi:

«1. Il est interdit d'installer ou de faire installer des affiches, panneaux ou autres annonces publicitaires de quelque nature que ce soit sur toute propriété publique ou d'en installer ou fixer ou d'en faire installer ou fixer sur les arbres situés sur toute propriété publique dans les limites de la ville de Peterborough ou sur les poteaux, étais ou autres objets portant les lignes de transmission d'une compagnie de téléphone, de télégraphe ou d'électricité et situés sur toute propriété publique dans les limites de la ville de Peterborough.» [Les soulignements ne figurent pas dans le texte original.]

L'intimé a apposé sur des poteaux de service public dans la ville de Peterborough des affiches annonçant un prochain spectacle de son groupe de musiciens et a été accusé, en vertu de la *Loi sur les infractions provinciales*, d'avoir contrevenu au règlement. Devant les juridictions inférieures, l'intimé a admis avoir commis les infractions, mais il a soutenu que le règlement était anticonstitutionnel. Un juge de paix l'a reconnu coupable des chefs d'accusation, et la Cour provinciale a rejeté l'appel qu'il a formé par la suite en se fondant sur un exposé conjoint des faits. La Cour d'appel de l'Ontario a accueilli un appel subséquent, annulé ses déclarations de culpabilité et prononcé des acquittements.

Origine :	Ontario
N° du greffe:	22787
Arrêt de la Cour d'appel:	le 22 octobre 1991
Avocats:	J.H. Wigley et R.A. Maxwell pour l'appelante Peter R. Jervis pour l'intimé

23216A.D. v. HER MAJESTY THE QUEEN

Canadian Charter of Rights and Freedoms - Criminal law - Procedural law - Factors to be considered in determining whether or not there has been an infringement of the right to be tried within a reasonable time pursuant to s. 11(b) of the *Charter* - Whether s. 11(b) of the *Charter* applies to appellate proceedings - Whether the length of appellate proceedings should be considered when determining whether or not s. 11(b) of the *Charter* has been infringed - To which party should delays relevant to s. 11(b) of the *Charter* be attributed.

On October 2, 1985, the Appellant was charged with sexual offences involving his step-daughters. The District Court of Ontario granted the Appellant's motion to quash the indictment, leading the Crown to prefer a second indictment. The Appellant's subsequent motion alleging abuse of process was dismissed, but his motion to quash second indictment was granted, and a stay of proceedings was ordered. The Court of Appeal for Ontario allowed the Respondent's appeal and ordered the charges be tried. On June 6, 1991, the Appellant brought a motion for a stay of proceedings on the ground that his right to be tried within a reasonable time under s. 11(b) of the *Canadian Charter of Rights and Freedoms* had been infringed. On June 12, 1991, Forget J. of the District Court of Ontario allowed the Appellant's motion for a stay of proceedings. On September 18, 1992, the Ontario Court of Appeal allowed the Respondent's appeal, set aside the stay of proceedings and remitted the matter for trial on an expedited basis.

Origin of the case: Ontario

File No.: 23216

Judgment of the Court of Appeal: September 18, 1992

Counsel: Gary R. Barnes for the Appellant
The Attorney General of Ontario for the Respondent

23216A.D.c. SA MAJESTÉ LA REINE

Charte canadienne des droits et libertés - Droit criminel - Droit procédural - Facteurs dont il faut tenir compte pour déterminer s'il y a eu violation du droit d'être jugé dans un délai raisonnable, prévu à l'al. 11b) de la *Charte* - L'al. 11b) de la *Charte* s'applique-t-il aux procédures d'appel? Faut-il tenir compte de la longueur des procédures d'appel pour déterminer s'il y a eu violation de l'al. 11b) de la *Charte*? - À quelle partie faut-il attribuer les délais pertinents pour l'application de l'al. 11b) de la *Charte*?

Le 2 octobre 1985, l'appelant a été accusé d'infractions d'ordre sexuel impliquant ses belles-filles. La Cour de district de l'Ontario a accueilli la requête en annulation de l'acte d'accusation, soumise par l'appelant, ce qui a obligé le ministère public à présenter un second acte d'accusation. La requête subséquente de l'appelant, invoquant l'abus de procédure, a été rejetée mais sa requête en annulation du second acte d'accusation a été accueillie et les procédures ont été suspendues. La Cour d'appel de l'Ontario a accueilli l'appel interjeté par l'intimé et ordonné la tenue du procès. Le 6 juin 1991, l'appelant a présenté une requête en suspension des procédures, alléguant que son droit d'être jugé dans un délai raisonnable, prévu à l'al. 11b) de la *Charte canadienne des droits et libertés*, avait été violé. Le 12 juin 1991, le juge Forget de la Cour de district de l'Ontario a accueilli la requête de l'appelant et ordonné la suspension des procédures. Le 18 septembre 1992, la Cour d'appel de l'Ontario a accueilli l'appel interjeté par l'intimé, annulé la suspension des procédures et renvoyé l'affaire pour qu'elle soit jugée dans les plus brefs délais.

Origine :Ontario

N° du greffe :23216

Arrêt de la Cour d'appel: Le 18 septembre 1992

Avocats :Gary R. Barnes pour l'appelant
Le procureur général de l'Ontario pour l'intimée

23023 HER MAJESTY THE QUEEN v. IMRE FINTA

Criminal law - Evidence - Offences - War crimes - Crimes against humanity - Admissibility of evidence - Exceptions to the hearsay rule - Instructions to the jury - Interpretation of s. 7(3.71) of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in holding that the police statement and deposition of Imre Dallos, which were taken from the record of the 1947 investigation and the 1948 *in absentia* trial of the Respondent held in Hungary, were admissible - Whether the Court of Appeal erred in law in holding that the trial judge's instructions to the jury pertaining to the evidence relating to the eyewitness identification of the Respondent were appropriate and did not amount to a misdirection - Whether the Court of Appeal erred in law in failing to find that the trial judge erred in putting to the jury the peace officer defence embodied in s. 25 of the *Criminal Code*, the military orders defence and the issue of mistake of fact. Did the trial judge misdirect the jury in the manner in which he defined those defences - Whether the Court of Appeal erred in disregarding the constitutional validity issue, or erroneously decided it, in respect to the application of the *Charter* to the whole intent and purpose of the War Crimes legislation, but more specifically to the provision which abolishes the effect of Section 15 of the *Criminal Code of Canada* as a defence to the charges under s. 7(3.71) - Whether the Court of Appeal erred in holding that s. 7(3.71) of the *Criminal Code of Canada*, and ss. 7(3.71)(a)(i)(ii)(iii), 7(3.71)(b), 7(3.74) and 7(3.76) are constitutionally valid and do not offend against the provisions of the *Charter*, specifically ss. 7, 11(a), (b) (d) and 11(g) of the *Charter of Rights and Freedoms*

In 1988, the Respondent was charged with unlawful confinement, robbery, kidnapping and manslaughter under the *Criminal Code*, R.S.C. 1927, c. 36, as amended. The indictment alleged that, in 1944, the Respondent, while an officer in the Hungarian army, forcibly confined 8,617 Jews in the brickyard at Szeged, where he robbed them of their personal effects and valuables. It further alleged that at the Rokus railway station, he kidnapped 8,617 Jews with the intent to transport them out of Hungary against their will and that he caused the deaths of some of those persons by loading them into boxcars. The indictment consisted of four pairs of alternate counts with one count charging offences against the *Criminal Code* amounting to a crime against humanity with the second count characterizing them as war crimes.

The Respondent acknowledged that he had been a gendarmerie captain present at the brickyard and had participated in the confiscation of valuables but denied he was in a position of authority at the brickyard or responsible for the other alleged offences. The Respondent did not adduce evidence by way of defence. After the close of the Appellant's case, the trial judge placed before the jury the videotaped testimony of two witnesses taken by way of commission evidence and the minutes of testimony given by a witness at the Respondent's Hungarian trial in 1947-8. The trial judge ruled the hearsay evidence to be admissible because of the unique features of the trial. He ruled prospectively that the Respondent had called no evidence and defence counsel addressed the jury last. The jury acquitted the Respondent on all counts. The Appellant's appeal was dismissed by a majority of the Court of Appeal. Dubin C.J.O. and Tarnopolsky dissented and would have allowed the appeal and ordered a new trial.

Origin of the case: Ontario

File No. 23023

Judgment of the Court of Appeal: April 29, 1992

Counsel: Christopher Amerasinghe for the Appellant
Douglas Christie for the Respondent

23023SA MAJESTÉ LA REINE c. IMRE FINTA

Droit criminel - Preuve - Infractions - Crimes de guerre - Crimes contre l'humanité - Admissibilité de la preuve - Exceptions à la règle du oui-dire - Directives au jury - Interprétation du par. 7(3.71) du *Code criminel*, L.R.C. (1985), ch. C-46 - La Cour d'appel a-t-elle commis une erreur en concluant que la déclaration de la police et la déposition de Imre Dallos, tirées du dossier de l'enquête menée en 1947 et du procès tenu en 1948 en Hongrie en l'absence de l'intimé, étaient admissibles? - La Cour d'appel a-t-elle commis une erreur en concluant que les directives du juge du procès au jury concernant la preuve de l'identification de l'intimé par un témoin oculaire étaient appropriées et ne constituaient pas des directives erronées? - La Cour d'appel a-t-elle commis une erreur de droit en ne concluant pas que le juge du procès avait eu tort de soumettre au jury la défense relative à un agent de la paix, prévue à l'art. 25 du *Code criminel*, la défense fondée sur les ordres militaires et la question de l'erreur de fait? - Le juge du procès a-t-il donné au jury des directives erronées en définissant ces défenses? - La Cour d'appel a-t-elle commis une erreur en négligeant la question de la constitutionnalité ou l'a-t-elle tranchée erronément relativement à l'application de la *Charte* à l'objet et au but généraux des lois en matière de crimes de guerre, mais plus particulièrement à la disposition qui supprime l'effet de l'article 15 du *Code criminel du Canada* à titre de défense contre les accusations portées en vertu du par. 7(3.71)? - La Cour d'appel a-t-elle commis une erreur en concluant que le par. 7(3.71) du *Code criminel du Canada* et les sous-al. 7(3.71)a)(i), (ii), (iii), l'al. 7(3.71)b) et les par. 7(3.74) et 7(3.76) sont constitutionnels et ne portent pas atteinte aux dispositions de la *Charte*, particulièrement à l'art. 7 et aux al. 11a), b), d) et g) de la *Charte des droits et libertés*?

En 1988, l'intimé a été accusé de séquestration illégale, de vol, d'enlèvement et d'homicide involontaire en vertu du *Code criminel*, S.R.C. 1927, ch. 36, et ses modifications. Il est allégué à l'acte d'accusation qu'en 1944, l'intimé, alors officier de l'armée hongroise, aurait séquestré de force 8 617 Juifs dans une briqueterie de Szeged, où il leur aurait volé biens et objets de valeur. Il y est également allégué qu'il a enlevé 8 617 Juifs à la gare de Rokus dans l'intention de les transporter hors de la Hongrie contre leur gré, et qu'il a causé la mort de certaines de ces personnes en les entassant dans des wagons couverts. L'acte d'accusation consistait en quatre paires de chefs d'accusation subsidiaires, l'un portant des accusations relativement à des infractions au *Code criminel* et constituant un crime contre l'humanité, et l'autre qualifiant les infractions de crimes de guerre.

L'intimé a reconnu qu'il était capitaine dans la gendarmerie alors en poste à la briqueterie et qu'il avait participé à la confiscation d'objets de valeurs, mais il a nié être dans une position d'autorité à la briqueterie ou être coupable des autres infractions alléguées. L'intimé n'a produit aucune preuve pour sa défense. À la clôture de la preuve de l'appelant, le juge du procès a présenté au jury les dépositions de deux témoins, enregistrées sur magnétophone par voie de commission rogatoire, et le procès-verbal de la déposition d'un témoin recueillie lors du procès de l'intimé tenu en Hongrie en 1947 et 1948. Le juge du procès a admis la preuve par oui-dire en raison du caractère unique du procès. Il a décidé par la suite que l'intimé n'avait cité aucun témoin, et l'avocat de la défense s'est donc adressé au jury en dernier lieu. Le jury a acquitté l'intimé quant à tous les chefs d'accusation. L'appel de l'appelante a été rejeté par la Cour d'appel à la majorité. Dissidents, le Juge en chef Dubin et le juge Tarnopolsky étaient d'avis d'accueillir l'appel et d'ordonner un nouveau procès.

Origine :Ontario

N° du greffe :23023

Arrêt de la Cour d'appelle 29 avril 1992

Avocats :Christopher Amerasinghe pour l'appelante
Douglas Christie pour l'intimé

22808 HER MAJESTY THE QUEEN v. PAUL BENJAMIN DAVY

Criminal law - Trial - Charge to jury - Instructions required for manslaughter under ss. 21(1) and (2) of the *Criminal Code* - Scope of party liability under s. 21(2) of the *Criminal Code* - Availability of a verdict of manslaughter with respect to the liability of the Respondent - What is the correct legal basis of criminal liability for a person alleged to be guilty of the crime of manslaughter as an "aider or abettor" under s. 21(1)(b) and (c) of the *Code* - Party liability under s. 21(2) of the *Code* for incidental offences committed by the principal during the execution of the common unlawful purpose - Party liability for manslaughter under s. 21(2) of the *Code* - Is "objective foreseeability of death" the correct legal standard? - Whether the Court of Appeal erred in refusing to apply the curative provisions of s. 686(1)(b)(iii) of the *Criminal Code*.

The Respondent and his co-accused Ricky Allan Jackson were charged with the first degree murder of Eugene Rae at his antique shop. After a lengthy trial by a judge and jury, Jackson was convicted of first degree murder and the Respondent was convicted of second degree murder. The Respondent was sentenced to life imprisonment without eligibility for parole for 10 years.

Jackson worked for the deceased and was involved in a homosexual relationship with him, but believed that the deceased had brought in another young man to take Jackson's place. Jackson asked the Respondent to drive him to see the deceased. According to the Crown, Jackson, the Respondent and the Respondent's wife drove to the shop in the Respondent's car. Both men entered the store through the back door, confronted the Mr. Rae and beat him to death. Jackson then went upstairs where a 19 year old employee of the deceased was hiding beside a bed, attacked him and beat him with a hammer, leaving him for dead on the bed.

Jackson and the Respondent gave very different versions of what occurred. Jackson completely exonerated the Respondent, testifying that the Respondent never left the car and was unaware of what happened in the shop. According to the Respondent, they parked the car in a parking lot across the street from the shop. Jackson got out of the car carrying a hammer, balaclava and gloves and ordered the Respondent to follow him. Jackson entered the house and the Respondent remained outside near the door. The Respondent saw another person in the house with Jackson and heard loud voices and "three smacks". The Respondent became frightened and ran toward the car. Jackson ran after him, forced him to return to the shop and told him to retrieve a cash box from the floor. They returned to the car and Jackson ordered the Respondent to drive.

The Respondent and Jackson appealed their convictions. The Court of Appeal allowed the appeals, quashed the convictions, and ordered new trials of first and second degree murder for Jackson and the Respondent respectively.

Origin of the case: Ontario

File No. 22808

Judgment of the Court of Appeal: November 18, 1991

Counsel: Kenneth L. Campbell and Jay Naster for the Appellant
Marc Rosengerg for the Respondent

22808SA MAJESTÉ LA REINE c. PAUL BENJAMIN DAVY

Droit criminel - Procès - Exposé au jury - Directives requises en cas d'homicide involontaire coupable en vertu des par. 21(1) et (2) du *Code criminel* - Portée de la responsabilité de la personne qui participe à une infraction en vertu du par. 21(2) du *Code criminel* - Possibilité d'un verdict d'homicide involontaire coupable en ce qui concerne la responsabilité de l'intimé - Quel est le fondement juridique correct de la responsabilité criminelle dans le cas d'une personne présumée coupable du crime d'homicide involontaire coupable en tant que «personne qui a aidé ou encouragé» en vertu des al. 21(1*b*) et *c*) du *Code*? - Responsabilité de la personne qui participe en vertu du par. 21(2) du *Code* en ce qui concerne des infractions accessoires commises par l'auteur principal durant la réalisation de la fin illégale commune - Responsabilité de la personne qui participe dans le cas d'un homicide involontaire coupable en vertu du par. 21(2) du *Code* - La «prévisibilité objective de la mort» est-elle la norme juridique correcte? - La Cour d'appel a-t-elle commis une erreur en refusant d'appliquer les dispositions réparatrices du sous-al. 686(1*b*)(iii) du *Code criminel*.

L'intimé et son coaccusé Ricky Allan Jackson ont été accusés du meurtre au premier degré de Eugene Rae à sa boutique d'antiquités. À la suite d'un long procès devant juge et jury, Jackson a été reconnu coupable de meurtre au premier degré et l'intimé a été reconnu coupable de meurtre au second degré. L'intimé a été condamné à l'emprisonnement à perpétuité sans être admissible à une libération conditionnelle avant 10 ans.

Jackson travaillait pour le défunt et entretenait une relation homosexuelle avec lui, mais il a cru que le défunt avait fait entrer un autre jeune homme pour prendre sa place. Jackson a demandé à l'intimé de l'emmener voir le défunt. Selon le ministère public, Jackson, l'intimé et l'épouse de ce dernier se sont rendus à la boutique dans la voiture de l'intimé. Les deux hommes sont entrés dans le magasin par la porte arrière, se sont trouvés en présence du M. Rae et l'ont battu à mort. Jackson est ensuite monté à l'étage où un employé de 19 ans du défunt était caché à côté d'un lit, l'a attaché, lui a donné des coups de marteau et l'a laissé pour mort sur le lit.

Jackson et l'intimé ont donné des versions très différentes de ce qui est survenu. Jackson a innocenté complètement l'intimé en témoignant que celui-ci n'a jamais quitté la voiture et n'était pas au courant de ce qui s'est passé dans la boutique. Selon l'intimé, ils ont laissé la voiture dans un terrain de stationnement en face de la boutique. Jackson est sorti de la voiture avec un marteau, un passe-montagne et des gants et a ordonné à l'intimé de le suivre. Jackson est entré dans la maison et l'intimé est resté à l'extérieur près de la porte. L'intimé a vu une autre personne dans la maison avec Jackson et a entendu des éclats de voix et «trois bruits secs». L'intimé a pris peur et a couru vers la voiture. Jackson l'a poursuivi, l'a forcé à retourner à la boutique et lui a dit de récupérer une caisse du plancher. Ils sont retournés à la voiture et Jackson a ordonné à l'intimé de prendre le volant.

L'intimé et Jackson ont interjeté appel de leurs déclarations de culpabilité. La Cour d'appel a accueilli les appels, annulé les déclarations de culpabilité et ordonné la tenue de nouveaux procès pour meurtre au premier degré et pour meurtre au second degré en ce qui concerne Jackson et l'intimé respectivement.

Origine : Ontario

N° du greffe: 22808

Arrêt de la Cour d'appel: le 18 novembre 1991

Avocats: Kenneth L. Campbell et Jay Naster pour l'appelante
Marc Rosengerg pour l'intimé

23116ARTELL DEVELOPMENTS LIMITED v. 677950 ONTARIO LIMITED ET AL.

Commercial law - Criminal law - Mortgages - Interest - Statutes - Interpretation - Collateral advantage - Whether the Court of Appeal erred in its interpretation of s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in its interpretation of s. 347 of the *Criminal Code* by failing to apply the appropriate standard of mental intent necessary to establish a criminal offence - Whether the Court of Appeal erred in the manner of calculation of interest pursuant to s. 347 of the *Criminal Code* - Whether an amount payable under a mortgage transaction constitutes a "criminal rate" of interest within the meaning of s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46.

The Respondent, Paul Horvat, a property developer, agreed to purchase lands through the Respondent numbered company. On closing, he was required to pay the vendors \$348,000 and the vendors were to take back a first mortgage for the balance of the purchase price of \$2,232,000. The Appellant is controlled by Arthur Ellis, a money lender. When the Respondent told him of an offer to purchase the property at a considerable profit, Ellis offered to fund the purchase, provided the Respondent produce the offer to purchase. The Respondent had previously offered Ellis a fifty percent interest in the property, but upon seeing the executed offer, Ellis declined, stating that he was not interested in a joint venture or a partnership. Instead, he proposed that they share equally in the potential profits. Ellis offered to finance the deal by advancing \$375,000 on the date of sale and taking a second mortgage for \$1,675,000, which would secure both the cash advance and his \$1,300,000 share of the estimated profits. The Respondent believed the property could be sold at a better price. Ellis agreed to let him test the market and stated the Respondent was not bound to accept the offer. The anticipated share of profit was to remain the same and after the sale the balance of \$1,300,000 would continue as a second mortgage. A mortgage, guaranteed by the Respondent Horvat, was executed by the Respondent numbered company, for the principal amount of \$1,675,000. It provided for renewal in the event the Respondent, Horvat, received an offer to purchase which was acceptable to Ellis. On closing of the sale to a third party, the sum of \$375,000, would be paid to Ellis and the balance of \$1,300,000, would become due in five years. Seven days prior to the mortgage due date, Ellis called the Respondent, Horvat, who refused to discuss whether any sale of the property had been arranged. The Respondent threatened litigation if Ellis failed to remove the mortgage from the property within fourteen days. The following day, Ellis offered to discharge the mortgage on payment of \$375,000 on the due date. This offer was rejected by Horvat, who sold the lands after the mortgage was due. The Respondent, Horvat, sued the Appellant to have the mortgage declared void and to have him repay sums paid pursuant to the mortgage while the Appellant claimed payment of the principal sum which was due. The actions were tried together and the Respondent's motion for summary judgment was granted. Upon payment of \$375,000, the mortgage was to be discharged. It was held that the Appellant, as mortgagee, could recover no more than the amount actually advanced with interest. The Court of Appeal dismissed the Respondent's motion to quash the appeal and directed that the mortgage be discharged upon payment by the Respondent, Horvat, of the sum of \$375,000. The Court of Appeal allowed the appeal from the summary judgment and returned the action to the trial list. The trial judge gave judgment in favour of the Appellant for \$1,300,000. The Court of Appeal allowed the Respondent Horvat's appeal.

The following are the issues raised in this appeal:

1. Did the Court of Appeal err in its interpretation of "interest" within the meaning of s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46?
2. Did the Court of Appeal err in its interpretation of s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46, by failing to apply the appropriate standard of mental intent necessary to establish a criminal offence?
3. Did the Court of Appeal err in its calculation of the term of the mortgage and hence in the manner of calculation of interest pursuant to s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46?
4. Is s. 347 of the *Criminal Code* *ultra vires* s. 91(19) of the *Constitution Act, 1867* in whole or in part?

Origin of the case: Ontario

File No.: 23116

Judgment of the Court of Appeal: July 23, 1992

Counsel: Gowling, Strathy & Henderson for the Appellant
Bresver, Grossman, Scheininger & Davis for the Respondent

23116 ARTELL DEVELOPMENTS LIMITED c. 677950 ONTARIO LIMITED ET AL.

Droit commercial - Droit criminel - Hypothèques - Intérêts - Lois -Interprétation - Avantage parallèle - La Cour d'appel a-t-elle interprété erronément l'art. 347 du *Code criminel*, L.R.C. (1985), ch. C-46? - La Cour d'appel a-t-elle interprété erronément l'art. 347 du *Code criminel* en omettant d'appliquer la norme appropriée en ce qui concerne l'intention requise pour établir une infraction criminelle? - La Cour d'appel a-t-elle commis une erreur quant au mode de calcul de l'intérêt aux termes de l'art. 347 du *Code criminel*? - Un montant payable en vertu d'une opération hypothécaire constitue-t-il un «taux d'intérêt criminel» au sens de l'art. 347 du *Code criminel*, L.R.C. (1985), ch. C-46?

L'intimé Paul Horvat, promoteur immobilier, a convenu de se porter acquéreur de certaines terres par l'intermédiaire de la société intimée à dénomination numérique. Au moment de la passation du contrat, il était tenu de verser aux vendeurs la somme de 348 000 \$ et ces derniers devaient lui prêter le solde du prix d'achat, soit 2 232 000 \$, ce prêt étant garanti par une hypothèque de premier rang. L'appelante est sous le contrôle d'Arthur Ellis, bailleur de fonds. Quand l'intimée lui a fait part d'une offre d'acheter la propriété en question à un prix qui rapporterait un bénéfice considérable, Ellis a offert de financer l'achat, pourvu que l'intimé lui montre l'offre d'achat. L'intimée avait auparavant offert à Ellis une participation de cinquante pour cent dans la propriété. Au vu toutefois de l'offre en bonne et due forme, Ellis l'a déclinée, disant ne s'intéresser aucunement à une entreprise conjointe ou à une association. Il a proposé plutôt le partage égal du bénéfice éventuel. Pour financer l'opération, il a offert d'avancer la somme de 375 000 \$ le jour de la vente et de prêter sur l'hypothèque de second rang la somme de 1 675 000 \$, l'hypothèque devant servir à garantir aussi bien le remboursement de l'avance que le paiement de sa part de 1 300 000 \$ dans le bénéfice prévu. Or, l'intimé croyait que la propriété pouvait se vendre à meilleur prix. Ellis a donc convenu de lui permettre de sonder le marché et a indiqué que l'intimé n'était pas tenu d'accepter son offre. La part du bénéfice prévu resterait la même et, après la vente, le solde de 1 300 000 \$ continuerait à faire l'objet d'une hypothèque de second rang. Une hypothèque de 1 675 000 \$, garantie par l'intimé Horvat, a été consentie par la société intimée à dénomination numérique. Aux termes de l'acte constitutif de l'hypothèque, celle-ci serait reconduite au cas où l'intimé Horvat recevrait une offre d'achat jugée acceptable par Ellis. Au moment de la vente à un tiers, la somme de 375 000 \$ serait versée à Ellis et le solde de 1 300 000 \$ serait exigible dans cinq ans. Sept jours avant l'échéance de l'hypothèque, Ellis a appelé l'intimé Horvat, qui a refusé de lui dire s'il avait été conclu un accord pour la vente de la propriété. L'intimée a menacé Ellis de poursuites judiciaires s'il ne dégrevait pas la propriété de l'hypothèque dans un délai de quatorze jours. Le lendemain, Ellis a offert de donner mainlevée de l'hypothèque sur paiement de la somme de 375 000 \$ à l'échéance. Cette offre a été rejetée par Horvat, qui a vendu les terres en cause après l'échéance de l'hypothèque. Celui-ci a intenté à l'appelante une action visant à obtenir une déclaration de la nullité de l'hypothèque et à faire rembourser par elle les sommes payées en exécution de l'hypothèque, tandis que l'appelante a demandé le paiement du capital dû. Les deux actions ont été instruites ensemble et il a été fait droit à la requête de l'intimée en jugement sommaire. L'hypothèque devait s'éteindre sur paiement de 375 000 \$. Il a été statué que l'appelante, en sa qualité de créancière hypothécaire, ne pouvait toucher davantage que la somme qu'elle a en fait avancée et les intérêts courus. La Cour d'appel a rejeté la requête de l'intimée en annulation de l'appel et a ordonné que la mainlevée de l'hypothèque soit accordée sur paiement par l'intimé Horvat de la somme de 375 000 \$. La Cour d'appel a accueilli l'appel interjeté contre le jugement sommaire et a fait réinscrire l'action au rôle des procès. Le juge de première instance a rendu jugement en faveur de l'appelante, lui accordant la somme de 1 300 000 \$. La Cour d'appel a accueilli l'appel de l'intimé Horvat.

Les questions soulevées par le pourvoi sont les suivantes :

- 1.La Cour d'appel a-t-elle commis une erreur dans son interprétation du terme «intérêt» au sens de l'art. 347 du *Code criminel*, L.R.C. (1985), ch. C-46?
- 2.La Cour d'appel a-t-elle interprété erronément l'art. 347 du *Code criminel*, L.R.C. (1985), ch. C-46, en omettant d'appliquer la norme appropriée en ce qui concerne l'intention requise pour établir une infraction criminelle?
- 3.La Cour d'appel a-t-elle commis une erreur dans le calcul de la durée de l'hypothèque et, partant, dans le mode de calcul de l'intérêt aux termes de l'art. 347 du *Code criminel*, L.R.C. (1985), ch. C-46?

4.L'article 347 du *Code criminel* excède-t-il, en totalité ou en partie, le pouvoir que confère le par. 91(19) de la *Loi constitutionnelle de 1867*?

Origine : Ontario

N° du greffe : 23116

Arrêt de la Cour d'appel: le 23 juillet 1992

Avocats : Gowling, Strathy & Henderson pour l'appelante

Bresver, Grossman, Scheininger & Davis pour l'intimée

22312 JAMES CHARLES THORNTON v. HER MAJESTY THE QUEEN

Criminal law - Offenses, interpretation - Nuisance - Evidence - Appellant donated blood, which he knew was HIV contaminated, to the Red Cross - Criminal conviction of nuisance - If the commission of an unlawful act is limited to acts proscribed by statute, can the omission or failure to discharge a legal duty be broader and include duties under the common law? - Is it appropriate to conclude that the "duty imposed by law" defined for the purpose of criminal negligence be applied to any other section in the *Criminal Code* and more specifically, to the offence of nuisance? - What is the effect of s. 9(a) of the *Criminal Code*? - Is it appropriate to conclude that although common law offences are, except for a few exceptions, no longer part of the *Criminal Code*, that the breach of a civil common law duty constitutes the failure to discharge legal duty as set out in s. 180(2)?

The Appellant was charged with an offence contrary to section 176(a) of the *Criminal Code of Canada*, now section 180 of the *Criminal Code of Canada*, R.S.C., 1985, c. C-46, that he:

"on or about the 16th day of November, 1987, at the City of Ottawa in the said Judicial District did commit a common nuisance endangering the lives or health of the public by donating to the Canadian Red Cross Society a quantity of his blood knowing that his blood had previously been found to contain antibodies to Human Immunodeficiency Virus and intentionally withholding the information from the Canadian Red Cross Society, contrary to Section 176(a) of the Criminal Code of Canada."

He was convicted of the charge by Flanigan D.C.J., sitting without a jury, and sentenced to a term of 15 months imprisonment.

On November 16, 1987, the Appellant gave blood at the Canadian Red Cross regional headquarters blood donor clinic in Ottawa, after he had knowingly tested positive on two occasions for Human Immunodeficiency Virus antibodies (HIV). The Appellant admitted at trial that he deliberately withheld from the Red Cross the information that he had tested positive for HIV antibodies and that he was in a high risk group because he knew that, if he did so, his blood would not be accepted.

The Appellant appealed both his conviction and sentence. The Court of Appeal of Ontario dismissed the appeal.

Origin of the case: Ontario

File No. 22312

Judgment of the Court of Appeal: January 10, 1991

Counsel: L. Greenspon for the Appellant
S. Casey Hill for the Respondent

22312 JAMES CHARLES THORNTON c. SA MAJESTÉ LA REINE

Droit criminel - Interprétation d'infractions - Nuisance - Preuve - L'appelant a donné à la Croix-Rouge du sang qu'il savait contaminé par le VIH - Reconnu coupable d'avoir commis un acte criminel de nuisance - Si la perpétration d'un acte illicite se limite aux actes interdits par la loi, l'omission d'accomplir une obligation légale peut-elle être plus étendue et comprendre des obligations en vertu de la common law? - Y a-t-il lieu de conclure que le «devoir qu'impose la loi» et qui est défini pour les fins de la négligence criminelle s'applique à tout autre article du *Code criminel* et plus particulièrement à l'infraction de nuisance? - Quel est l'effet de l'al. 9a) du *Code criminel*? - Y a-t-il lieu de conclure que, bien que les infractions de common law ne fassent plus partie du *Code criminel*, sauf quelques exceptions, le manquement à une obligation civile en vertu de la common law constitue l'omission d'accomplir une obligation légale ainsi qu'il est prévu au par. 180(2)?

L'appelant a été accusé d'une infraction commise en contravention de l'alinéa 176a) du *Code criminel du Canada*, maintenant l'article 180 du *Code criminel du Canada*, L.R.C. (1985), ch. C-46, parce que:

«aux environs du 16 novembre 1987, dans la ville et le district judiciaire d'Ottawa, il a commis une nuisance publique en mettant en danger la vie ou la santé du public en donnant de son sang à la Société canadienne de la Croix-Rouge tout en sachant qu'on avait déjà conclu que celui-ci contenait des anticorps contre le virus d'immunodéficience humaine et en cachant volontairement ces renseignements à la Société canadienne de la Croix-Rouge, en contravention de l'alinéa 176a) du Code criminel du Canada.»

Il a été reconnu coupable de l'infraction par le juge Flanagan, qui siégeait seul, et a été condamné à une peine d'emprisonnement de 15 mois.

Le 16 novembre 1987, l'appelant a donné du sang dans le cadre de la collecte de sang du bureau régional de la Croix-Rouge canadienne à Ottawa, après que des tests eurent déterminé à deux reprises la présence, dans son sang, d'anticorps contre le virus d'immunodéficience humaine (VIH). L'appelant a admis au procès avoir caché volontairement à la Croix-Rouge les renseignements selon lesquels premièrement des tests avaient révélé chez lui la présence d'anticorps contre le VIH et deuxièmement il faisait partie d'un groupe à risque élevé parce qu'il savait que, sinon, son sang ne serait pas accepté.

L'appelant a interjeté appel à la fois de la déclaration de culpabilité et de la peine. La Cour d'appel de l'Ontario a rejeté cet appel.

Origine : Ontario

N° du greffe: 22312

Arrêt de la Cour d'appel: le 10 janvier 1991

Avocats: L. Greenspon pour l'appelant
S. Casey Hill pour l'intimée

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**DEADLINES: MOTIONS
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	:	June 7, 1993
Service	:	May 17, 1993
Filing	:	May 25, 1993
Respondent	:	May 31, 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.

**DÉLAIS: REQUÊTES
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	:	7 juin 1993
Signification	:	17 mai 1993
Dépot	:	25 mai 1993
Intimé	:	31 mai 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.

DEADLINES: APPEALS

The next session of the Supreme Court of Canada commences on April 26, 1993.

Pursuant to the *Supreme Court Act* and *Rules*, the following requirements for filing must be complied with before an appeal will be inscribed and set down for hearing:

Case on appeal must be filed within three months of the filing of the notice of appeal.

Appellant's factum must be filed within five months of the filing of the notice of appeal.

Respondent's factum must be filed within eight weeks of the date of service of the appellant's factum.

Intervener's factum must be filed within two weeks of the date of service of the respondent's factum.

The Registrar shall inscribe the appeal for hearing upon the filing of the respondent's factum or after the expiry of the time for filing the respondent's factum

The Registrar shall enter on a list all appeals inscribed for hearing at the October 1993 Session on August 4, 1993.

DÉLAIS: APPELS

La prochaine session de la Cour suprême du Canada débute le 26 avril 1993.

Conformément à la *Loi sur la Cour suprême* et aux *Règles*, il faut se conformer aux exigences suivantes avant qu'un appel puisse être inscrit pour audition:

Le dossier d'appel doit être déposé dans les trois mois du dépôt de l'avis d'appel.

Le mémoire de l'appellant doit être déposé dans les cinq mois du dépôt de l'avis d'appel.

Le mémoire de l'intimé doit être déposé dans les huit semaines suivant la signification de celui de l'appellant.

Le mémoire de l'intervenant doit être déposé dans les deux semaines suivant la signification de celui de l'intimé.

Le registraire inscrit l'appel pour audition après le dépôt du mémoire de l'intimé ou à l'expiration du délai de signification du mémoire de l'intimé.

Le août 1993, le registraire met au rôle de la session d'octobre 1993 tous les appels inscrits pour audition.

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