

**SUPREME COURT  
OF CANADA**

**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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October 18, 1996

1730 - 1756

le 18 octobre 1996

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**APPLICATIONS FOR LEAVE TO  
APPEAL FILED**

**Rosemary (Rose-Marie) Burchill et al.**  
Frank Burchill

v. (25525)

**Yukon Travel et al. (Yuk.)**  
Murray J. Leitch

FILING DATE 4.10.1996

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**Daniel Pelletier**  
Pierre Sylvestre  
Sylvestre, Charbonneau

c. (25526)

**Francine Hébert (Qué.)**  
Anne Tourigny  
Doré, Tourigny, St-Onge, Fiset &  
Beauchesne

DATE DE PRODUCTION 4.10.1996

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**The Sault Ste. Marie Board of Commissioners of  
Police et al.**

Michael S. O'Neill  
Sarlo O'Neill

v. (25527)

**Tom Makila (Ont.)**  
Joseph A. Bisceglia  
Bisceglia & Assoc.

FILING DATE 4.10.1996

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**Jean Cloutier**  
Jean Cloutier

c. (25528)

**Andre L. Monty et al. (Qué.)**  
Mondor Fournier

DATE DE PRODUCTION 4.10.1996

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**Nipissing Helicopters Inc. et al.**  
Kenneth Radnoff, Q.C.  
Radnoff, Pearl, Slover, Swedko, Dwoskin

v. (25529)

**Eagle Copters Maintenance Ltd. (Alta.)**  
Roger F. Smith  
MacKimmie, Matthew

FILING DATE 8.10.1996

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

**Budget Car Rentals Toronto Ltd. et al.**  
B.A. Percival, Q.C.  
Benson Percival Brown

v. (25530)

**Dwain Cummings (Ont.)**  
Chile Eboe-Osuji  
Eboe-Osuji & Addunji

FILING DATE 4.10.1996

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**Gillis Quarries Ltd.**  
J. Barry Hughes, Q.C.  
Inkster, Christie, Hughes, MacKay

v. (25531)

**Her Majesty The Queen in right of the Province  
of Manitoba (Man.)**  
W. Glenn McFetridge  
Dept. of Justice

FILING DATE 7.10.1996

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**Continental Bank Leasing Corp.**  
H. Lorne Morphy, Q.C.  
Tory Tory DesLauriers & Binnington

v. (25532)

**Her Majesty The Queen (F.C.A.)**  
Patricia Lee  
Dept. of Justice

FILING DATE 4.10.1996

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**Dr. Murray A. Peglar et al.**  
James M. Lepp  
Harper Grey Easton

v. (25533)

**Donald Raymond Vance (B.C.)**  
Robert W. Smith  
Robert W. Smith

FILING DATE 7.10.1996

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**James R. Ferguson**  
W.E. Code, Q.C.  
Code Hunter Wittmann

v. (25535)

**Her Majesty The Queen et al. (Alta.)**  
Dawne D. Creasser  
Beresh DePoe & Cunningham

FILING DATE 2.10.1996

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**OCTOBER 11, 1996 / LE 11 OCTOBRE 1996**

**CORAM: Chief Justice Lamer and Gonthier and Iacobucci JJ. /  
Le juge en chef Lamer et les juges Gonthier et Iacobucci**

**Richard Baker**

**v. (25499)**

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

**NATURE OF THE CASE**

Criminal law - Defences - Intoxication - Whether the trial judge erred in charging the jury on the two-step approach to the defence of intoxication - Whether the trial judge's charge to the jury contained errors that should result in a new trial

**PROCEDURAL HISTORY**



November 10, 1992  
Supreme Court of Newfoundland (Trial Division)  
(Riche J.)

Conviction: Second degree murder, attempted murder

March 20, 1996  
Supreme Court of Newfoundland (Court of Appeal)  
(Mahoney, Steele, Cameron JJ.A.)

Appeal dismissed

September 24, 1996  
Supreme Court of Canada

Application for leave to appeal and motion for the  
extension of time filed

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**Reddy Rajagopal Chavali, Reddy Rajagopal Chavali, in Trust, Reddy Krishnaveni Chavali,  
Reddy Krishnaveni Chavali in Trust, Reddy Venkata Subbarami Chavali, Reddy Venkata  
Subbarami Chavali in Trust, 715048 Ontario Ltd., In Trust, Sadana Corporation Ltd., in Trust,  
Vahini Holdings Ltd., in Trust, Meru Holdings Ltd., In Trust and 715040 Ontario Ltd., In Trust**

v. (25421)

**Royal Trust Corporation of Canada**

- and -

**Arthur Ault, Alicia Natividad, Gowling, Strathy & Henderson, Scott & Aylen, Andridge  
Capital Corporation, George Gaty, Chateau Royale Professional Building Inc.,  
Cobit Corporation, Royal Trust Corporation of Canada, Nelligan/Power, David Chick,  
Kanny Ng, Majestic Key Management Ltd., Roy Nandrum, 862908 Ontario Limited,  
Majestic Key Construction Ltd., Majestic Key Holding Corporation, Majestic Key Development Inc.,  
North American Trust Company, Peat Marwick Thorne Inc., Samuel Talbert, Collette Talbert,  
Canadian Imperial Bank of Commerce (Ont.)**

#### **NATURE OF THE CASE**

Procedural law - *Canadian Charter of Rights and Freedoms* - Civil Procedure - Whether the Court of Appeal erred in dismissing the Applicants' motion to remove and restrain the law firm Nelligan/Power as solicitor of record - Whether the Court of Appeal erred in dismissing the Applicants' motion to amend their counterclaim and for other ancillary relief - Whether the Applicants' rights under ss. 7 and 15 of the *Charter* were breached.

#### **PROCEDURAL HISTORY**

September 5, 1995  
Ontario Court (General Division)  
(Roy J.)

Applicants' motion dismissed; cross-motions to stay the counterclaim other than as against Royal Trust Corporation of Canada granted

April 29, 1996  
Court of Appeal for Ontario  
(Labrosse J.A.)

Applicants' motion for an order removing the law firm Nelligan/Power as solicitor of record and restraining it from acting as counsel on the appeal dismissed

May 30, 1996  
Court of Appeal for Ontario  
(Morden, Brooke and Moldaver JJ.A.)

Applicants' appeal dismissed

August 30, 1996  
Supreme Court of Canada

Applications for leave to appeal filed

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**CORAM: Chief Justice Lamer and L'Heureux-Dubé and Gonthier JJ. /  
Le juge en chef Lamer et les juges L'Heureux-Dubé et Gonthier**

**Georges Y. Boka, Rosette Leduc**

c. (25398)

**Michel Lavoie, Marianna Lavoie**

et

**Le Centre canadien d'expertise des peintures Ltée,  
L'Officier de la publicité des droits de la  
circonscription foncière de Terrebonne (Qué.)**

**NATURE DE LA CAUSE**

Code civil - Contrats - Vente - Preuve - Annulation - Erreur, dol, fraude - Témoignage d'expert - Achat par les intimés de deux tableaux attribués au peintre Marc-Aurèle Fortin - Absence de certificat d'authenticité - Preuve d'expert indiquant qu'il s'agit de faux - Action des intimés en annulation de la vente accueillie quant à un seul tableau - Appel des demandeurs rejeté - Appel incident des intimés quant au second tableau accueilli - La Cour d'appel a-t-elle erré en considérant que le juge de première instance a conclu que la prépondérance de la preuve établissait la fausseté des tableaux? - En se prononçant sur la prépondérance de la preuve, la Cour d'appel a-t-elle erré en substituant sa propre appréciation des faits à celle du juge de première instance?

**HISTORIQUE PROCÉDURAL**

Le 18 novembre 1991  
Cour supérieure du Québec (Bergeron J.C.S.)

Action des intimés en annulation de vente accueillie en partie

Le 22 avril 1996  
Cour d'appel du Québec (Michaud JCCA, Deschamps et Delisle J.J.C.A.)

Appel principal des demandeurs rejeté, appel incident des intimés accueilli

Le 21 juin 1996  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Entreprises E.A. Bourque (Québec) Inc.,**

**c. (25456)**

**Corporation Municipale de la Ville de Hull**

**et**

**Communauté régionale de l'Outaouais (Qué.)**

**NATURE DE LA CAUSE**

Droit municipal - Municipalités - Droit fiscal - Législation - Interprétation - Textes réglementaires - Surtaxe - L'expression "...imposer et prélever annuellement" prévue à l'article 486 de la *Loi sur les cités et villes*, L.R.Q., chap. C-19, permet-elle à une ville de procéder par voie de règlements de modification? - Qu'advient-il d'un règlement adopté en vertu de l'article 486 de la loi lorsque la période pour laquelle il a été adopté est échue? - La Cour d'appel du Québec a-t-elle erré en droit en statuant que les règlements en litige ne comportaient que des "informalités mineures", qu'elle qualifie même d'erreurs d'écriture, qui ne sont pas susceptibles d'en affecter la légalité ni d'induire les contribuables en erreur? - Les règlements concernant l'imposition et le prélèvement de la surtaxe sur les terrains vagues sont-ils valides et légaux?

**HISTORIQUE PROCÉDURAL**

Le 5 mars 1992  
Cour supérieure du Québec (Plouffe J.C.S.)

Action de la demanderesse en annulation de règlements  
et en recouvrement de taxes accueillie

Le 2 mai 1996  
Cour d'appel du Québec  
(Beauregard, Otis et Forget JJ.CA)

Jugement de première instance réformé et action de la  
demanderesse rejetée

Le 30 août 1996  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Les Maisons Arrowood Ltée\Arrowood Homes Ltd.,**

**c. (25457)**

**Corporation Municipale de la ville de Hull**

**et**

**Communauté régionale de l'Outaouais (Qué.)**

**NATURE DE LA CAUSE**

Droit municipal - Municipalités - Droit fiscal - Législation - Interprétation - Textes réglementaires - Surtaxe - L'expression "...imposer et prélever annuellement" prévue à l'article 486 de la *Loi sur les cités et villes*, L.R.Q., chap. C-19, permet-elle à une ville de procéder par voie de règlements de modification? - Qu'advient-il d'un règlement adopté en vertu de l'article 486 de la *Loi sur les cités et villes* lorsque la période pour laquelle il a été adopté est échue? - La Cour d'appel du Québec a-t-elle erré en considérant que l'adoption par la ville intimée de règlements de modification rencontrait les exigences de l'expression "imposer et prélever annuellement" prévue à l'article 486 de la *Loi sur les cités et villes*? - En confirmant la validité des règlements de la ville intimée, la Cour d'appel a-t-elle erré en prolongeant la période exécutoire d'un règlement au-delà de l'exercice financier pour lequel il a été adopté?

**HISTORIQUE PROCÉDURAL**

Le 19 février 1992  
Cour supérieure du Québec (Plouffe J.C.S.)

Action de la demanderesse en annulation de règlements  
et en recouvrement de taxes accueillie

Le 2 mai 1996  
Cour d'appel du Québec  
(Beauregard, Otis et Forget J.J.C.A.)

Renvoi du dossier en Cour supérieure pour qu'il soit  
décidé de la qualification des terrains; action en  
annulation rejetée

Le 30 août 1996  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**CORAM: La Forest, Cory and Major JJ. /  
Les juges La Forest, Cory et Major**

**Richard Bruce Watson**

**v. (25429)**

**Nova Scotia Human Rights Commission (N.S.)**

**NATURE OF THE CASE**

Administrative law - Judicial review - Prerogative writs - Nova Scotia Human Rights Commission - Whether the Nova Scotia Court of Appeal erred in law in holding that a plan as required by Section 25 of the *Human Rights Act*, R.S.N.S. 1989, c.214 was in existence for the City of Dartmouth with respect to this selection process - Whether the Nova Scotia Court of Appeal erred in law in holding that the Nova Scotia Human Rights Commission met the criteria required at law to dismiss the complaint without investigation or an attempt to settle the complaint as required by Section 29.

**PROCEDURAL HISTORY**

August 30, 1995 Supreme Court of Nova Scotia (Goodfellow J.)	Application for an order of mandamus
May 14, 1996 Nova Scotia Court of Appeal (Clarke C.J., Bateman and Matthews JJ.A.)	Appeal dismissed
August 30, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**Lloyd Roy Barrett**

v. (25424)

**Allen Waters, CHUM Ltd., Moses Znaimer, Quadrille  
Investment Group, City T.V., Tony Young (Master "T") alias  
and John Gallagher**

**AND**

**CHUM Limited**

**- and -**

**Lloyd Roy Barrett (Ont.)**

**NATURE OF THE CASE**

Procedural law - Civil Procedure - Did the motions judge err in striking out the statement of claim on the grounds that it was vexatious - Did the motions judge err in granting an order pursuant to s. 140 of the *Courts of Justice Act*, R.S.O., c. C.43 - Did the motions judge err in granting orders prohibiting the Applicant from personally serving documents and attending at the Respondents' business and homes of its employees.

**PROCEDURAL HISTORY**

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May 12, 1995 Ontario Court (General Division) (Chapnik J.)	Respondents' motion to strike Applicant's statement of claim granted
May 23, 1996 Court of Appeal for Ontario (Brooke, McKinlay, Osborne JJ.A.)	Applicant's appeal dismissed (first appeal)
April 19, 1996 Ontario Court (General Division) (Cumming J.)	Respondent CHUM's application for an order pursuant to s. 140 of the <i>Courts of Justice Act</i> granted; order also granted prohibiting the Applicant from personally serving documents on CHUM parties and from attending within a specified distance of certain premises
June 17, 1996 Court of Appeal for Ontario (Osborne, Labrosse, Moldaver JJ.A.)	Applicant's application for leave to appeal dismissed (second appeal)
August 6, 1996 Supreme Court of Canada	Application for leave to appeal filed (both)

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**CORAM: L'Heureux-Dubé, Sopinka and McLachlin JJ. /  
Les juges L'Heureux-Dubé, Sopinka et McLachlin**

**Salvatore Gramaglia**

**v. (25446)**

**Sunlife Trust Co. and Doug Vensel (Alta.)**

**NATURE OF THE CASE**

Procedural law - Property law - Costs - Mortgages - Appeal - Security for costs - Foreclosure - Whether the Court of Appeal erred in granting the Respondents security for costs as against the Applicant - Whether the Court of Queen's Bench judge erred in hearing matter of Applicant's counterclaim *de novo* and striking out the counterclaim.

**PROCEDURAL HISTORY**

September 20, 1995 Court of Queen's Bench of Alberta (Waller M.C.Q.B.A.)	Order <i>nisi</i> declared and <i>inter alia</i> : Applicant's defence to foreclosure action struck; amounts owing on the mortgage set and redemption period set
December 13, 1995 Court of Queen's Bench of Alberta (Cairns J.)	Appeal from Master Waller's order dismissed; order affirmed and Applicant's counterclaim struck pursuant to <i>de novo</i> appeal
February 14, 1996 Court of Appeal of Alberta (Hunt J.A. in Chambers)	Order for security of costs
June 14, 1996 Court of Appeal of Alberta (Kerans, Hetherington and McFadyen JJ.A.)	Appeal dismissed and motion to vacate Hunt J.A.'s order also dismissed
August 8, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**Ali Mohamed Holly**

**v. (25439)**

**Barbara Ann White (Alta.)**

**NATURE OF THE CASE**

Procedural law - Civil Procedure - Judgments and orders - Rule 244 of the *Alberta Rules of Court* - Did the Court of Appeal err in dismissing an appeal from an order which dismissed an action for want of prosecution.

**PROCEDURAL HISTORY**



November 29, 1994  
Court of Queen's Bench for Alberta  
(Master Breitzkreuz)

Respondent's motion for dismissal of the Applicant's  
action for want of prosecution granted

December 16, 1994  
Court of Queen's Bench for Alberta (Bielby J.)

Appeal dismissed

September 21, 1995  
Court of Appeal of Alberta  
(Belzil, Russell and Picard JJ.A.)

Appeal dismissed

July 26, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**Derrick Concrete Cutting & Coring Ltd.**

v. (25425)

**Central Oilfield Service Limited (Alta.)**

**NATURE OF THE CASE**

Commercial law - Contracts - Tender - Obligation to named subcontractors - Whether inclusion of a sub-contractor's bid in a successful tender creates obligations on the part of the contractor - Whether the Court of Appeal erred in finding that a sub-contractor's bid in a successful construction tender created only unilateral, not mutual or reciprocal, obligations - Whether the Court of Appeal erred in its assessment of the implied terms in "Contact A" in a construction tender.

**PROCEDURAL HISTORY**

June 8, 1994  
Court of Queen's Bench of Alberta (Dea J.)

Action for breach of contract dismissed

November 28, 1995  
Court of Appeal of Alberta  
(Irving, Russell and Picard JJ.A.)

Appeal dismissed

July 4, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**OCTOBER 15, 1996 / LE 15 OCTOBRE 1996**

**CORAM: Chief Justice Lamer and Gonthier and Iacobucci JJ. /  
Le juge en chef Lamer et les juges Gonthier et Iacobucci**

**Winnipeg Child and Family Services (Northwest Area)**

**v. (25508)**

**G. (D.F.) (Man.)**

**NATURE OF THE CASE**

Torts - Family law - Statutes - Interpretation - S. 56 of the *Mental Health Act*, R.S.M. 1987, c. M110 - Exercise of *parens patriae* jurisdiction - Foetal rights - Legal status of unborn child - Does a birth mother who has chosen to carry a foetus to full term owe a duty of care to the foetus? - If the answer of question 1 is "yes", in what circumstances, if any, should the Court intervene to enforce compliance with the duty of care?

**PROCEDURAL HISTORY**

APPLICATIONS FOR LEAVE  
SUBMITTED TO COURT SINCE LAST ISSUE

DEMANDES SOUMISES À LA COUR DEPUIS  
LA DERNIÈRE PARUTION

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August 13, 1996  
Court of Queen's Bench of Manitoba  
(Schulman J.)

Application for order under s. 56 of the *Mental Health Act* and motion for an order exercising *parens patriae* jurisdiction: interim mandatory injunction granted; Director of Child and Family Services to have custody of the Respondent until she gives birth

September 12, 1996  
Court of Appeal of Manitoba (Scott, C.J.M., Huband,  
Twaddle, Helper and Monnin JJ.A.)

Appeal allowed: order appealed from set aside and Applicant's applications dismissed

October 4, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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October 11, 1996 / le 11 octobre 1996

**CORAM: Gonthier, Cory, McLachlin, Iacobucci and Major JJ. /  
Les juges Gonthier, Cory, McLachlin, Iacobucci et Major**

**Shawn Trevor Wesley Laverty**

B. Rory B. Morahan, for the appellant.

v. (24822)

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

Robert A. Mulligan, for the respondent (video conference).

**DISMISSED / REJETÉE**

**NATURE OF THE CASE**

Criminal law - Defence - Statutes - Interpretation - Provocation - Self-defence - Whether the trial judge erred in failing to instruct the jury that the use of force to defend oneself is not *ipso facto* an unlawful act - Whether the trial judge erred in failing to ensure that the jury understood the onus was on the Crown to prove beyond a reasonable doubt the intent referred to in s. 229(a)(i) and (ii) of the *Criminal Code* - Whether the trial judge erred in instructing that self-defence leads to an acquittal on all charges, including manslaughter, in all circumstances - Whether the trial judge erred in failing to instruct the jury with respect to s. 37 of the *Criminal Code* to clarify the defence of self-defence generally - Whether the trial judge erred in failing to instruct the jury that "the reasonable man test" was a reasonable man of the age and characteristics of the accused - Whether the trial judge erred when he failed to answer the question of the deliberating jury seeking clarification of s. 229(a)(i) and (ii).

**PROCEDURAL HISTORY**

February 16, 1994  
Supreme Court of British Columbia (Braidwood J.)

Conviction: Second degree murder

June 27, 1995  
Court of Appeal for British Columbia  
(McEachern C.J., Southin J.A. [dissenting] and  
Hollinrake J.A.)

Appeal against conviction dismissed

July 25, 1995  
Supreme Court of Canada

Notice of appeal as of right filed

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OCTOBER 17, 1996 / LE 17 OCTOBRE 1996

25299 LES MESSAGERIES PUBLI-MAISON LTÉE c. LA SOCIÉTÉ CANADIENNE DES POSTES  
et LES MAGASINS KOFFLER DE L'EST INC. (Qué.)

CORAM: Le Juge en chef et les juges Gonthier 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**

Droit administratif - Compétence - Contrôle judiciaire - Requête de la demanderesse en injonction permanente et en jugement déclaratoire portant que l'intimée n'a pas la capacité de conclure un contrat de distribution d'objets non adressés en l'absence d'un tarif de port établi par règlement - Requête déclinatoire de juridiction *rationae materiae* présentée par l'intimée - Requête de l'intimée accueillie - Appel de la demanderesse rejetée - Compétence de la Section de première instance de la Cour fédérale d'entendre le litige - Application de l'arrêt *I/O International Terminal Operators c. Miida Electronics Inc.*, [1986] 1 R.C.S. 752.

**HISTORIQUE PROCÉDURAL**

Le 1<sup>er</sup> mai 1995  
Cour supérieure du Québec  
(Hurtubise J.C.S.)

Requête déclinatoire de l'intimée accueillie, la Cour supérieure n'ayant pas compétence pour entendre le litige

Le 27 février 1996  
Cour d'appel du Québec  
(Baudoin, Fish et Forget JJ.C.A.)

Appel rejeté

Le 29 avril 1996  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**25323**      **LAS VEGAS RESTAURANT & TAVERN LTD. AND LAS VEGAS STRIP LTD. v. ZANZIBAR TAVERN INC. AND THE CORPORATION OF THE CITY OF TORONTO** (Ont.)

CORAM:      The Chief Justice and Gonthier and Iacobucci JJ.

The application for leave to appeal is dismissed with costs on the application and on the motion for a stay in the courts below.

La demande d'autorisation d'appel est rejetée, avec dépens relativement à la demande et à la requête visant à obtenir un sursis d'exécution déposée devant les tribunaux d'instance inférieure.

**NATURE OF THE CASE**

Municipal law - *Planning Act*, R.S.O. 1990, c. P. 13, s. 34(9)(a) - Zoning by-laws - Adult entertainment parlour - Can a use of premises which is incidental or ancillary to another use be the basis for a legal non-conforming use - Did the trial judge err when determining whether a particular use was established, by failing to apply the use as defined in the City of Toronto by-law.

**PROCEDURAL HISTORY**

June 1, 1995  
Ontario Court of Justice (General Division)  
(Lane J.)

Applicants' action for a declaration that their operation is a legal non-conforming use, dismissed. Action for a declaration that the Applicant's operation is a prohibited use: successful

April 23, 1996  
Court of Appeal for Ontario  
(Finlayson, McKinlay and Arbour JJ.A.)

Appeal dismissed

May 15, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**25220**      **MYUNG KAP KWON AND 838603 ONTARIO INC. v. ALEC COOPER** (Ont.)

CORAM:      La Forest, Cory and Major JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Property law - Commercial law - Real property - Contracts - Failure of both parties to comply with the terms of an agreement of purchase and sale - Obligation on closing to accept a personal undertaking to discharge an encumbrance in lieu of the discharge required by an agreement of purchase and sale - Timing of objections to tender - Obligation of good faith in real estate transactions.

**PROCEDURAL HISTORY**

January 4, 1995  
Ontario Court (General Division) (Daudlin J.)

Judgment for applicant

January 17, 1996  
Court of Appeal for Ontario  
(Brooke, Robins and McKinlay JJ.A.)

Respondent's appeal allowed and counterclaim allowed

March 18, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**25036**            **CHARLES THOMAS BELOWITZ v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - First degree murder - Evidence - Admissibility of evidence - Whether rope should have been admitted in evidence - Hearsay evidence - Whether evidence of one police officer as to findings of another officer should have been admitted into evidence.

**PROCEDURAL HISTORY**



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January 9, 1991 Ontario Court of Justice (General Division) (Thomas J.)	Conviction : First degree murder
November 3, 1993 Court of Appeal for Ontario (Blair, Goodman and Robins JJ.A.)	Appeal dismissed
May 22, 1996 Supreme Court of Canada (Cory J.)	Motion for the extension of time granted
May 31, 1996 Supreme Court of Canada	Application for leave to appeal filed
August 9, 1996 Supreme Court of Canada	Motion to file a lengthy response granted

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**25344**      **DR. HACHMI HAMMAMI v. THE COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA** (B.C.)

CORAM:      L'Heureux-Dubé, Sopinka and Cory 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 - Procedural law - Appeal - Physicians and surgeons - Interlocutory motion for disclosure under the *Medical Practitioners Act*, R.S.B.C. 1970, c. 254 - Whether the proper interpretation of section 63(3) of the *Medical Practitioners Act*, Rule 49 of the *Rules of Court* and related sections, authorizes the granting of an order for disclosure of the College of Physicians and Surgeons of British Columbia's file to a doctor appealing a decision of the College - If yes, then whether the Court of Appeal erred in requiring evidence as a precondition to obtaining an order for disclosure - Whether the Court of Appeal erred in holding that nothing short of personal animus constitutes bias - Whether the Court of Appeal erred in holding that allegations of bias not evident on the face of the record must be dealt with by judicial review and cannot be dealt with on appeal.

**PROCEDURAL HISTORY**

November 25, 1993 Supreme Court of British Columbia (Donald J.)	Motion for disclosure granted
March 25, 1996 Court of Appeal for British Columbia (Lambert, Southin, Cumming, Hollinrake and Rowles JJ.A.)	Appeal allowed
May 24, 1996 Supreme Court of Canada	Application for leave to appeal filed

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**25407**      **DR. JOHN KUNTZ v. THE COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA** (B.C.)

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

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

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

**NATURE OF THE CASE**

Administrative law - Procedural law - Appeal - Physicians and surgeons - Interlocutory motion for disclosure under the *Medical Practitioners Act*, R.S.B.C. 1970, c. 254 - Whether the proper interpretation of section 63(3) of the *Medical Practitioners Act*, Rule 49 of the *Rules of Court* and related sections, authorizes the granting of an order for disclosure of the College of Physicians and Surgeons of British Columbia's file to a doctor appealing a decision of the College - If yes, then whether the Court of Appeal erred in requiring evidence as a precondition to obtaining an order for disclosure - Whether the Court of Appeal erred in holding that nothing short of personal animus constitutes bias - Whether the Court of Appeal erred in holding that allegations of bias not evident on the face of the record must be dealt with by judicial review and cannot be dealt with on appeal.

**PROCEDURAL HISTORY**

September 12, 1991  
Supreme Court of British Columbia (Oppal J.)

Appeal from an order to produce documents dismissed

March 25, 1996  
British Columbia Court of Appeal (Lambert, Southin,  
Cumming, Hollinrake and Rowles JJ.A.)

Appeal allowed

June 27, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**25240**            **DAMON GREGORY HORNE v. HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM:        Sopinka, Cory, McLachlin, Iacobucci 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 - Procedural law - Appeal - Evidence - Majority of the Court of Appeal upheld the Applicant's conviction on three counts of robbery - Whether Harradence J.A.'s dissent gives rise to an appeal as of right - Whether the dissent is entirely based on the sufficiency of the evidence of corroboration.

**PROCEDURAL HISTORY**

May 25, 1994  
Court of Queen's Bench of Alberta (Ritter J.)

Conviction: impaired driving, failure to comply with demand for breath sample, operation of motor vehicle while disqualified, damaging property under \$1,000 and 3 counts of robbery

February 26, 1996  
Court of Appeal of Alberta (Harradence J.A.[dissenting] and Foisy and Irving JJ.A.)

Appeal dismissed

March 27, 1996  
Supreme Court of Canada

Notice of appeal as of right filed

June 21, 1996  
Supreme Court of Canada

Crown's notice of motion to quash appeal as of right

August 26, 1996  
Supreme Court of Canada

Application for leave to appeal filed

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**REVISED / RÉVISÉ**

October 10, 1996 / le 10 octobre 1996

A.D.M. v. HER MAJESTY THE QUEEN (Crim.)(Ont.)(25209)

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

The application for an extension of time is granted, and the motion to admit new evidence and the application for leave to appeal are dismissed.

La demande de prorogation de délai est accordée, et la requête pour déposer de nouvelles preuves et la demande d'autorisation d'appel sont rejetées.

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11.10.1996

Before / Devant: CHIEF JUSTICE LAMER

**Motion for additional time to present oral argument**

Southam Inc. et al.

v. (24915)

The Director of Investigation and Research (Ont.)

**Requête en prorogation du temps accordé pour la plaidoirie**

Neil Finkelstein & Mark Katz, for the appellants.

Stanley Wong & André Brantz, for the respondent.

**GRANTED / ACCORDÉE**

1. The application is granted in part;
2. The time to argue the appeal is extended by 1/2 hour for each the appellants and the respondent.

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15.10.1996

Before / Devant: IACOBUCCI J.

**Motion to add the trial transcripts and abridge time to file the respondent's factum**

Hickman Motors Ltd.

v. (24994)

Her Majesty The Queen (Nfld.)

**Requête visant à ajouter la transcription du procès et à réduire le délai imparti pour déposer le mémoire de l'intimée**

With the consent of the parties.

**GRANTED / ACCORDÉE** The motion is granted with respect to the addition to the case on appeal of the transcript of the trial; and the time for serving and filing the respondent's factum shall be up to and including October 23, 1996.

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10.10.1996

Before / Devant: MAJOR J.

**Motion for leave to intervene**

BY/PAR: Alcan Aluminum Ltd., Repap Enterprises Inc., B.C. Cattlemen's Association, B.C. Chamber of Commerce, B.C. Wildlife Federation, Business Council of British Columbia, Council of Forest Industries, Council of Tourist Associations, Fisheries Council of British Columbia, Guideoutfitters

**Requête en autorisation d'intervention**

Association of British Columbia, Mining Association of British Columbia, the Pacific Fishermen's Defence Alliance, Chief George Guerin et al. (Musqueam), the First Nations Summit, God in the person of James Russell Sterritt and the Westbank First Nation

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IN/DANS: Delgamuukw, also known as Earl Muldoe, suing on his own behalf and on behalf of all members of the Houses of Delgamuukw et al.

v. (23799)

Her Majesty The Queen in Right of the Province of British Columbia and the A.G. of Canada (B.C.)

IT IS HEREBY ORDERED THAT:

1. The motion for leave to intervene of the applicant Alcan Aluminum Ltd. is granted. The applicant may file a thirty page factum and is granted fifteen minutes for oral argument in the above appeal.
2. The motion for leave to intervene of the applicant Repap Enterprises Inc. is granted. The applicant may file a twenty page factum and is granted fifteen minutes for oral argument in the above appeal.
3. The motion for leave to intervene of the applicants B.C. Cattlemen's Association, B.C. Chamber of Commerce, B.C. Wildlife Federation, Business Council of British Columbia, Council of Forest Industries, Council of Tourist Associations, Fisheries Council of British Columbia, Guideoutfitters Association of British Columbia, Mining Association of British Columbia, and the Pacific Fishermen's Defence Alliance is granted. The applicants may file a joint factum of twenty pages and are granted fifteen minutes for joint oral submissions in the above appeal.
4. The motion for leave to intervene of the applicants Chief George Guerin et al. (Musqueam) is granted. The applicants may file a twenty page factum and is granted fifteen minutes for oral argument in the above appeal.
5. The motion for leave to intervene of the applicant First Nations Summit is granted. The applicant may file a twenty page factum and is granted fifteen minutes for oral argument in the above appeal.
6. The motion for extension of time and for leave to intervene of the applicant Westbank First Nation is granted. The applicant may file a twenty page factum and is granted fifteen minutes for oral argument in the above appeal.
7. The motion for leave to intervene of the applicant "God, in the person of James Russell Sterritt" is denied.

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16.10.1996

Before / Devant: THE REGISTRAR

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

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

Jerry Lee Dunn

With the consent of the parties.

v. (25444)

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

**GRANTED / ACCORDÉE** Time extended to November 15, 1996.

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16.10.1996

Before / Devant: THE REGISTRAR

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

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

Francis Joseph Godin

With the consent of the parties.

v. (25443)

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

**GRANTED / ACCORDÉE** Time extended to November 15, 1996.

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16.10.1996

Before / Devant: LE REGISTRAIRE

**Requête en prorogation du délai imparti pour déposer la réponse des intimés**

**Motion to extend the time in which to file the respondents' response**

Guy Fortin

c. (25426)

Ross Clarkson et al. (Qué.)

**ACCORDÉE / GRANTED** Délai prorogé au 4 octobre 1996.

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16.10.1996

Before / Devant: THE REGISTRAR

**Motion for acceptance of factum on appeal over 40 pages**

Reference Re: Independence and Impartiality of the Judges of the Provincial Court of P.E.I. (P.E.I.)(24778)

and

Reference Re: Remuneration of Judges of the Provincial Court of P.E.I. (P.E.I.)(24508)

**GRANTED / ACCORDÉE**

**Requête en acceptation d'un mémoire d'appel de plus de 40 pages**

With the consent of the parties.



15.10.1996

**Her Majesty The Queen**

**v. (25198)**

**Carmine Folino (Ont.)**

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15.10.1996

**Sa Majesté La Reine**

**c. (25221)**

**Michel Cogger (Qué.)**

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15.10.1996

**Francesco Amato**

c. (25387)

**Ministre de la Justice du Canada et al. (Qué.)**

(requête)

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**APPEALS HEARD SINCE LAST ISSUE  
AND DISPOSITION**

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

11.10.1996

CORAM: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

**Shawn Trevor Wesley Laverty**

**v. (24822)**

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

GONTHIER J. (orally for the Court) -- Substantially for the reasons of McEachern C.J. and Hollinrake J.A., we are all of the view that this appeal as of right should be dismissed. The appeal is accordingly dismissed.

11.10.1996

CORAM: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

**Bernadette Mae Keshane**

**v. (25031)**

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

JUSTICE GONTHIER (orally) -- We need not hear from you Mr. Curliss. The Court is ready to hand down judgment now. Judgment of the Court will be given by our colleague, Mr. Justice Cory.

JUSTICE CORY (orally) -- Assuming without deciding that there was an infringement of s. 8 of the *Charter* in this case, we are nonetheless all of the view that the evidence obtained as a result of the search was admissible pursuant to s. 24(2). It was real evidence that existed prior to the search. It was not elicited as a result of the compelled assistance of the accused. There was no bad faith demonstrated by the police. If there was a breach of s. 8 it could not be termed either flagrant or serious. The evidence discovered in the search was essential to prove the commission of a serious offence. It follows that the Court of Appeal was correct in setting aside the acquittal by the trial judge and in directing that the evidence be admitted.

However the appellant did not have the opportunity to put forward a defence. There must therefore be a new trial with the evidence obtained in the search admitted. The order of the Court of Appeal is therefor varied to provide that a new trial is directed.

To the extent a new trial is directed, the appeal is allowed.

B. Rory B. Morahan, for the appellant.

Robert A. Mulligan, for the respondent (video conference).

LE JUGE GONTHIER (oralement au nom de la Cour) -- Essentiellement pour les raisons exposées par le juge en chef McEachern et le juge Hollinrake, nous sommes tous d'avis qu'il y a lieu de rejeter le présent pourvoi formé de plein droit. Le pourvoi est donc rejeté.

Bruce P. Ritter, for the appellant.

Douglas G. Curliss, for the respondent.

LE JUGE GONTHIER (oralement) -- Il ne sera pas nécessaire de vous entendre M<sup>e</sup> Curliss. La Cour est prête à rendre jugement séance tenante, lequel sera prononcé par notre collègue le juge Cory.

LE JUGE CORY (oralement) -- À supposer sans en décider qu'il y a eu violation de l'art. 8 de la *Charte* en l'espèce, nous sommes néanmoins tous d'avis que la preuve obtenue grâce à la fouille était admissible conformément au par. 24(2). Il s'agissait d'une preuve matérielle qui existait avant la fouille. Elle n'a pas été obtenue grâce à l'aide forcée de l'accusée. La police n'a pas fait preuve de mauvaise foi. S'il y a eu violation de l'art. 8, cette violation ne pouvait pas être qualifiée de flagrante ou de grave. La preuve découverte au cours de la fouille était essentielle pour établir la perpétration d'une infraction grave. Il s'ensuit que la Cour d'appel a eu raison d'annuler l'acquittement prononcé par le juge du procès et d'ordonner l'admission de la preuve.

Cependant, l'appelante n'a pas eu l'occasion de soumettre une défense. Il doit donc y avoir un nouveau procès au cours duquel la preuve obtenue grâce à la fouille sera utilisée. En conséquence, l'ordonnance de la Cour d'appel est modifiée de manière à préciser qu'un nouveau procès est ordonné.

Dans la mesure où un nouveau procès est  
ordonné, le pourvoi est accueilli.

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## WEEKLY AGENDA

## ORDRE DU JOUR DE LA SEMAINE

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**AGENDA for the week beginning October 21, 1996.**  
**ORDRE DU JOUR pour la semaine commençant le 21 octobre 1996.**

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Date of Hearing/  
Date d'audition

Case Number and Name/  
Numéro et nom de la cause

The Court is not sitting this week

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La Cour ne siège pas cette semaine

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### 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.



**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 : November 4, 1996**

Service : October 28, 1996

Filing : October 21, 1996

Respondent : October 14, 1996

**Motion day : December 2, 1996**

Service : November 25, 1996

Filing : November 18, 1996

Respondent : November 11, 1996

**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 : 4 novembre 1996**

Signification : 28 octobre 1996

Dépôt : 21 octobre 1996

Intimé : 14 octobre 1996

**Audience du : 2 décembre 1996**

Signification : 25 novembre 1996

Dépôt : 18 novembre 1996

Intimé : 11 novembre 1996





The winter session of the Supreme Court of Canada will commence September 30, 1996.

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 four 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 four 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

La session d'hiver de la Cour suprême du Canada commencera le 30 septembre 1996.

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 quatre 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 quatre 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.

SUPREME COURT OF CANADA SCHEDULE  
CALENDRIER DE LA COUR SUPREME

- 1996 -

OCTOBER - OCTOBRE						
S	M	T	W	T	F	S
D	L	M	M	J	V	S
29	M 30	1	2	3	4	5
6	7	8	9	10	11	12
13	H 14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

NOVEMBER - NOVEMBRE						
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DECEMBER - DECEMBRE						
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22	23	24	H 25	H 26	27	28
29	30	31				

- 1997 -

JANUARY - JANVIER						
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FEBRUARY - FÉVRIER						
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MARCH - MARS						
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30	H 31					

APRIL - AVRIL						
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JUNE - JUIN						
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29	30					

Sittings of the court:  
Séances de la cour:

Motions:  
Requêtes:

Holidays:  
Jours fériés:



18 sitting weeks / semaines séances de la cour  
83 sitting days / journées séances de la cour  
8 motion and conference days / journées requêtes, conférences  
1 holidays during sitting days / jours fériés durant les sessions