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Her Majesty The Queen

v. (23063)

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NATURE OF THE CASE

Criminal law - Offences - Physicians and surgeons - Evidence - Sexual assault - *Voir dire* - Admissibility of the expert's evidence - Respondent doctor convicted of four counts of sexual assault, contrary to s. 246 (now s.271) of the *Criminal Code*, R.S., c. C-34 - Trial judge excluding the expert evidence as character evidence not falling within the proper sphere of expert evidence - Whether the Court of Appeal erroneously expanded upon the basis for the admissibility of expert evidence going to an individual's lack of propensity to commit an offence - Whether the Court of Appeal erred by misapprehending the nature of the expert opinion evidence in this case and by substituting its view of that evidence for that of the trial judge?

PROCEDURAL HISTORY

November 16, 1990 Ontario Court of Justice (Bernstein J.)	Convictions: four counts of sexual assault, contrary to s. 246 (now s. 271) of the *Criminal Code*, R.S., c. C-34
April 14, 1992 Court of Appeal for Ontario (Brook, Finlayson and Labrosse, JJ.A.)	Respondent's appeal allowed; Convictions quashed; New trial ordered Applicant's leave to appeal against sentence dismissed
June 15, 1992 Supreme Court of Canada	Application for leave to appeal filed

Her Majesty The Queen

v. (23115)

Robert Howard Burns (Crim.)(B.C.)

NATURE OF THE CASE

Criminal law - Offences - Evidence - Credibility of complainant - Applicant convicted of indecent assault, contrary to s. 149(1) of the *Criminal Code*, and sexual assault, contrary to s. 246.1(1) of the *Criminal Code* - Whether the British Columbia Court of Appeal erred in law in reversing the trial judge's assessment of the credibility of the complainant - Whether the British Columbia Court of Appeal erred in law in holding that the trial judge was required to give reasons why he accepted the complainant's evidence about the indecent and sexual assaults.

PROCEDURAL HISTORY

February 20, 1991 Supreme Court of British Columbia (Arkell J.)	Convictions: indecent assault, contrary to s. 149(1) of the *Cr. C.*; and sexual assault, contrary to s. 246.1(1) of the *Cr. C.*
June 18, 1992 Court of Appeal of British Columbia (McEachern, C.J.B.C. and Proudfoot and Hollinrake, JJ.A.)	Appeal allowed; New trial ordered
August 07, 1992 Supreme Court of Canada	Application for leave to appeal filed

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Artell Developments Limited

v. (23116)

**677950 Ontario Limited and Paul Horvat
and Wone Tone Financial Services Inc.
and Gunther Holdings Ltd. (Ont.)**

NATURE OF THE CASE

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.

PROCEDURAL HISTORY

August 9, 1989 Supreme Court of Ontario (Bell Oyen J.)	Action allowed; judgment in favour of the Applicant in the amount of $1,300,000
July 23, 1992 Court of Appeal for Ontario (Blair, Griffiths and Arbour JJ.A.)	Appeal allowed: trial judgment set aside; declaration that mortgage satisfied by the payment of $375,000 and the sum of $1,300,000 to be paid out to the Respondent
September 14, 1992 Supreme Court of Canada	Application for leave to appeal filed

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

Alexander Berladyn

v. (23031)

Government of the United States of America, The Minister of Justice and The Director of the Vancouver Pre-trial Services Centre (Crim.)(B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Extradition - Offences - Evidence - Judicial Review - Whether the Court of Appeal of British Columbia erred in permitting the introduction of "fresh evidence" prior to the hearing of the appeal - Whether the Court of Appeal erred in relying upon the "fresh evidence" to find that the Applicant's rights under sections 7 and 12 of the *Charter of Rights and Freedoms* had not been infringed.

PROCEDURAL HISTORY

May 31, 1989 Supreme Court of British Columbia (Hardinge C.C.J.)	Warrant of Committal issued
July 12, 1991 Supreme Court of British Columbia (Oppal J.)	Applicant's application for a writ of *habeas corpus ad subjiciendum* dismissed

May 27, 1992 Court of Appeal of British Columbia (Southin, Taylor and Goldie, JJ.A.)	Applications of the Respondent Government to supplement the record and to adduce fresh evidence allowed; Applicant's appeal dismissed
July 20, 1992 Supreme Court of Canada	Application for leave to appeal filed

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Clifford Saddleback

v. (23111)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Offences - Impaired driving - Right to retain and instruct counsel - Waiver - Whether the Alberta Court of Appeal erred in holding that there was no breach of the Applicant's s. 10(b) *Charter* rights and, further, in failing to exclude the certificate of analyses under s. 24(2) and enter an acquittal.

PROCEDURAL HISTORY

March 26, 1991 Provincial Court of Alberta (Crowe P.C.J.)	Conviction: Impaired driving, contrary to s. 253(b) of the *Criminal Code*, R.S.C. 1985, c. C-46
September 6, 1991 Court of Queen's bench of Alberta (MacKenzie, J.)	Appeal allowed, conviction quashed, new trial ordered
May 7, 1992 Court of Appeal of Alberta (McDonald, McClung and Bracco, JJ.A.)	Respondent's appeal allowed, judgment of the Court of Queen's Bench set aside and conviction and sentence restored
July 31, 1992 Supreme Court of Canada	Application for leave to appeal filed

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New Brunswick Public Employees Association and Louise Mazerolle

v. (23079)

Her Majesty The Queen in Right of the Province of New Brunswick as represented by the Board of Management (N.B.)

NATURE OF THE CASE

Labour law - Arbitration - *Canadian Charter of Rights and Freedoms* - Statutes - Collective Agreement - Judicial review - Dismissal of employee towards the end of the probationary period - Whether the courts below erred in failing to find that the Adjudicator contravened sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* by holding that the principles of fairness and natural justice did not apply to the employee's dismissal - Whether the courts below erred in failing to find that section 23(4) of the *Civil Service Act*, S.N.B. 1984, c. C -5.1, violates section 7 of the *Charter*.

PROCEDURAL HISTORY

August 12, 1991 Public Service Labour Relations Board (Bertrand A., Adjudicator)	Award: grievance dismissed
December 31, 1991 Court of Queen's Bench of New Brunswick (Stevenson J.)	Application for judicial review dismissed
April 22, 1992 Court of Appeal of New Brunswick (Angers, Ayles and Ryan, JJ.A.)	Appeal dismissed
June 17, 1992 Supreme Court of Canada	Application for leave to appeal filed

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

Luc-Lin Bourque

c. (23094)

Jacques Hétu (Qué.)

NATURE DE LA CAUSE

Code civil - Responsabilité civile - Droit des professions - Dommages-intérêts - Procédure - Procédure civile - Actions - Moyen de non-recevabilité - Intérêt de l'intimé - La Cour d'appel a-t-elle erré en condamnant le demandeur, par voie de dommages, à satisfaire en fait à l'obligation de délivrance et de garantie du vendeur (1491 *C.c.B.C.*), sans que ce vendeur n'ait été recherché en exécution de ses obligations? - La Cour d'appel a-t-elle erré dans sa détermination du lien de causalité en faisant de la faute du notaire l'élément créateur du préjudice et en négligeant la véritable source du dommage, soit le défaut par le vendeur de livrer ce qu'il a déclaré vendre? - La Cour d'appel a-t-elle erré en ne faisant pas la distinction entre l'existence d'un droit d'action né et actuel contre le notaire et la détermination d'un préjudice certain pouvant être, au moment du jugement, relié par lien de causalité direct à la faute reprochée? - La Cour d'appel a-t-elle erré en laissant croire que le notaire condamné pouvait avoir un recours contre le vendeur?

HISTORIQUE PROCÉDURAL

Le 30 juin 1987 Cour provinciale du Québec (Blanchette j.c.p.)	Action accueillie; demandeur condamné à payer à l'intimé la somme de 3 825$ à titre de dommages
Le 27 avril 1992 Cour d'appel du Québec (Rothman, Gendreau et Baudoin jj.c.a.)	Appel accueilli; dommages octroyés à l'intimé réduits à 1 093$
Le 26 juin 1992 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Jacques Bilodeau et Les Distributions C.L.B. Inc.

c. (23095)

Roland Boutin et Qualipro Inc. (Qué.)

NATURE DE LA CAUSE

Droit des biens - Droit d'auteur - Procédure - Tribunaux - Appel - Compétence - Preuve - Test applicable pour déterminer une contrefaçon - Fardeau de preuve imposé à l'auteur de l'oeuvre - Compte tenu de la preuve, la Cour d'appel pouvait-elle conclure que la carte des intimés ne peut être considérée comme une reproduction ou au mieux, une simple adaptation de la carte des demandeurs? - La Cour d'appel a-t-elle commis une erreur en écartant les conclusions de fait du juge de première instance? - *Loi sur le droit d'auteur*, L.R.C. (1985), ch. C-42.

HISTORIQUE PROCÉDURAL

Le 13 décembre 1988 Cour du Québec (chambre civile) (Aubin j.p.c.q.)	Action principale des intimés accueillie quant à Roland Boutin; demande reconventionnelle des demandeurs accueillie
Le 30 avril 1992 Cour d'appel du Québec (Nichols, Gendreau et Baudoin jj.c.a.)	Pourvoi des intimés accueilli
Le 29 juin 1992 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Richmond Square Development Corporation

v. (23086)

Commercial Registration Appeal Tribunal
and
Ontario New Home Warranty Program and
Middlesex Condominium Corporation No. 134 (Ont.)

NATURE OF THE CASE

Property law - Judicial review - Prerogative writs - Statutory remedies - *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O-31 - Whether the refusal of the Court of Appeal to grant leave to appeal operates to deprive the Applicant of its right to have the principles of natural justice apply before the Respondent Tribunal - Whether the refusal of the Court of Appeal to grant leave to appeal operates to deprive the Applicant of its *Charter* rights, contrary to s. 7 of the *Canadian Charter of Rights and Freedoms* - Whether the refusal of the Court of Appeal to grant leave to appeal operates to deprive the Applicant of its right to a s. 16(2) conciliation hearing and of its right to a reasonable opportunity following the conciliation hearing to repair any work determined thereby to be covered by the statutory warranty, both prior to and

separate from the Applicant being required to attend before the Respondent Tribunal to answer allegations pursuant to s. 9 of the *Warranty Plan Act* based on the same conciliation decision.

PROCEDURAL HISTORY

November 21, 1991 Ontario Court (General Division) (Borins J.)	Leave to appeal granted to the Applicant pursuant to s. 6(2) of the *Judicial Review Procedures Act, R.S.O. 1980, c. 224*; Order compelling the Respondent CRAT to hold conciliation hearing; Order prohibiting Respondent CRAT from holding a revocation hearing
December 2, 1991 Ontario Court (General Division) (Carruthers J.)	Orders set aside; Order that hearing under s.16(2) of the *Ontario New Home Warranties Plan Act* and s. 9 revocation hearing to be held together
April 21, 1992 Court of Appeal for Ontario (Krever, McKinlay and Labrosse JJ.A.)	Leave to appeal dismissed
June 22, 1992 Supreme Court of Canada	Application for leave to appeal filed

OCTOBER 1, 1992 / LE 1 OCTOBRE 1992

22892 **NOVA SCOTIA HUMAN RIGHTS COMMISSION AND SCOTT SLIPP - v - THE CANADA LIFE ASSURANCE COMPANY** (N.S.)

CORAM: The Chief Justice and McLachlin 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

Civil Rights - Insurance - Statutes - Interpretation - Whether mortgage insurance is a service customarily provided to the public within the meaning of s. 15(1)(a) of the Nova Scotia *Human Rights Act*, R.S.N.S., 1989, c. 214 - Whether there was discrimination against the Applicant on the basis of physical handicap within the meaning of s. 15(1)(a) and 15(2) of the *Act* - Whether there was a *bona fide* qualification and thus a duty to accommodate.

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22924 **HER MAJESTY THE QUEEN - v. - ALBERT D. FRIEDBERG** (F.C.A.) (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Taxation - Assessment - Statutes - Interpretation - Speculative trading in futures contracts -Is a taxpayer, in computing his income for *Income Tax Act* purposes (and absent any provision of the *Act* precluding such choice), entitled to choose any method of profit and loss computation acceptable under generally acceptable accounting principles or must a taxpayer choose that method which most accurately reflects his income position?

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23019 GILLES PARISIEN AND CHARLES MACNEIL - v. - HER MAJESTY THE QUEEN (Crim.) (Ont.)

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 - Offence - Obstruction of justice - Police officers accused of obstructing justice by failing to charge another police officer with impaired driving - Whether the Court of Appeal for Ontario erred in law in failing to confirm the learned Motions Judge's finding that the offence of attempting to obstruct justice under section 139(2) of the *Criminal Code* required an element of criminality - Whether the Court of Appeal erred in law in failing to recognize that whether the Applicants had a duty to arrest and charge another person is a question of law for a judge to determine and not one of fact for a jury - Whether the Court of Appeal erred in law in concluding that the Applicants' failure to exercise their discretion in a manner that is not even prescribed in the *Criminal Code* or any other statute could result in actual criminal liability depending on the whim of a jury.

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22947 THE HYDRO ELECTRIC COMMISSION OF THE TOWN OF KENORA AND THE CORPORATION OF THE TOWN OF KENORA - v. - VACATIONLAND DAIRY CO-OPERATION LIMITED (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Municipal law - Municipal corporation - Public utilities - Energy - Statutes - Rates -Underbilling - Error as to billing - Statutory entitlement to reimbursement - Duties to consumers - Discrimination - Estoppel - Whether utility precluded from claiming proper amount - Whether the public policy of rate non-discrimination precludes the defence of estoppel to a claim by a public utility for proper charges - *Maritime Electric Co. v. General Dairies Ltd.*, [1937] 1 D.L.R. 609 (P.C.) (Can.).

22999 **GEORGE HENRY HOWARD - v. - HER MAJESTY THE QUEEN** (Crim.) (Ont.)

CORAM: The Chief Justice and McLachlin 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 - Criminal law - Indians - Fisheries - Division of powers - Indian treaties - Section 35(1) of the *Constitution Act, 1982* - Applicant taking fish out of season contrary to the *Ontario Fishery Regulations*, C.R.C. 1979, Ch. 849 (made pursuant to the *Fisheries Act*, R.S.C. 1970, c. F-14) - Did the courts below err in applying the principles enunciated by the Supreme Court of Canada in construing the terms of an ambiguous Indian treaty document? - Did the courts below err in failing to give substantive meaning to the term "Indian title"? - Whether the courts below failed to give substantive meaning to a basket clause in the 1923 Treaty - Whether the courts below erred in permitting the Respondent to discharge the onus of proving extinguishment of treaty rights.

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23025 **TIMOTHY CLUTTERBUCK - v. - HER MAJESTY THE QUEEN** (Crim.) (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Offences - Perjury - Corroboration - Whether the Court of Appeal for Ontario erred in ruling that corroboration is not required by section 133 of the *Criminal Code* in order to sustain a conviction for perjury, where proof of the alleged perjury rests upon inferences to be drawn from conduct - Whether lower courts erred in inferring Applicant's guilt from his conduct, where he alleged he could not remember conduct - Interpretation of section 133 of the *Criminal Code*.

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22989 LE MINISTRE DU REVENU DU QUÉBEC, LE SOUS-MINISTRE DU REVENUE DU QUÉBEC, LE PROCUREUR GÉNÉRAL DU QUÉBEC, MONSIEUR ROBERT PAULIN - v. - 143 471 CANADA INC., MONSIEUR LEONARDO ARCURI, MONSIEUR FRANCESCO MILIOTO, MONSIEUR ANTONIO FACCHINO, MONSIEUR JOHN A. PAOLETTI, MONSIEUR SANTO GRACIOPPO, MONSIEUR CASIMIRO C. PANARELLO - et entre - LE MINISTRE DU REVENU DU QUÉBEC, LE SOUS-MINISTRE DU REVENU DU QUÉBEC, LE PROCUREUR GÉNÉRAL DU QUÉBEC, MONSIEUR FRANÇOIS LARAMÉE - v. - MONSIEUR MAURICE TABAH, 116 689 CANADA INC., LES ENTREPRISES IMMOBILIÈRES MAURICE TABAH INC., MONSIEUR GEORGES ABOUASSLY, MONSIEUR IBRAHIM HADDAD, MONSIEUR FERNAND HÉTU, MONSIEUR PAUL-OMER DESROSIERS, ME JOHANNE PIETTE, SERVICE IMMOBILIER JOLIETTE INC. (Qué.)

CORAM: Le Juge en chef et les juges McLachlin et Iacobucci

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Droit fiscal - Procédure - Saisie - Requête en évocation, *certiorari* et *mandamus* attaquant la constitutionnalité des perquisitions et saisies - Requête interlocutoire visant l'entiercement des documents saisis - La Cour d'appel a-t-elle erré dans son application des critères développés dans l'arrêt *Manitoba (P.G.) c. Metropolitan Stores Ltd.*, [1987] 1 R.C.S. 110, en concluant au bien-fondé d'une ordonnance d'entiercement de documents saisis à la suite d'autorisations écrites émises en vertu de l'art. 40 de la *Loi sur le ministère du Revenu*, L.R.Q. 1977, ch. M-31?

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22942 **RONALD MICHAEL DERRICKSON, BRIAN D. ELI, HAROLD J. DERICKSON v. ANN MARIE TOMAT, MARY DERICKSON, LARRY DERRICKSON, LLOYD ELI SR., CLARENCE CLOUGH and BARBARA DERRICKSON, and persons unknown, carrying on business as the WESTBANK INDIAN ACTION AND ADVISORY COUNCIL and said WESTBANK INDIAN ACTION AND ADVISORY COUNCIL and GARY SWITE, ROSE DERRICKSON, BARBARA COBLE, BONNIE COBLE and ROBERT LOUIE** (B.C.)

CORAM: La Forest, Sopinka and Gonthier JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Torts - *Canadian Charter of Rights and Freedoms* - Libel and slander - Damages - Evidence -Freedom of expression - Civil conspiracy - Measure of damages - Group liability for the tort of defamation - Did the Court of Appeal err in holding that the trial judge failed to find that each of the Respondents was individually responsible for the preparation and publication of the defamatory material? - Did the Court of Appeal err in holding that the trial judge erred in rejecting the defence of qualified privilege in respect of the Respondents, other than Robert Louie? - Whether the Court of Appeal erred in determining that damages in favour of a public official should be limited having regard to freedom of expression as expressed in the *Charter* - Whether the Court of Appeal was correct in ordering a new trial.

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23056 MASTER PAVING & CONSTRUCTION (NIAGARA FALLS) LTD. v. THE CORPORATION OF THE CITY OF NIAGARA FALLS (Ont.)

CORAM: La Forest, 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

Municipal law - Penal law - Interpretation and application of by-laws - Zoning - Non-conforming use of land - Unlawful use of land in agricultural and hazard zone for the purpose of a contractor's yard contrary to City of Niagara Falls By-Law No. 79-200 - Whether the Court of Appeal erred in determining that the approval given by the Planning Board cured the gap of two and one half months in which there was no by-law in existence -Whether the Court of Appeal failed to appreciate that during the time there was no by-law, the Applicant's use of the land became a legal non-conforming use.

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22981 A.C. c. SA MAJESTÉ LA REINE (Crim.) (Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit criminel - Procès - Défense - Fin de non-recevoir - Preuve - Expert - Est-ce que la Cour d'appel a commis une erreur en décidant que la diligence raisonnable était un facteur à considérer pour décider de la recevabilité de la défense de fin de non-recevoir fondée sur la chose jugée? - Admissibilité d'un témoignage d'expert en contre-preuve - Est-ce que la Cour d'appel a commis une erreur de droit en ne reconnaissant pas que le fait qu'un témoignage d'un expert en contre-preuve soit admissible sur un point particulier ne rend pas ce témoignage admissible sur un autre point qui ne peut légalement faire l'objet d'une contre-preuve.

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22863 SAMUEL H. SHANKS v. THOMAS HARRY McNEE and BEVERLY ANN McNEE - and - LONDON LIFE, CONFEDERATION LIFE and GREAT WEST LIFE (B.C.)

CORAM: La Forest, 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 - Damages - Insurance - Measure of damages - Disability benefits - Injuries suffered in motor vehicle accident - Claims for past and future loss of income - Whether disability benefits should be deducted from damage awards for loss of income in order to avoid double recovery - Whether a tortfeasor is entitled to the benefits of payments made to an injured person by a third party which are intended to compensate the injured person for the loss sustained as a result of the tort - Whether the principle which permits the deduction of collateral benefits from an award of compensatory damages, if such principle exists, extends to and includes benefits which are paid to an injured person pursuant to the terms of a collective agreement and paid for in kind by the injured party - Whether the doctrine of subrogation applied to disability benefits paid to an injured person pursuant to a plan or scheme of insurance when the paln or scheme is silent with respect to the issue of subrogation - Interpretation of *Ratych v. Bloomer*, [1990] 1 S.C.R. 940.

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22860 JOHN EARL MILLER v. MARIEA COOPER - AND - THOMAS HARRY McNEE and BEVERLY ANN McNEE v. SAMUEL H. SHANKS (B.C.)

CORAM: La Forest, 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 - Damages - Insurance - Measure of damages - Disability benefits - Injuries suffered in motor vehicle accident - Claims for past and future loss of income - Whether disability benefits should be deducted from damage awards for loss of income in order to avoid double recovery - Whether Respondent required to deduct disability benefits from the claims for past and future loss of income even though she paid 30 per cent of the premium for the disability insurance - Whether Respondent should be required to deduct the disability benefits from the claim for past loss of income even though he contributed to premium for a long term disability plan and even if the insurer has a right of repayment, which the Applicant says was not proved - Whether Respondent required to deduct an amount equivalent to the income tax he would have paid on his earnings - Interpretation of *Ratych v. Bloomer*, [1990] 1 S.C.R. 940.

22915 PATRICK OWEN SWINAMER v. THE ATTORNEY GENERAL OF NOVA SCOTIA, representing HER MAJESTY THE QUEEN in Right of the PROVINCE OF NOVA SCOTIA (N.S.)

CORAM: La Forest, 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 - Highways - Standard of care - Tort liability of a government agency - Interpretation of *Just v. The Queen in Right of British Columbia*, [1989] 2 S.C.R. 1228 - Interpretation of the statutory and common law policy and duties of the Crown in relation to the maintenance of public highways - Whether the Court of Appeal erred in law by making a policy decision not to impose a duty of care on government agencies - Whether the Court of Appeal erred on a issue of mixed law and fact in that it found that the trial judge erred in concluding that there was a policy to inspect and remove diseased trees from adjoining lands.

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22946 MONTAGUE BROWN v. HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND HIGHWAYS (B.C.)

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

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22948 MOBIL OIL CANADA LTD., GULF CANADA RESOURCES LTD., PETRO-CANADA INC. and CHEVRON CANADA RESOURCES LTD. v. CANADA-NEWFOUNDLAND OFFSHORE PETROLEUM BOARD (Nfld.)

CORAM: La Forest, Sopinka and Gonthier JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

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

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22867 BRADWELL HENRY CUNNINGHAM v. CHERYLEE LYN WHEELER and EDWARD KENNETH WHEELER (B.C.)

CORAM: La Forest, 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 - Damages - Insurance - Measure of damages - Disability benefits - Injuries suffered in motor vehicle accident - Claim for past wage loss - Whether disability benefits should be deducted from damage awards for loss of income in order to avoid double recovery - Whether a tortfeasor is entitled to the benefits of payments made to an injured person by a third party which are intended to compensate the injured person for the loss sustained as a result of the tort - Whether or not and to what extent the collateral benefits rule continues to apply to disability benefits received by an injured plaintiff after the decision of the Supreme Court of Canada in *Ratych v. Bloomer* [1990] 1 S.C.R. 940 - Whether the Court of Appeal erred in finding that the disability benefits received by the Applicant as a result of tradeoffs in the collective bargaining process between his union and employer, were deductible from the trial judge's award for past wage loss.

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22961 THE ATTORNEY GENERAL OF CANADA and THE SOLICITOR-GENERAL OF CANADA v. RICHARD SAUVÉ and THE CHIEF ELECTORAL OFFICER OF CANADA (Ont.)

CORAM: La Forest, Sopinka and Gonthier 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 - Civil rights - Right to vote - Federal legislation prohibiting inmates of prisons from voting in elections - Whether rights of inmates under the *Charter* are thereby infringed - Applicability of s. 1 of the *Charter*.

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22962 HER MAJESTY THE QUEEN v. WALTER STANLEY BELCZOWSKI (F.C.A.) (Alta.)

CORAM: La Forest, Sopinka and Gonthier 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 - 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*.

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22980 LEROY JENSEN and ROGER TOLOFSON v. KIM TOLOFSON (B.C.)

CORAM: La Forest, 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 - Jurisdiction - *Forums non conveniens* - The Respondent, a British Columbia resident, was riding as a passenger in a car driven by his father, the Applicant Tolofson - While driving in Saskatchewan, they were involved in an accident with a vehicle driven by the Applicant, Jensen, a resident of Saskatchewan - Respondent commencing action in British Columbia - Whether in an action on a tort in a province other than the province of the forum, the Court of the forum is required to apply the law of the forum automatically upon determining that it has jurisdiction - Whether *McLean v. Pettigrew*, [1945] S.C.R. 62, sets out the test to be applied in determining the choice of law in tort actions or whether it should be distinguished as a case deciding jurisdiction only.

23033 ROBERT L. HODGKINSON v. DAVID L. SIMMS and JERRY S. WALDMAN, carrying on business as SIMMS & WALDMAN, and the said SIMMS & WALDMAN, a partnership (B.C.)

CORAM: La Forest, Sopinka and Gonthier JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Commercial law - Law of professions - Contracts - Stockbrokers - Fiduciary duty - Applicant stockbroker investing funds on the advice of a chartered accountant - Whether the Court of Appeal erred in extending the majority decision in *International Corona Resources Ltd. v. Lac Minerals Ltd.*, [1989] 2 S.C.R. 574 to curtail the circumstances in which a fiduciary duty will be owed by professional advisors to clients - Whether the Court of Appeal erred in failing to hold that financial advisors who induce clients to invest in self interested transactions are liable for losses resulting from a failing market.

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MOTIONS

REQUÊTES

24.9.1992

Before / Devant: THE REGISTRAR

Motion to inscribe this appeal for the fall session

Requête pour inscrire l'appel sur le rôle de la session d'automne

A.G.B.

With the consent of the parties.

v. (22856)

Her Majesty The Queen (P.E.I.)

GRANTED / ACCORDÉE

24.9.1992

Before / Devant: McLACHLIN J.

Motion for a stay of execution

Naika International Ltd.

v. (23165)

Bank of Montreal (B.C.)

Requête en vue de surseoir à l'exécution

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

Patrick G. Foy, contra.

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

The following was ordered:

The applicant, Naika International Ltd., seeks a stay of execution of an order compelling the production of documents in an action in British Columbia. If the stay is not granted and the documents not produced, the applicant faces the possibility that its defence may be struck out pursuant to the British Columbia rules before the trial, which is scheduled to proceed in October.

It is agreed that the applicant must establish a serious question for the consideration of this Court before a stay can be granted. Having reviewed its material, I cannot conclude that it has established this.

The applicant submits that it cannot produce the documents in question without breaking the law of Vanuatu, where Naika is registered and administered by a trust company. This, if established, would raise the legal question of whether Canadian Courts will require production of documents where production violates the law of a foreign jurisdiction.

The applicant's material falls short of establishing that producing the documents would violate the law of Vanuatu. The affidavit it relies on says that disclosure by the officer of the trust company which administers Naika would violate the law, unless it were done in the circumstances mentioned in s. 9 of the *Trust Companies Act* of Vanuatu. Section 9 permits disclosure, provided that the trust company authorizes it. The applicant has not suggested any reason why the trust company would not authorize disclosure. In fact, the deponent of the affidavit says that she is "not able to say what the role of the trust company is in relation to the company".

It follows that the applicant has not established that disclosure would involve breach of Vanuatu law, and hence has failed to raise a serious question for the consideration of this Court.

In view of this conclusion, I need not consider the arguments on irreparable harm and the balance of convenience.

The application is dismissed with costs.

25.9.1992

Before / Devant: McLACHLIN J.

Motion to file an amended factum

Vincent Hall

v. (22399)

Jean Hébert also known as Joseph Jean Claude Hébert (B.C.)

DISMISSED / REJETÉE for want of jurisdiction.

Requête en vue de produire un mémoire modifié

James I. Minnes, for the motion.

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

25.9.1992

Before / Devant: McLACHLIN J.

Motion to extend the time in which to file a leave to intervene and for leave to intervene

Requête en prorogation du délai pour produire une requête en intervention et requête en autorisation d'intervention

BY/PAR:Canadian Council for Refugees

David Matas, for the motion.

IN/DANS:Abdul Rassoul Dehghani

Consent filed by the appellant.

v. (22153)

The Minister of Employment and Immigration (F.C.A.)

Brian Everden, for the respondent.

GRANTED / ACCORDÉE

25.9.1992

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai de signification et de production de la réponse de l'intimée

337965 B.C. Ltd. et al.

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

v. (23139)

Colin Baxter, contra.

Tachama Forest Products Ltd. et al. (B.C.)

GRANTED / ACCORDÉE Time extended to November 20, 1992.

28.9.1992

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai de production de la réponse des appelants

Fédération des employées et employés de services publics Inc. et al.

c. (22339)

Louisette Béliveau St. Jacques (Qué.)

Motion to extend the time in which to file the appellants' response

Avec le consentement des parties.

ACCORDÉE / GRANTED Délai prorogé au 16 octobre 1992.

28.9.1992

Before / Devant: THE REGISTRAR

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

Her Majesty The Queen

v. (22063)

Chikmaglur Mohan (Ont.)

Requête en prorogation du délai de signification et de production de la réponse de l'intimé

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to Sept. 18, 1992

28.9.1992

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai de signification et de production de la réponse de l'intimé

Insurance Corp. of British Columbia

v. (23128)

Minister of Financial Institutions (Ont.)

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to Sept. 30, 1992

25.9.1992

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to adjourn the hearing of these appeals

Requête pour ajourner l'audition de ces appels

The Oshawa Group Ltd.

v. (22442)

The Attorney General of Ontario (Ont.)

and

Hy and Zel's Inc. et al.

v. (22556)

The Attorney General of Ontario (Ont.)

and

Paul Magder Furs Ltd. et al.

v. (22559)

The Attorney General of Ontario (Ont.)

With the consent of the parties.

GRANTED / ACCORDÉES Adjourned to the January session.

29.9.1992

Before / Devant: McLACHLIN J.

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

Requête en prorogation du délai de signification et de production du mémoire de l'intimée

Frederick Francis Benson

v. (22811)

Her Majesty The Queen (N.S.)

With the consent of the parties.

GRANTED / ACCORDÉE

30.9.1992

Before / Devant: THE CHIEF JUSTICE LAMER

Motion for an order expediting the hearing of this appeal

Requête visant à accélérer l'audition de l'appel

Irene Helen Young

v. (22227)

James Kam Chen Young et al. (B.C.)

With the consent of the parties.

GRANTED / ACCORDÉE and this appeal will be heard together with *Plouffe v. Shea (22296)*

23.9.1992

Cyril Patrick Prosper

v (23178)

Her Majesty The Queen (Crim.)(N.S.)

AS OF RIGHT

22.06.1992

Her Majesty the Queen

v. (22889)

Richard Carmichael Augustine (N.B.)

(appeal)

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AGENDA for the week beginning October 5, 1992.
ORDRE DU JOUR pour la semaine commençant le 5 octobre 1992.

Date of Hearing/ Date d'audition	NO.	Case Number and Name/ Numéro et nom de la cause
05/10/92	15	Frederick Francis Benson v. Her Majesty the Queen (Crim.)(N.S.)(22811)
06/10/92 9:30AM	5	Vincent Hall v. Jean Hébert, also known as Joseph Jean Claude Hébert (B.C.)(22399)
06/10/92	13	Her Majesty The Queen v. Lyndon Paul Cooper (Crim.)(Nfld.)(22395)
07/10/92 9:15AM	4	George Ernest Hunt v. Lac D'Amiante du Québec Ltée, formerly known as Lake Asbestos Company Ltd. et al. (B.C.)(22637)
08/10/92	14	United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd. (Nfld.)(22023)
08/10/92	36	Her Majesty The Queen v. K.G.B. (Crim.)(Ont.)(22351)
09/10/92	3	Gary Rube v. Her Majesty the Queen (Crim.)(B.C.)(22421)
09/10/92	6	Josef Hans Egger v. Her Majesty The Queen (Crim.)(Alta.)(22816)

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.

22811**FREDERICK FRANCIS BENSON V. HER MAJESTY THE QUEEN**

Criminal law - Trial - Evidence - Admissibility of Evidence - Probative value of evidence -Whether the trial judge erred in law in admitting evidence of physical abuse against other members of the family of the victim.

Following a trial by judge and jury, the Appellant was found guilty of two counts of sexual intercourse with a person who was not his wife without her consent, two counts of intent to wound causing bodily harm and one count of indecent assault. He was sentenced to a total term of thirteen years imprisonment.

The Appellant resided in the home of his brother and his brother's wife in Halifax and was responsible for the care of the couple's twelve children. The complainant is one of the daughters. The abuse commenced, according the her evidence, when she was six to eight years of age and continued until she was sixteen. There was evidence that the Appellant totally dominated the children and the complainant in particular during the period he resided in the home. Constant threats and fear were used to enforce the Appellant's will over the child. There were a number of physical assaults on the child.

An older brother caught the Appellant at night having relations with the complainant. As a result the Appellant was forced to leave the home and went to Toronto. Years later, the complainant saw the Appellant, who had become addicted to alcohol, in a store in Halifax and decided to report the alleged assaults to the police.

Prior to the trial the Appellant made an application for a stay of proceedings to the trial judge. The Appellant contended that because of his physical and mental condition and the long delay in laying the charges it was impossible to mount a proper defence to the charges and to get a fair trial. The application was supported by medical evidence. The Appellant relied on Sections 7 and 11(d) of the *Canadian Charter of rights and Freedoms*. In dismissing the application, the trial judge found that the Appellant had failed to establish that he had been prejudiced or that he would not get a fair trial because his health or the delay in bringing the charges.

The Appellant appealed from his conviction and sentence. At the conclusion of oral argument before the Court of Appeal on the grounds of appeal set out in the Appellant's Notice of Appeal, the Court requested counsel to make further written submission on two issues which had been raised during the argument. The first related to the admission of evidence of physical abuse against other members of the family and in particular the evidence of the brother. The Court of Appeal of Nova Scotia, Appeal Division, dismissed the appeals, Jones J.A. dissenting on the issue related to the evidence of the brother.

The sole ground of this appeal as of right is whether the trial judge erred in law in admitting evidence of physical abuse against other members of the family, and in particular the evidence of the brother of the complainant.

Origin of the case: Nova Scotia
File No.: 22811
Judgment of the Court of Appeal: December 18, 1991
Counsel:C. M. Garson, for the Appellant
Attorney General for the Province of Nova Scotia for the Respondent

Factum of the Appellant 25 pages

22811 **FREDERICK FRANCIS BENSON c. SA MAJESTÉ LA REINE**

Droit criminel - Procès - Preuve - Admissibilité de la preuve - Valeur probante de la preuve - Le juge du procès a-t-il erré en droit en recevant la preuve de mauvais traitements physiques subis par d'autres membres de la famille de la victime?

Après son procès devant juge et jury, l'appelant a été déclaré coupable relativement à deux accusations de rapports sexuels avec une personne qui n'était pas sa conjointe sans son consentement, à deux accusations d'intention de blesser en infligeant des blessures corporelles et à une accusation d'attentat à la pudeur. Il a reçu une peine d'emprisonnement totale de treize ans.

L'appelant résidait avec son frère et sa belle-soeur dans leur résidence d'Halifax où il prenait soin des douze enfants du couple. La plaignante est l'une de leurs filles. Selon son témoignage, elle a subi les agressions alors qu'elle était âgée d'entre six et huit ans jusqu'à seize ans. La preuve a démontré que l'appelant dominait totalement les enfants, particulièrement la plaignante, lorsqu'il résidait à la maison. Des menaces et des craintes constantes permettaient à l'appelant d'imposer sa volonté à l'enfant. Cette dernière a subi de nombreuses agressions physiques.

Un soir, un frère plus âgé a surpris l'appelant alors qu'il avait des relations avec la plaignante. L'appelant, forcé de quitter la résidence, s'est donc rendu à Toronto. Plusieurs années plus tard, dans un magasin d'Halifax, la plaignante a vu l'appelant, devenu alcoolique, et elle a décidé de rapporter les agressions alléguées à la police.

Avant le procès, l'appelant a soumis une requête en suspension d'instance au juge du procès. L'appelant soutenait qu'en raison de son état physique et mental et du long moment mis à porter les accusations, il lui était impossible de constituer une défense convenable contre les accusations et de subir un procès équitable. L'appelant a appuyé sa requête d'une preuve médicale en plus d'invoquer les articles 7 et 11*d*) de la *Charte canadienne des droits et libertés*. Le juge du procès a rejeté la requête en concluant que l'appelant n'avait pas établi qu'en raison de son état de santé ou du temps mis à porter les accusations, il avait été lésé ou n'obtiendrait pas un procès équitable.

L'appelant a interjeté appel de la déclaration de culpabilité et de sa sentence. À la clôture des plaidoiries entendues par la Cour d'appel sur les moyens d'appel formulés dans l'avis d'appel de l'appelant, la Cour a demandé aux avocats de lui soumettre des observations écrites supplémentaires sur deux questions soulevées au cours des plaidoiries. La première portait sur l'admission de la preuve des mauvais traitements physiques subis par les autres membres de la famille, et particulièrement du témoignage du frère. La Cour d'appel de la Nouvelle-Écosse, Section d'appel, a rejeté les appels, le juge Jones étant dissident sur la question relative au témoignage du frère.

Le présent appel de plein droit porte sur la seule question de savoir si le juge du procès a commis une erreur de droit en recevant la preuve des mauvais traitements physiques subis par les autres membres de la famille, et particulièrement le témoignage du frère de la plaignante.

Origine :Nouvelle-Écosse
N^{o} du greffe :22811
Arrêt de la Cour d'appel : Le 18 décembre 1991
Avocats :C.M. Garson pour l'appelant
Le Procureur général de la province de la Nouvelle-Écosse pour l'intimée

Mémoire de l'appelant : 25 pages

22399 VINCENT HALL V. JEAN HÉBERT, ALSO KNOWN AS JOSEPH JEAN CLAUDE HÉBERT

Torts - Negligence - Defence - Damages - Motor vehicles - Duty of care - Is there a duty of care upon a person who has custody and control over a motor vehicle not to turn such custody or control over to a person who he knows or ought to know is impaired, and if so, can a person who has custody and control of a motor vehicle escape such a duty by reason of his own intoxication? - Is the defence *ex turpi causa non oritur actio* applicable to a claim in tort? - Should the defence be expanded to instances where there is no joint criminal enterprise? - Does the maxim survive s. 1 of the *Negligence Act*, R.S.B.C. 1979, c. 298?

The Appellant suffered injuries following a motor vehicle accident. The Appellant, who had consumed a sufficient quantity of alcohol to render himself impaired, was driving the Respondent's car, with the Respondent's permission. The Respondent, also impaired, had been driving but had caused his vehicle to stall on a steep, gravel road that led down to a gravel pit. He and the Appellant turned the car around, and the Appellant took the wheel. While they were attempting to roll start the car, the Appellant lost control and the car ended up in the gravel pit, upsidedown.

The Appellant sued for damages alleging that the Respondent's negligence caused or contributed to the accident. In his statement of claim, he alleged that the Respondent was negligent in driving the vehicle, or alternatively, in permitting the Appellant to drive while impaired. The trial judge allowed the claim and apportioned liability 25% to the Appellant and 75% to the Respondent. The Respondent appealed this judgment to the Court of Appeal, which allowed the appeal and dismissed the Appellant's claim.

Origin of the case: B.C.

File No.: 22399

Judgment of the Court of Appeal: February 1, 1991

Counsel: Steven H. Heringa for the Appellant
James S. Carfra Q.C. for the Respondent

Factum of the Appellant: 39 pp.

22399 **VINCENT HALL C. JEAN HÉBERT, AUSSI CONNU SOUS LE NOM DE JOSEPH JEAN CLAUDE HÉBERT**

Responsabilité délictuelle - Négligence - Moyen de défense - Dommages-intérêts - Véhicules à moteur - Obligation de diligence - Une personne qui a la garde et le contrôle d'un véhicule à moteur a-t-elle une obligation de diligence de ne pas confier la garde ou le contrôle de ce véhicule à une personne qu'il sait ou aurait dû savoir qu'elle avait les facultés affaiblies; dans l'affirmative, la personne qui a la garde et le contrôle d'un véhicule peut-elle s'exonérer en invoquant sa propre intoxication? - Le moyen de défense *ex turpi causa non oritur actio* est-il applicable à une réclamation délictuelle? - Le moyen de défense ne devrait-il pas aussi viser les cas où il n'existe pas d'entreprise criminelle commune? - La maxime est-elle sauvegardée par l'article premier de la *Negligence Act*, R.S.B.C. 1979, ch. 298?

L'appelant a subi des blessures à la suite d'un accident de véhicule à moteur. L'appelant, qui avait consommé suffisamment d'alcool pour avoir les facultés affaiblies, conduisait la voiture de l'intimé, avec l'autorisation de ce dernier. L'intimé, également en état d'ébriété, avait aussi conduit la voiture avant l'incident, mais avait fait caler le moteur sur une route de gravier escarpée menant à une carrière. L'appelant et lui ont réussi à remettre la voiture sur la route et c'est à ce moment que l'appelant a pris le volant. Pendant qu'ils tentaient de faire partir la voiture en courant à côté, l'appelant a perdu le contrôle et la voiture s'est retrouvé, à l'envers, dans la carrière.

L'appelant a intenté une action en dommages-intérêts, soutenant que l'accident était attribuable à la négligence de l'intimé. Dans sa déclaration, l'appelant soutient que l'intimé a fait preuve de négligence en conduisant le véhicule ou, subsidiairement, en lui permettant de conduire pendant qu'il était en état d'ébriété. Le juge de première instance a accueilli la réclamation et tenu l'appelant responsable dans une proportion de 25 pour cent et l'intimé, dans une proportion de 75 pour cent. L'intimé a interjeté appel du jugement auprès de la Cour d'appel, qui a accueilli l'appel et rejeté la réclamation de l'appelant.

Origine: C.-B.

N^{o} du greffe: 22399

Arrêt de la Cour d'appel: Le 1er février 1991

Avocats: Steven H. Heringa pour l'appelant
James S. Carfra c.r. pour l'intimé

Mémoire de l'appelant: 39 pp.

22395HER MAJESTY THE QUEEN V. LYNDON PAUL COOPER

Criminal law - Offences - Defences - Whether Court of Appeal erred in its interpretation of *mens rea* necessary for the offence of murder within s. 229(a)(ii) of the *Criminal Code* - Whether Court of Appeal erred in holding that accused must have "continuing awareness" of his illegal act, as that interpretation eliminates the element of recklessness in s. 229(a)(ii).

The Respondent and Deborah Careen had known each other for some time, and, on the night of Careen's death, met in a bar, where both drank heavily. After leaving the bar, the Respondent and Careen went to the Respondent's car, where they engaged in consensual sexual activity. They began to argue, which led to the Respondent striking Careen and putting his hand around her neck and shaking her. The Respondent testified that he then blacked out. He awoke later that morning, and found himself next to Careen's body. He removed her body from the car, placed it on the ground, and drove off. Forensic evidence established that the victim had been hit twice, but that these injuries could not have caused her death, which resulted from strangulation. This evidence also showed that the victim had to have been held by the neck for two minutes for death to ensue.

The Respondent was charged with the first degree murder of Careen. He was convicted by a jury of second degree murder, and appealed to the Court of Appeal for Newfoundland. His appeal was allowed, the Court setting aside his conviction and ordering a new trial.

Origin of the case: Nfld.

File No.: 22395

Judgment of the Court of Appeal: February 5, 1991

Counsel: J. Thomas Eagan for the Appellant
Ernest L. Gittens for the Respondent

Factum of the Appellant: 18 pp.

22395 SA MAJESTÉ LA REINE C. LYNDON PAUL COOPER

Droit criminel - Infractions - Moyens de défense - La Cour d'appel s'est-elle trompée dans son interprétation de la *mens rea* nécessaire pour l'infraction de meurtre prévue à l'art. 229*a*)(ii) du *Code criminel*? - Est-ce à tort que la Cour d'appel a conclu que l'accusé doit avoir une «conscience continue» de son acte illégal, étant donné que cette interprétation écarte l'élément d'indifférence énoncé à l'art. 229*a*)(ii)?

L'intimé et Deborah Careen se connaissaient depuis assez longtemps et, la nuit de la mort de celle-ci, s'étaient retrouvés dans un bar où ils ont tous deux bu copieusement. Après avoir quitté le bar, l'intimé et Careen se sont rendus à la voiture de l'intimé. Ils se sont livrés là, avec le consentement de Careen, à des actes sexuels. Une dispute a toutefois éclaté entre les deux, dispute au cours de laquelle l'intimé a frappé Careen, l'a prise à la gorge d'une main et l'a secouée. Selon le témoignage de l'intimé, il a alors perdu connaissance. En se réveillant plus tard dans la matinée, il s'est trouvé à côté du cadavre de Careen. Il a sorti le cadavre de la voiture, l'a mis à terre et a quitté les lieux. D'après la preuve médico-légale, la victime avait reçu deux coups, mais les blessures en découlant n'auraient pas pu causer sa mort, qui a en fait eu lieu par strangulation. Il ressort en outre de cette preuve qu'il a fallu que la victime soit tenue à la gorge pendant deux minutes pour que la mort s'ensuive.

L'intimé a été accusé de meurtre au premier degré par suite de la mort de Careen. Reconnu coupable par un jury de meurtre au deuxième degré, il a interjeté appel devant la Cour d'appel de Terre-Neuve. La Cour a accueilli l'appel, a annulé le verdict de culpabilité et a ordonné la tenue d'un nouveau procès.

Origine : Terre-Neuve

N^{o} du greffe : 22395

Arrêt de la Cour d'appel : Le 5 février 1991

Avocats : J. Thomas Eagan pour l'appelante
Ernest L. Gittens pour l'intimé

Mémoire de l'appelante : 18 pages

22637 George Ernest Hunt v. Lac d' Amiante Canada Inc. formerly known as Lake Asbestos Company Ltd. Asbestos Corporation Limited, Atlas Turner Inc., Bell Asbestos Mines Limited, JM Asbestos Inc., The Quebec Mining Association and National Gypsum Co.

Procedural law - Actions - Pre-trial procedure - Production of documents - Conflict of laws -Doctrine of comity -Constitutional law - Statutes - Interpretation - Appellant (plaintiff) seeking production of documents located in Quebec - Quebec legislation prohibiting the sending out of province of said documents - What effect does Quebec legislation have on British Columbia action? - Whether British Columbia courts can consider constitutionality of Quebec legislation -Did Respondents make efforts in good faith to comply with the *Rules of Court*? - *Business Concerns Records Act*, L.R.Q. 1977, c. D-12.

The Appellant, who suffers from cancer caused by the inhalation of asbestos fibres, has sued the Respondents, Quebec companies involved in the production and distribution of asbestos, for damages. He alleges that they and others had been negligent and further, that there had been a conspiracy to hide the dangers of asbestos from the public. In the course of the proceedings, the Appellant demanded production of documents from the Respondents. The Respondents complied, insofar as documents located in the Province of British Columbia were concerned, but refused to produce documents located in the Province of Quebec, relying on the provisions of the *Business Concerns Records Act*, L.R.Q. 1977, c. D-12. Orders prohibiting the Respondents from sending documents out of the province of Quebec had been made under s. 4 of this Act. The Appellant applied to the Supreme Court of British Columbia for an ordering compelling the production of the documents. The chambers judge dismissed the application. The Appellant appealed to the Court of Appeal for British Columbia, which dismissed the appeal. He appeals to the Supreme Court of Canada by leave.

Origin of the case:	B.C.
File No.:	22637
Judgment of the Court of Appeal:	June 6, 1991
Counsel:	J.J. Camp Q.C., David P. Church and Stephen Antle for the Appellant W. S. Berardino, Q.C. and Avon M. Mersey for the Respondent Lac D'Amiante; Jack Giles, Q.C. and Robert J. McDonnell for the Respondents Asbestos Corporation Ltd., Bells Asbestos Mines Ltd., and Atlas Turner Inc; Richard B. Lindsay and Gregory S. Miller for the Respondent J.M. Asbestos Ltd.; Louis J. Zivot for the Respondent Quebec Asbestos Mining Association; John L. Finlay for the Respondent National Gypsum Co.
Factum of the Appellant:	36 pp.

22637 **George Ernest Hunt c. Lac d'Amiante Canada Inc. anciennement connue sous le nom de Lake Asbestos Company Ltd., Société Asbestos Limitée, Atlas Turner Inc., Les mines d'amiante Bell, Limitée, JM Asbestos Inc., The Quebec Mining Association et National Gypsum Co.**

Droit procédural - Actions - Procédure préparatoire au procès - Production de documents -Droit international privé - Doctrine de la courtoisie - Droit constitutionnel - Lois - Interprétation - L'appelant (demandeur) demande la production de documents situés au Québec - La loi québécoise interdit l'envoi de ces documents à l'extérieur de la province -Quel est l'effet de la loi québécoise sur l'action intentée en Colombie-Britannique? - Les tribunaux de la Colombie-Britannique peuvent-ils étudier la constitutionnalité de la loi québécoise? - Les intimées ont-elles tenté de bonne foi de respecter les *Règles de pratique*? -*Loi sur les dossiers d'entreprise*, L.R.Q. 1977, ch. D-12.

L'appelant, qui souffre d'un cancer dû à l'inhalation de fibres d'amiante, a intenté une poursuite en dommages-intérêts contre les intimées, des compagnies québécoises effectuant la production et la distribution de l'amiante. Il soutient qu'elles ont, avec d'autres, été négligentes et qu'en outre, on a tramé une conspiration pour cacher au public les dangers de l'amiante. Au cours de l'instance, l'appelant a demandé aux intimées de produire certains documents. Ces dernières ont acquiescé à la demande relativement aux documents situés dans la province de la Colombie-Britannique, mais elles ont refusé de produire les documents situés dans la province de Québec, invoquant les dispositions de la *Loi sur les dossiers d'entreprise*, L.R.Q. 1977, ch. D-12. Des ordonnances interdisant aux intimées d'envoyer les documents à l'extérieur de la province de Québec ont été rendues en vertu de l'art. 4 de la Loi. L'appelant a demandé à la Cour suprême de la Colombie-Britannique de rendre une ordonnance visant à exiger la production des documents. Le juge en son cabinet a rejeté la demande. L'appelant a sans succès interjeté appel à la Cour d'appel de la Colombie-Britannique. Il se pourvoit devant la Cour suprême du Canada sur autorisation.

Origine :C.-B.

N^{o} du greffe :22637

Arrêt de la Cour d'appel : Le 6 juin 1991

Avocats :J.J. Camp, c.r., David P. Church et Stephen Antle pour l'appelant
W.S. Berardino, c.r., et Avon M. Mersey pour l'intimée Lac d'Amiante;
Jack Giles, c.r., et Robert J. McDonnell pour les intimées Société Asbestos Ltée, Les mines d'amiante Bell, Ltée, et Atlas Turner Inc.;
Richard B. Lindsay et Gregory S. Miller pour l'intimée J.M. Asbestos Ltd.;
Louis J. Zivot pour l'intimée Quebec Asbestos Mining Association;
John L. Finlay pour l'intimée National Gypsum Co.

Mémoire de l'appelant :36 pages

22023 United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Limited

Labour law - Labour relations - Collective agreement - Interpretation - Collective agreement entered into between Appellant and Respondent providing that when the Appellant, on its own, or through an affiliated company, performs the kind of work covered by the collective agreement, the terms of the collective agreement would be applicable - Company affiliated with the Appellant winning contract to build building - Union taking grievance to arbitration and arbitrator, using extrinsic evidence in aid of his interpretation, finding that collective agreement had been breached - Did Court of Appeal improperly review decision of arbitrator? - Did Court of Appeal misconstrue the basis of the use of extrinsic evidence? - Did Court of Appeal err by imposing an unrealistic standard of interpretation of collective agreements and in restricting the use of interpretive aids.

The Appellant Union represents employees of the Respondent Bradco Construction Limited, which is affiliated with, and carries on business on the same premises as, N.D. Dobbin Limited, a non-unionized company. Both companies employ carpenters, and are involved in the construction business. The Respondent is a party to a collective agreement with the Appellant Union. The collective agreement, under the heading "Preservation of Work", provided, in s. 3.01, that when the Appellant, on its own, or through an affiliated company, performs the kind of work covered by the collective agreement, the terms of the collective agreement would be applicable to all such work. Dobbin Ltd. submitted an independent bid for, and won, the contract to build the Fine Arts Building at the Corner Brook campus of the University of Newfoundland. This contract required Dobbin Ltd. to employ carpenters. The Union grieved, claiming that there had been a breach of Clause 3 of the collective agreement with the Respondent Bradco.

The arbitrator found in favour of the Appellant Union. In his view, the collective agreement was ambiguous, and he was entitled therefore look to extrinsic evidence to resolve the ambiguity. He was of the view that the Respondent and Dobbin Ltd. engaged in the practice of "double breasting" whereby two companies, one unionized and the other not, are controlled by the same persons, giving the owners a competitive edge in bidding on contracts. Disputes over this practice had caused a lengthy strike in the construction business, which was settled in 1976. The arbitrator considered the report which led to the settlement of the strike, and concluded that the Respondent was engaged in the practice of double breasting, and had breached the spirit and letter of Clause 3 of the collective agreement. The Respondent's subsequent application for review of the decision of the arbitrator was dismissed by the Supreme Court of Newfoundland, Trial Division. The Respondent appealed to the Court of Appeal of Newfoundland, which allowed its appeal, and set aside the decision of the arbitrator.

Origin of the case: Nfld.

File No.: 22023

Judgment of the Court of Appeal: March 7, 1990

Counsel: Randell J. Earle for the Appellant
Thomas R. Kendell for the Respondent

Factum of the Appellant: 34 pp.

22023 **Fraternité unie des charpentiers et menuisiers d'Amérique, section locale 579 c. Bradco Construction Limited**

Droit du travail - Relations de travail - Convention collective - Interprétation - La convention collective conclue entre l'appelant et l'intimée prévoit que si, de son chef ou par l'entremise d'une compagnie affiliée, l'appelant effectue un travail régi par la convention collective, les modalités de celle-ci s'appliquent - La compagnie affiliée à l'appelant a obtenu le contrat de construction d'un immeuble - Le syndicat a référé un grief à l'arbitrage, et l'arbitre, qui a utilisé une preuve extrinsèque pour faciliter son interprétation, a conclu que la convention collective avait été violée - La Cour d'appel a-t-elle irrégulièrement révisé la décision de l'arbitre? - La Cour d'appel a-t-elle interprété erronément le fondement de l'utilisation d'une preuve extrinsèque? - La Cour d'appel a-t-elle commis une erreur en imposant une norme d'interprétation des conventions collectives irréaliste et en limitant le recours aux moyens d'interprétation?

Le syndicat appelant représente les employés de l'intimée Bradco Construction Limited qui exploite une entreprise au même endroit que N.D. Dobbin Limited, une compagnie non syndiquée à laquelle elle est affiliée. Les deux compagnies emploient des charpentiers et oeuvrent dans le domaine de la construction. L'intimée et le syndicat appelant sont parties à une convention collective. Sous la rubrique «Maintien du travail», l'art. 3.01 de la convention collective prévoit que si, de son chef ou par l'entremise d'une compagnie affiliée, l'appelant effectue un travail régi par la convention collective, les modalités de celle-ci s'appliquent à ce travail. Dobbin Ltd. a déposé une soumission indépendante, qui a été acceptée, pour le contrat de construction du Fine Arts Building au campus Corner Brook de l'Université de Terre-Neuve. En vertu de ce contrat, Dobbin Ltd. devait employer des charpentiers. Le syndicat a déposé un grief pour le motif que la clause 3 de la convention collective liant l'intimée Bradco avait été violée.

L'arbitre a conclu en faveur du syndicat appelant. À son avis, la convention collective étant ambiguë, il avait le droit d'étudier la preuve extrinsèque, et c'est ce qu'il a fait, pour dissiper cette ambiguïté. Selon lui, l'intimée et Dobbin Ltd. ont eu recours à la pratique du «double volet» par laquelle deux compagnies, dont l'une est syndiquée, sont dirigées par les mêmes personnes, ce qui procure aux propriétaires un avantage concurrentiel lors de soumissions. En raison des conflits mettant en cause cette pratique, l'entreprise de la construction a connu une longue grève qui a été réglée en 1976. Après avoir étudié le rapport ayant conduit au règlement de la grève, l'arbitre a conclu que l'intimée avait eu recours à la pratique du double volet et avait violé l'esprit et la lettre de la clause 3 de la convention collective. La demande en révision de la décision de l'arbitre, présentée subséquemment par l'intimée, a été rejetée par la Cour suprême de Terre-Neuve, section de première instance. L'intimée a interjeté appel avec succès auprès de la Cour d'appel de Terre-Neuve qui a infirmé la décision de l'arbitre.

Origine :T.-N.

N^{o} du greffe :22023

Arrêt de la Cour d'appel: Le 7 mars 1990

Avocats :Randell J. Earle pour l'appelant
Thomas R. Kendell pour l'intimée

Mémoire de l'appelant : 34 pages

22351 **HER MAJESTY THE QUEEN v. K.G.B.**

Criminal law - Evidence - Prior inconsistent statements - Whether the Court of Appeal erred in law when it held that the learned trial Judge did not err in law in holding that the prior inconsistent statements of several witnesses could not be used as evidence of the facts alleged in the statements.

The Respondent and three other young men in a car got into an argument at an intersection with Joseph Wright and his brother who were walking home. Thereafter a fight occurred. The brothers were unarmed and during the course of the fight Joseph Wright was fatally stabbed in the chest by one of the four others who thereafter fled the scene. In videotaped interviews, the three young men involved with the Respondent told police that the Respondent had made statements to them in which he acknowledged killing the deceased with a knife. The Respondent was charged with second degree murder. When called at trial by the Crown, the three men did not testify as to the inculpatory statements made by the Respndent. On cross-examination of those prior statements, they admitted lying to the police and stated the Respondent had never made any incriminating statements. The trial judge held the only use that could be made of the prior inconsistent statements of the three witnesses was with respect to their credibility. As a result of the doubt which existed with respect to the issue of identification, the trial judge acquitted the Respondent. The Appellant's appeal to the Court of Appeal of Ontario was dismissed.

The following is the issue raised in this appeal:

The Ontario Court of Appeal erred in law when it held that the learned trial Judge did not err in law when he held that the prior inconsistent statements of several witnesses could not be used as evidence of the facts alleged in the statements.

Origin of the case:Ontario

File No.22351

Judgment of the Court of Appeal:February 27, 1991

Counsel:Attorney General for the Province of Ontario for the Appellant
Keith Wright for the Respondent

Factum of the Appellant:50 pages

22351 **SA MAJESTÉ LA REINE c. K.G.B.**

Droit criminel - Preuve - Déclarations antérieures incompatibles - La Cour d'appel a-t-elle commis une erreur de droit lorsqu'elle a conclu que le juge de première instance n'avait pas commis d'erreur de droit en affirmant que les déclarations antérieures incompatibles de plusieurs témoins ne pouvaient être utilisées comme preuve des faits contenus dans les déclarations.

L'intimé et trois autres jeunes hommes, alors dans une voiture arrêtée à une intersection, ont commencé à se disputer avec Joseph Wright et son frère qui rentraient à pied chez eux. Ils se sont ensuite bagarrés. Les frères n'étaient pas armés et pendant la bagarre Joseph Wright a été mortellement poignardé à la poitrine par un des quatre autres; ces derniers ont tous pris la fuite. Lors des entrevues sur bande magnétoscopique, les trois jeunes hommes qui étaient avec l'intimé ont dit à la police que l'intimé leur avait déclaré qu'il reconnaissait avoir tué la victime avec un couteau. L'intimé a été accusé de meurtre au deuxième degré. Assignés comme témoins à charge, les trois hommes n'ont pas témoigné relativement aux déclarations inculpatoires faites par l'intimé. En contre-interrogatoire relativement à ces déclarations antérieures, ils ont admis avoir menti à la police et affirmé que l'intimé n'avait jamais fait de déclarations incriminantes. Le juge de première instance a conclu que les déclarations incompatibles des trois témoins ne pouvaient servir qu'à attaquer leur crédibilité. En raison des doutes qu'il avait quant à la question de l'identité, le juge de première instance a acquitté l'intimé. L'appel interjeté par l'appelante devant la Cour d'appel a été rejeté.

Le présent appel soulève la question suivante:

La Cour d'appel de l'Ontario a-t-elle commis une erreur de droit lorsqu'elle a affirmé que le juge de première instance n'avait pas commis d'erreur de droit en affirmant que les déclarations antérieures incompatibles de plusieurs témoins ne pouvaient être utilisées comme preuve des faits contenus dans les déclarations.

Origine: Ontario

N^{o} du greffe: 22351

Arrêt de la Cour d'appel: Le 27 février 1991

Avocats: Procureur général de la province de l'Ontario pour l'appelante
Keith Wright pour l'intimé

Mémoire de l'appelant: 50 pages.

22421 **GARY RUBE v. HER MAJESTY THE QUEEN**

Canadian Charter of Rights and Freedoms - Criminal law - Food and drugs - Offences - Statutes - Whether s. 5 of the *Food and Drugs Act*, R.S.C. 1985, c. F-27 creates an absolute liability offence or a strict liability offence - Constitutional validity of s. 5(1) of the *Food and Drugs Act* - Does s. 5(1) of the *Act* violate s. 7 of the *Charter*? - Can the impugned provision be saved by s. 1 of the *Charter*? - Whether the matter falls within provincial jurisdiction and if not, does it come under the *Meat Inspection Act*, R.S.C. 1985, c. M-3.2 and is it therefore unconstitutional?

The Appellant was charged with two counts of the following offence:

"Between February 16, 1988 and February 29, 1988, at or near the Municipality of Delta, Province of British Columbia, did sell food, to wit, a side of beef to Barbara Louise Purdy in a manner that was false, misleading or deceptive regarding its composition in violation of Section 5(1) of the *Food and Drugs Act* and did thereby commit an offence contrary to Section 31 of the said *Act*."

Prior to trial, the Appellant challenged the constitutional validity of s. 5 of the *Food and Drugs Act*. The trial judge granted the application and ordered a stay of the proceedings. The Respondent's appeal was allowed by the Court of Appeal which set aside the stay of proceedings and remitted the matter back to the Supreme Court of British Columbia for a plea.

The following are the issues raised in this appeal:

1. Does s. 5(1) of the *Food and Drugs Act*, R.S.C. 1985, c. F-27, in whole or in part, violate s. 7 of the *Canadian Charter of Rights and Freedoms*?

2. If the answer to question 1 is in the affirmative, is the impugned provision saved by s. 1 of the *Canadian Charter of Rights and Freedoms* and therefore not inconsistent with the *Constitution Act, 1982*?

3. That the matter was one under provincial jurisdiction and if not under the *Meat Inspection Act* (R.C. c. 25) and therefore unconstitutional.

Origin of the case: British Columbia

File No. 22421

Judgment of the Court of Appeal: February 22, 1991

Counsel: Sheldon Goldberg for the Appellant
Deputy Attorney General of Canada for the Respondent

Factum of the Appellant: 21 pages

22421 **GARY RUBE C. SA MAJESTÉ LA REINE**

Charte canadienne des droits et libertés - Droit criminel - Aliments et drogues - Infractions - Lois - L'article 5 de la *Loi sur les aliments et drogues*, L.R.C. (1985), ch. F-27 crée-t-il une infraction de responsabilité absolue ou une infraction de responsabilité stricte? - Validité constitutionnelle du par. 5(1) de la *Loi sur les aliments et drogues* - Le par. 5(1) de la *Loi* va-t-il à l'encontre de l'art. 7 de la *Charte*? - La disposition attaquée peut-elle être sauvegardée par l'article premier de la *Charte?* - S'agit-il d'une matière qui relève de la compétence provinciale? Sinon, relève-t-elle de la la *Loi sur l'inspection des viandes*, L.R.C. (1985), ch. M-3.2 et par conséquent, est-elle inconstitutionnelle?

Deux chefs d'accusation ont été portés contre l'appelant relativement à l'infraction suivante:

[TRADUCTION] «Entre le 16 février 1988 et le 29 février 1988, dans la municipalité de Delta, province de Colombie-Britannique, ou à proximité de celle-ci, a vendu des aliments, savoir, un flanc de boeuf à Barbara Louise Purdy de manière fausse, trompeuse ou mensongère quant à sa composition contrairement au paragraphe 5(1) de la *Loi sur les aliments et drogues* et a commis une infraction en contravention de l'article 31 de ladite *Loi*.»

Avant le procès, l'appelant a contesté la validité constitutionnelle de l'art. 5 de la *Loi sur les aliments et drogues*. Le juge de première instance a fait droit à la demande et a ordonné la suspension des procédures. L'appel de l'intimée a été accueilli par la Cour d'appel qui a annulé la suspension des procédures et renvoyé l'affaire à la Cour suprême de Colombie-Britannique aux fins du plaidoyer.

Le présent appel soulève les questions suivantes:

1. Le par. 5(1) de la *Loi sur les aliments et drogues* L.R.C. (1985), ch. F-27, va-t-il, en tout ou en partie, à l'encontre de l'art. 7 de la *Charte canadienne des droits et libertés*?

2. Dans l'affirmative, la disposition attaquée peut-elle être sauvegardée par l'article premier de la *Charte canadienne des droits et libertés* et se trouver compatible avec la *Loi constitutionnelle de 1982*?

3. La matière relève de la compétence provinciale. Sinon, elle relève de la *Loi sur l'inspection des viandes* (L.R.C. ch. 25) et donc, inconstitutionnelle.

Origine: Colombie-Britannique

N^{o} du greffe: 22421

Arrêt de la Cour d'appel: 22 février 1991

Avocats: Sheldon Goldberg pour l'appelant
Sous-procureur général du Canada pour l'intimée

Mémoire de l'appelant: 21 pages

22816**HER MAJESTY THE QUEEN v. JOSEF HANS EGGER**

Criminal law - Evidence - Pre-trial procedure - Impaired driving - Blood samples - Respondent served with a certificate of qualified technician the day preceding his trial - Can the Crown rely on the presumption in s. 258(1)(d) of the *Criminal Code*, R.S.C. 1985, c. C-46 that an accused's blood alcohol concentration at the time of driving is the same as at the time of testing where the accused has not received written notice within three months of the taking of the samples that a second blood sample exists for release to him for testing? - Whether the Crown can rely on the presumption in s. 258(1)(d) of the *Criminal Code* where an accused has not requested that one of the blood samples be released to him within three months of its taking?

The Respondent was charged with impaired driving causing bodily harm and driving while impaired following a two-car collision. At the scene of the accident, the police demanded blood samples from the Respondent because they were concerned about the presence of blood in his mouth and the effect this would have on a reliable breath sample. After agreeing to giving blood samples, the Respondent was told that two blood samples would be taken and that one was for police use and that the other was kept for him in case he wanted to analyze it later on. Two months later, the police forwarded a certificate of analysis which revealed that the Respondent had had four times the statutory limit of concentration of alcohol in his blood. The Respondent was served at his home with the certificate of analysis and charged four months before trial. In the six months between the time he gave blood samples and his trial, he neither requested the extra sample of his blood nor applied to any Court for its release. The Respondent was served with a certificate of qualified technician the day preceding his trial. The Crown stated that the delay was due to inadvertence and called the named technician as a witness at trial. The Respondent was acquitted of all counts when the trial judge refused to admit the certificate of analysis into evidence. The Appellant's appeal was allowed by the Court of Appeal which ordered a new trial.

The following are the issues raised in this appeal:

1. May the Crown rely on the presumption in s. 258(1)(d) of the *Criminal Code* that an accused's blood alcohol concentration at the time of driving is the same as at the time of testing where the accused has not received written notice within three months of the taking of the samples that a second blood sample exists for release to him for testing?

2. May the Crown rely on the presumption in s. 258(1)(d) of the *Criminal Code* where an accused has not requested that one of the blood samples be released to him within three months of its taking?

Origin of the case:Alberta

File No:22816

Judgment of the Court of Appeal:December 23, 1991

Counsel:Dunphy Calvert for the Appellant
Attorney General's Office for the Respondent

Factum of the Appellant:21 pages

22816 SA MAJESTÉ LA REINE c. JOSEF HANS EGGER

Droit criminel - Preuve - Procédure préparatoire au procès - Conduite avec facultés affaiblies - Échantillons de sang - Le jour précédant son procès, l'intimé s'est vu signifier le certificat d'un technicien qualifié - Le ministère public peut-il invoquer la présomption établie à l'al. 258(1)*d*) du *Code criminel*, L.R.C. (1985), ch. C-46, selon laquelle l'alcoolémie d'un accusé au moment où il conduisait correspond au résultat de l'analyse, si l'accusé n'a pas reçu un avis écrit dans les trois mois du prélèvement des échantillons l'avisant qu'un deuxième échantillon de sang peut lui être remis pour analyse? Le ministère public peut-il invoquer la présomption établie à l'al. 258(1)*d*) du *Code criminel* si, dans les trois mois du prélèvement, l'accusé n'a pas demandé que l'un des échantillons de sang lui soit remis?

L'intimé a été accusé de conduite avec facultés affaiblies causant des lésions corporelles et de conduite avec facultés affaiblies à la suite d'une collision impliquant deux véhicules. Sur les lieux de l'accident, les policiers ont ordonné à l'intimé de fournir des échantillons de sang parce qu'ils craignaient que la présence de sang dans la bouche de ce dernier mine la fiabilité d'un échantillon d'haleine. Après avoir accepté de fournir des échantillons de sang, l'intimé a été avisé que des deux échantillons devant être prélevés, l'un serait utilisé par les policiers et l'autre serait conservé à son intention pour qu'il puisse ensuite l'analyser s'il le désirait. Deux mois plus tard, la police a fait parvenir un certificat d'analyse révélant que l'alcoolémie de l'intimé était quatre fois plus élevée que la limite légale. La signification du certificat d'analyse a été effectuée à la résidence de l'intimé, qui a été accusé quatre mois avant la tenue du procès. Entre le jour du prélèvement des échantillons de sang et son procès, soit six mois, l'intimé n'a jamais demandé l'autre échantillon de sang ni demandé à la cour qu'il lui soit remis. Le jour précédant son procès, l'intimé s'est vu signifier le certificat d'un technicien qualifié. Selon le ministère public, qui a appelé ce technicien à la barre des témoins au procès, le retard a été causé par inadvertance. Le juge du procès ayant refusé d'admettre le certificat d'analyse en preuve, l'intimé a été acquitté sur tous les chefs. L'appel de l'appelante a été accueilli par la Cour d'appel qui a ordonné un nouveau procès.

Le présent pourvoi soulève les questions suivantes :

1. Le ministère public peut-il invoquer la présomption établie à l'al. 258(1)*d*) du *Code criminel*, L.R.C. (1985), ch. C-46, selon laquelle l'alcoolémie d'un accusé au moment où il conduisait correspond au résultat de l'analyse, si l'accusé n'a pas reçu un avis écrit dans les trois mois du prélèvement des échantillons l'avisant qu'un deuxième échantillon de sang peut lui être remis pour analyse?

2. Le ministère public peut-il invoquer la présomption établie à l'al. 258(1)*d*) du *Code criminel* si, dans les trois mois du prélèvement, l'accusé n'a pas demandé que l'un des échantillons de sang lui soit remis?

Origine :Alberta

N^{o} du greffe :22816

Arrêt de la Cour d'appel Le 23 décembre 1991

Avocats :Dunphy Calvert pour l'appelant

Le bureau du Procureur général pour l'intimée

Mémoire de l'appelant21 pages

This index includes applications for leave to appeal standing for judgment at the beginning of 1992 and all the applications for leave to appeal filed or heard in 1992 up to now.

Cet index comprend les requêtes en autorisation de pourvoi en délibéré au début de 1992 et toutes celles produites ou entendues en 1992 jusqu'à maintenant.

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APPEALS INSCRIBED FOR HEARING AT THE SESSION OF THE SUPREME COURT OF CANADA, BEGINNING MONDAY, OCTOBER 05, 1992

Revised September 22, 1992

APPELS INSCRITS POUR AUDITION À LA SESSION DE LA COUR SUPRÊME DU CANADA COMMENÇANT LE LUNDI 05 OCTOBRE 1992

Révisé le 22 septembre 1992

SCHEDULE RE 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 : October 5, 1992

Service of motion : September 11, 1992
Filing of motion : September 17, 1992
Response : September 25, 1992

Motion day : November 2, 1992

Service of motion : October 9, 1992
Filing of motion : October 15, 1992
Response : October 23, 1992

Motion day : December 7, 1992

Service of motion : November 13, 1992
Filing of motion : November 19, 1992
Response : November 27, 1992

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.

CALENDRIER DES REQUÊTES À 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: 5 octobre 1992

Signification: 11 septembre 1992
Dépôt: 17 septembre 1992
Réponse : 25 septembre 1992

Audience du: 2 novembre 1992

Signification: 9 octobre 1992
Dépôt: 15 octobre 1992
Réponse : 23 octobre 1992

Audience du: 7 décembre 1992

Signification: 13 novembre 1992
Dépôt: 19 novembre 1992
Réponse : 27 novembre 1992

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.

REQUIREMENTS FOR FILING A CASE

The next session of the Supreme Court of Canada commences on October 5, 1992.

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 1992 Session on August 11, 1992.

For appeals which fall under the provisions of the *Rules of the Supreme Court of Canada* prior to their amendment on June 19, 1991, please contact the Process Registry at (613) 996-8666 for information regarding the applicable time limits.

*Please note change from information given in Bulletin of June 26, 1992.

PRÉALABLES EN MATIÈRE DE PRODUCTION

La prochaine session de la Cour suprême du Canada débute le 5 octobre 1992.

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'appelant 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'appelant.

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 11 août 1992, le registraire met au rôle de la session d'octobre 1992 tous les appels inscrits pour audition.

En ce qui concerne les délais applicables aux appels visés par les anciennes *Règles de la Cour suprême du Canada*, c'est-à-dire avant l'entrée en vigueur des modifications le 19 juin 1991, veuillez contacter le greffe au (613) 996 8666.

*Veuillez prendre note de la modification apportée au Bulletin du 26 juin 1992.