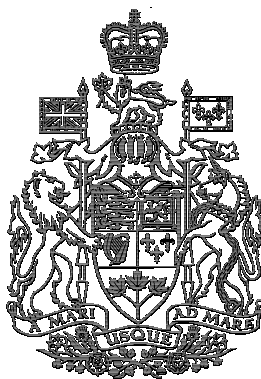


**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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March 8, 1996

341 - 380

le 8 mars 1996

CONTENTS**TABLE DES MATIÈRES**

Applications for leave to appeal filed	341 - 342	Demandes d'autorisation d'appel déposées
Applications for leave submitted to Court since last issue	343 - 349	Demandes soumises à la Cour depuis la dernière parution
Oral hearing ordered	-	Audience ordonnée
Oral hearing on applications for leave	-	Audience sur les demandes d'autorisation
Judgments on applications for leave	350 - 365	Jugements rendus sur les demandes d'autorisation
Motions	366 - 371	Requêtes
Notices of appeal filed since last issue	372	Avis d'appel déposés depuis la dernière parution
Notices of intervention filed since last issue	-	Avis d'intervention déposés depuis la dernière parution
Notices of discontinuance filed since last issue	373	Avis de désistement déposés depuis la dernière parution
Appeals heard since last issue and disposition	374 - 377	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	-	Jugements rendus sur les appels en délibéré
Headnotes of recent judgments	-	Sommaires des arrêts récents
Weekly agenda	378	Ordre du jour de la semaine
Summaries of the cases	-	Résumés des affaires
Cumulative Index - Leave	-	Index cumulatif - Autorisations
Cumulative Index - Appeals	-	Index cumulatif - Appels
Appeals inscribed - Session beginning	-	Appels inscrits - Session commençant le
Notices to the Profession and Press Release	-	Avis aux avocats et communiqué de presse
Deadlines: Motions before the Court	379	Délais: Requêtes devant la Cour
Deadlines: Appeals	380	Délais: Appels
Judgments reported in S.C.R.	-	Jugements publiés au R.C.S.

**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Velupillai Pushpanathan

Lorne Waldman

v. (25173)

**Minister of Citizenship and Immigration
(F.C.A.)(Crim.)(Ont.)**

George Thomson
Deputy Attorney General of Canada

FILING DATE 19.2.1996

James Peter Emms

In Person

v. (25168)

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

David Butt
Attorney General for Ontario

FILING DATE 21.2.1996

Her Majesty The Queen

Thomas Beveridge
Attorney General of Canada

v. (25167)

Dante Tortone (Crim.)(Ont.)

Clayton C. Ruby
Ruby and Edwardh

FILING DATE 28.2.1996

Dante Tortone

Clayton C. Ruby
Suzanne Jarvie
Ruby & Edwardh

v. (25170)

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

Thomas Beveridge
Attorney General of Canada

FILING DATE 29.2.1996

Keyvan Nourhaghghi

v. (25171)

The Toronto Hospital et al. (Ont.)

E. Hoaken

FILING DATE 19.2.1996

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

William Vanderheyden

Timothy E. Breen
Fleming, Breen

v. (25169)

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

Attorney General for Ontario

FILING DATE 29.2.1996

Derek Parker et al.

Gregory C. Blanchard
Killam, Whitelaw & Twining

v. (25174)

Maurice Hamelin et al. (B.C.)

John A. McAfee
McAfee Harder Hattori & Shaw
Carol Ross and Paul Bennett
Hordo, Ross & Bennett

FILING DATE 1.3.1996

Public Service Alliance of Canada

Andrew J. Raven
Raven, Jewitt & Allen

v. (25172)

National Capital Commission et al. (F.C.A.)(Ont.)

Lynn Harnden
Emond Harnden

FILING DATE 1.3.1996

Eugene Pentz et al.

v. (25175)

Andrew Treich et al. (Alta.)

Laurie McMurchie
Soby, Boyden Lenz

FILING DATE 29.2.1996

John David Lucas et al.

Ed Holgate
Holgate Law Office

v. (25177)

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

W. Brent Cotter, Q.C.
Attorney General for Saskatchewan

FILING DATE 4.3.1996

Steven McMahon

John A. Legge
Legge & Muszynski

v. (25100)

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

Goran Tomljanovic
Attorney General for Alberta

FILING DATE 4.3.1996

Ronald Edward Ward

Shaun Nakatsuru
Nakatsuru and Doucette

v. (25176)

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

Feroza Bhabha
Attorney General for Ontario

FILING DATE 5.3.1996

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

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

FEBRUARY 29, 1996 / LE 29 FÉVRIER 1996

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

S.G.G.

v. (24939)

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

NATURE OF THE CASE

Criminal law - Conduct of trial - Correctness of allowing the Crown to reopen its case - Correctness of permitting cross-examination on accused's bad character - Correctness of jury instruction on use of evidence as to bad character - Correctness of jury instruction on reasonable doubt.

PROCEDURAL HISTORY

June 4, 1992 Supreme Court of British Columbia (Low J.)	Judgment granting Crown leave to reopen its case
June 11, 1992 Supreme Court of British Columbia (Low J.)	Applicant convicted of second degree murder
May 25, 1994 Court of Appeal for British Columbia (Southin, Hollinrake and Ryan JJ.A.)	Appeal dismissed, subject to Applicant's re-arguing one ground
June 28, 1995 Court of Appeal for British Columbia (Southin, Hollinrake and Ryan JJ.A.)	Order dismissing re-argued ground of appeal
January 5, 1996 Supreme Court of Canada	Application for leave to appeal filed

Dorothy Kosanovich

v. (24944)

**Byers Transport Limited and
Clint S. Mellors (F.C.A.)(Alta.)**

NATURE OF THE CASE

Labour law - Jurisdiction - Statutes - Interpretation - Jurisdiction of adjudicator under *Canada Labour Code* - Review - Scope of *Canada Labour Code's* unjust dismissal provisions.

PROCEDURAL HISTORY

June 30, 1993 Adjudication (C.S. Mellors)	Applicant ordered reinstated in position
June 17, 1994 Federal Court Trial Division (Jerome A.C.J.)	Application by Respondent Byers Transport Ltd. for judicial review dismissed

July 18, 1995
Federal Court of Appeal
(Strayer and Linden JJ.A.; Marceau J.A. dissenting)

Appeal allowed

October 27, 1995
Supreme Court of Canada

Application for leave to appeal filed

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

John Paul Spinelli

v. (24917)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Search and seizure - Fundamental justice - Did the Court of Appeal err in failing to find that the Appellant had standing to raise the issue of police conduct, when the Crown conceded and the Court of Appeal accepted that the police violated the s. 8 rights of a third party, and when that violation resulted in the discovery of evidence against the Appellant - Did the Court of Appeal err in finding that the Appellant had to have a proprietary interest before he could have standing - Did the Court of Appeal err in failing to find that a court may, as a matter of fundamental justice, exclude evidence where the admission of the evidence will undermine the right to a fair trial.

PROCEDURAL HISTORY

December 10, 1993
Supreme Court of British Columbia
(Hutchison J.)

Conviction: fraud over \$1,000, attempted fraud over \$1,000, and public mischief

October 13, 1995
Court of Appeal for British Columbia
(Southin, Rowles and Finch JJ.A.)

Appeal dismissed

December 22, 1995
Supreme Court of Canada

Application for leave to appeal filed

The Workers' Compensation Board

v. (24913)

**Elaine Pasiechnyk, Rhonda McFarlane, Ronald MacMillan, Gordon Thompson, Orval Shevshenko,
Clifford Sovdi, Aaron Hill and Larry Marcyniuk**

and

Pro-Crane Inc., Saskatchewan Power Corporation, and the Attorney General of Saskatchewan

AND BETWEEN:

The Government of Saskatchewan

v.

**Elaine Pasiechnyk, Rhonda McFarlane, Ronald MacMillan, Gordon Thompson, Orval Shevshenko,
Clifford Sovdi, Aaron Hill and Larry Marcyniuk**

and

The Workers' Compensation Board

Pro-Crane Inc., Saskatchewan Power Corporation, and the Attorney General of Saskatchewan(Sask.)

NATURE OF THE CASE

Administrative law - Labour law - Judicial review - Jurisdiction - Workers' compensation - Whether an employer is vulnerable to legal action taken by an employee injured in the course of employment if the employer acts in two or more capacities - Whether the standard of review in the case of a tribunal with a strong privative clause is flexible depending on the level of expertise possessed by the tribunal on the particular question before it.

PROCEDURAL HISTORY

July 6, 1993 Workers' Compensation Board of Saskatchewan	Respondents barred from bringing an action in any court against SaskPower, ProCrane or the Government of Saskatchewan
November 19, 1993 Saskatchewan Court of Queen's Bench (Paris J.)	Application for judicial review dismissed
June 15, 1995 Court of Appeal for Saskatchewan (Vancise, Jackson, Wakeling JJ.A.)	Appeal dismissed against SaskPower and ProCrane and the Government of Saskatchewan in its capacity as an employer, but the within appeal allowed insofar as the claim is based on the Government's status as a regulator
October 12, 1995 Supreme Court of Canada	Application for leave to appeal filed by the Government of Saskatchewan
October 16, 1995 Supreme Court of Canada	Application for leave to appeal filed by the Workers' Compensation Board

**Fotios Korkontzilas, Panagiota Korkontzilas and
Olympia Town Real Estate Limited**

v. (24949)

Nick Soulos (Ont.)

NATURE OF THE CASE

Commercial law - Property law - Agency - Trusts and trustees - Real property - Remedies - Constructive trust - Fiduciary duties - Appropriate remedy for breach of fiduciary duty where there is no profit by the agent or loss by the principal - Whether the Court of Appeal erred in finding that a real estate agent who purchased a piece of property on which his principal had made an offer, held the property as constructive trustee for the principal.

PROCEDURAL HISTORY

June 4, 1991 Ontario Court (General Division) (Anderson J.)	Respondent's action dismissed
August 29, 1995 Court of Appeal for Ontario (Catzman, Carthy, Labrosse JJ.A)	Appeal allowed
October 27, 1995 Supreme Court of Canada	Application for leave to appeal filed

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

R.D.S.

v. (25063)

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

NATURE OF THE CASE

Criminal law - Reasonable apprehension of bias - Whether the trial judge showed bias in making comments with regard to police treatment of minorities.

PROCEDURAL HISTORY

December 2, 1994
Youth Court
(Sparks J.)

Acquittal: unlawfully assaulting a peace officer, unlawfully assaulting a peace officer with intent to prevent the lawful arrest of another person, unlawfully resisting a peace officer engaged in the lawful execution of his duty

April 18, 1995
Supreme Court of Nova Scotia
(Glube C.J.N.S.S.C.)

Summary conviction appeal allowed

October 25, 1995
Nova Scotia Court of Appeal
(Flinn, Pugsley, Freeman JJ.A.)

Appeal dismissed

December 22, 1995
Supreme Court of Canada

Application for leave to appeal filed

Bonnie Moldowan

v. (24954)

Saskatchewan Government Employees Union and Betty Pickering (Sask.)

NATURE OF THE CASE

Labour law - Labour relations - Jurisdiction - Duty of fair representation - Whether the Court of Appeal erred in removing the Applicant's existing common law right of action without express provision by the Legislation - Whether the Court of Appeal erred in failing to observe the exceptions to exclusive jurisdictions of Labour Boards in *Gendron v. Supply and Service Union* [1990] 1 S.C.R. 1298, and other jurisdictions were appropriate for Saskatchewan - Whether the Court of Appeal erred in finding that the common law duty of fair representation had been subsumed by the statutory duty and given exclusively to the Saskatchewan Labour Relations Board by *The Trade Union Act* - Whether the Court of Appeal erred in finding that the Saskatchewan Labour Relations Board had exclusive jurisdiction to hear and determine the Applicant's complaint notwithstanding that the Legislation did not so provide.

PROCEDURAL HISTORY

October 12, 1993
Queen's Bench for Saskatchewan
(Scheibel J.)

Respondent's application challenging jurisdiction of the Court dismissed.

July 21, 1995
The Court of Appeal for Saskatchewan
(Jackson, Cameron and Sherstobitoff JJ.A)

Appeal allowed: declaration pursuant to Queen's Bench Rule 99(1)(b) that the Queen's Bench does not have jurisdiction and Applicant's action dismissed

October 30, 1995
Supreme Court of Canada

Application for leave to appeal filed.

**CORAM: CHIEF JUSTICE LAMER AND L'HEUREUX-DUBÉ AND GONTHIER JJ. /
LE JUGE EN CHEF LAMER ET LES JUGES L'HEUREUX-DUBÉ ET GONTHIER**

Club Juridique

c. (24937)

**Nicole Dufour, Jocelyne Perros et
Le Barreau du Québec (Qué.)**

NATURE DE LA CAUSE

Droit criminel - Droit pénal - Mandat de perquisition - Est-ce que le Barreau pouvait faire une perquisition avant l'entrée en vigueur de l'article 190.1 du *Code des professions*, L.R.Q. ch. C-26, soit avant le 15 octobre 1994?

HISTORIQUE PROCÉDURAL

Le 3 mars 1995
Cour supérieure du Québec
(Baker j.c.s)

Requête en évocation rejetée

Le 22 juin 1995
Cour d'appel du Québec
(Vallerand j.c.a.)

Requête pour permission d'en appeler rejetée

Le 23 octobre 1995
Cour suprême du Canada

Demande d'autorisation déposée

Pierre Snyder et Guy Thériault

c. (24945)

Racine et Chamberland Inc., et Daniel Racine (Qué.)

NATURE DE LA CAUSE

Droit commercial - Contrats - Interprétation - Procédure - Tribunaux - Appel - Compétence - Interprétation de l'expression "déficit de liquidité" qui apparaît au contrat intervenu entre les parties - Juge de première instance retenant la signification comptable de l'expression - Cour d'appel, à la majorité, donnant plutôt à cette expression un sens compatible avec la nature du contrat, l'intention des parties et l'équité - La Cour d'appel, à la majorité, a-t-elle erré en modifiant les règles de droit applicables à son rôle d'intervention en substituant son appréciation des faits à celle du juge de première instance?

HISTORIQUE PROCÉDURAL

Le 22 novembre 1989
Cour supérieure du Québec
(Bélanger j.c.s.)

Action des demandeurs accueillie contre la société intimée et rejetée contre l'intimé Racine

Le 9 août 1995
Cour d'appel du Québec
(LeBel, Deschamps [dissidente quant au pourvoi principal] et Chamberland jj.c.a.)

Pourvoi de l'intimée accueilli et pourvoi incident des demandeurs accueilli en partie

Le 27 octobre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Alexandre J. Leiriao

c. (24967)

Ville de Val-Bélair (Qué.)

NATURE DE LA CAUSE

Droit des biens - Droit municipal - Expropriation - Agrandissement de la superficie de l'immeuble exproprié après l'avis d'expropriation - Date à laquelle doit être fixée l'indemnité - Méthode d'évaluation - La Cour d'appel a-t-elle erré en faits et en droit en concluant que l'indemnité reliée au bâtiment devait être fixée à partir de la superficie existante au moment de l'avis d'expropriation? - La Cour d'appel a-t-elle erré en faits et en droit en concluant que la méthode de la relocalisation devait être utilisée pour évaluer l'indemnité d'expropriation à laquelle a droit le demandeur?

HISTORIQUE PROCÉDURAL

Le 9 juillet 1993
Cour du Québec, Chambre de l'expropriation
(Vézina j.c.q.)

Intimée ordonnée de payer au demandeur une indemnité
de 592 938,15\$

Le 24 août 1995
Cour d'appel du Québec
(Gendreau, Brossard et Moisan [ad hoc] jj.c.a.)

Appel accueilli en partie; indemnité fixée à 479 619,14\$

Le 30 octobre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Le 26 janvier 1996
Cour suprême du Canada

Demande d'autorisation d'appel incident déposée

MARCH 7, 1996 / LE 7 MARS 1996

24860 **LA VILLE DE VERDUN c. GILLES DORÉ** (Qué.)

CORAM: Le juge en chef et les juges L'Heureux-Dubé et Gonthier

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Code civil - Responsabilité civile - Droit municipal - Municipalités - Législation - Interprétation - L'art. 2930 du *Code civil du Québec*, L.Q. 1991, ch. 64, a-t-il pour effet de rendre caduques les dispositions de l'art. 585 de la *Loi sur les cités et villes*, L.R.Q. 1977, ch. C-19, obligeant à donner un avis préalable à l'exercice d'une action en réparation du préjudice corporel, ou d'intenter celle-ci dans un délai plus court que celui de trois ans prévu par le *Code*? - L'État et les autres personnes morales de droit public, dont les municipalités, sont-ils devenus assujettis aux règles du droit civil plutôt qu'aux règles du droit public suite à l'entrée en vigueur de l'art. 1376 du *Code*? - *Laurentide Motels Ltd. c. Ville de Beauport*, [1989] 1 R.C.S. 705 - Règles d'interprétation applicables au *Code* - Utilité des commentaires du Ministre de la justice et de la version anglaise pour interpréter l'art. 2930 du *Code*.

HISTORIQUE PROCÉDURAL

Le 2 novembre 1994
Cour supérieure du Québec
(Deslongchamps j.c.s.)

Requête en irrecevabilité rejetée

Le 12 mai 1995
Cour d'appel du Québec
(Vallerand, Baudouin et
Rousseau-Houle jj.c.a.)

Pourvoi rejeté

Le 7 septembre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

24882 **HERCULES MANAGEMENT LTD., GUARDIAN FINANCE OF CANADA LTD., and MAX FREED v. ERNST & YOUNG ALEXANDER COX** (Man.)

CORAM: The Chief Justice and Iacobucci 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 - Commercial law - Companies - Shareholders - Whether Applicants' claims were derivative in nature - Ability of shareholders to bring action against companies' auditors - Privity of contract.

PROCEDURAL HISTORY

January 4, 1995
Court of Queen's Bench of Manitoba
(Dureault J.)

Motion by Respondents for summary judgment granted; *inter alia* claims of Applicants dismissed

May 24, 1995
Court of Appeal of Manitoba
(Philp, Lyon and Helper JJ.A.)

Applicants' appeal dismissed

September 21, 1995
Supreme Court of Canada

Application for leave to appeal filed

24885 **DAVID FARBER c. THE ROYAL TRUST COMPANY** (Qué.)

CORAM: Le juge en chef et les juges L'Heureux-Dubé et Gonthier

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Droit du travail - Responsabilité civile - Employeur et employé - Procédure - Preuve - Appel - Compétence - Congédiement déguisé - Poste du demandeur éliminé à l'occasion d'une restructuration - La Cour d'appel, à la majorité, a-t-elle erré en concluant que le juge de première instance pouvait admettre en preuve des chiffres inconnus au moment où l'intimée a offert un autre poste au demandeur afin que l'intimée puisse démontrer que son offre était raisonnable? - La Cour d'appel, à la majorité, a-t-elle erré en décidant que les modifications apportées par l'intimée au contrat de travail du demandeur n'étaient pas si importantes, au point de vue du salaire, du prestige, du statut et des responsabilités, qu'elles équivalaient à toutes fins utiles à une résiliation de son contrat de travail? - La Cour d'appel, à la majorité, limite-t-elle son rôle de façon erronée en ne substituant pas sa décision à celle du premier juge en présence d'une erreur manifeste en droit? - *Hodgkinson c. Simms*, [1994] 3 R.C.S. 377.

HISTORIQUE PROCÉDURAL

Le 11 août 1989
Cour supérieure du Québec
(Flynn j.c.s.)

Action en dommages-intérêts rejetée

Le 29 mai 1995
Cour d'appel du Québec
(Mailhot, Fish [dissident]
et Chamberland jj.c.a.)

Appel rejeté

Le 28 septembre 1995
Cour suprême du Canada

Demande d'autorisation d'appel déposée

24985 **RICHARD KELLY STEEL v. HER MAJESTY THE QUEEN** (Alta.)

CORAM: The Chief Justice and Gonthier and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter - Criminal law - Wiretap - Whether interception of privileged conversations between solicitor and client infringes right to effective assistance of counsel - Conspiracy to import and traffic in narcotics - Evidence of guilty plea by alleged co-conspirator.

PROCEDURAL HISTORY

May 31, 1993 Court of Queen's Bench of Alberta (Egbert J.)	Conviction: conspiracy to import and traffic in a narcotic
October 30, 1995 Court of Appeal for Alberta (Kerans, Foisy and McFadyen, JJ.A.)	Appeal dismissed
December 18, 1995 Supreme Court of Canada	Application for leave to appeal filed

25034 **DOUGLAS CALVERLEY v. HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM: The Chief Justice and Gonthier and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter - Criminal law - Conspiracy to import and traffic in narcotics - Wiretap authorizations.

PROCEDURAL HISTORY

May 31, 1993 Court of Queen's Bench of Alberta (Egbert J.)	Conviction: conspiracy to import and traffic in a narcotic
October 30, 1995 Court of Appeal for Alberta (Kerans, Foisy and O'Leary JJ.A)	Appeal dismissed
December 11, 1995 Supreme Court of Canada	Application for leave to appeal filed

25002 **FRANCIS ERIC BOYD GILES v. MARION BEATRICE GILES** (Alta.)

CORAM: The Chief Justice and Gonthier and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Family law - Custody - Access - Whether the Applicant could be prevented from taking further legal action by order of the Court - Whether the Applicant was denied equal protection and benefit of the law - Whether the tests for variation of access had been met - Whether arrears in support are relevant to determining access - Whether a psychological assessment ought to be ordered by the Court of Appeal before variation in access is upheld - Whether *viva voce* evidence must be heard whenever suspension of access is contemplated - Whether restraining order should be upheld.

PROCEDURAL HISTORY

February 16, 1993
Court of Queen's Bench of Alberta
(Hutchinson J.)

Trial of corollary relief matters: custody and child maintenance granted to Respondent with access to Applicant

March 3, 1995
Court of Queen's Bench of Alberta (O'Byrne J.)

Respondent's application for variation granted Cross-application for variation denied

September 22, 1995
Court of Appeal for Alberta
(Kerans, Hetherington, O'Leary JJ.A.)

Appeal dismissed in part, order of O'Byrne J. varied in part

November 17, 1995
Supreme Court of Canada

Application for leave to appeal filed

24841

DENIS LAREAU c. LES PRODUCTIONS EN SCÈNE LTÉE, BALLONS CONCEPT INC., AXA ASSURANCES INC., COMPAGNIE D'ASSURANCES WELLINGTON CIGNA DU CANADA (CIE D'ASSURANCES), BANQUE LA LAURENTIENNE, AMERICAN HOME INSURANCE COMPANY, NEW HAMPSHIRE INSURANCE COMPANY ET COMMONWEALTH INSURANCE COMPANY (Qué.)

CORAM: Le juge en chef et les juges L'Heureux-Dubé et Gonthier

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Procédures - Procédure civile - Intervention au sens de l'article 208 du *Code de procédure civile* - La Cour d'appel du Québec a-t-elle commis une erreur en confirmant la décision du juge de première instance de rejeter la demande d'intervention du demandeur?

HISTORIQUE PROCÉDURAL

Le 8 décembre 1994 Cour supérieure du Québec (Tremblay, J.C.S.)	Demande d'intervention du demandeur rejetée
Le 14 juillet 1985 Cour d'appel du Québec (Brossard, Proulx et Otis, J.J.C.A.)	Appel rejeté
Le 30 octobre 1995 Cour suprême du Canada	Demande d'autorisation d'appel déposée

24793 **THE CORPORATION OF THE CITY OF YORK v. SUPERIOR PROPANE INC. and PROPANE GAS ASSOCIATION OF CANADA INC. - and - ATTORNEY GENERAL FOR ONTARIO** (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

Municipal law - Municipal corporations - Validity of a zoning by-law - Whether the Court of Appeal erred in holding that the City's by-law was invalid because the province of Ontario occupied the field of propane regulation and that, in any event, there was a conflict of such a nature as to nullify the zoning by-law - What are the proper legal principles to be applied in determining the scope of a municipal government's authority granted by provincial legislation to regulate on matters that are also regulated by other provincial legislation? - *Planning Act*, S.O. 1983, c. 1 - *Energy Act*, R.S.O. 1980, c. 139.

PROCEDURAL HISTORY

November 19, 1991
Ontario Court of Justice
Divisional Court
(O'Driscoll, Hollingworth [dissenting]
and O'Brien JJ.)

Application for a declaration that the Applicant's
zoning by-law 1116-87 is invalid dismissed

May 3, 1995
Court of Appeal for Ontario
(Morden A.C.J.O., Griffiths and Abella JJ.A.)

Appeal allowed

June 20, 1995
Supreme Court of Canada

Application for leave to appeal filed

24830 **THE TOWN OF ST. ANDREWS v. HOSPITALITY INVESTMENTS LTD. and EVERETT
LORD BUILDING CONSTRUCTION LTD.** (N.B.)

CORAM: La Forest, Cory and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Torts - Municipal law - Negligence - Damages - Building standards - Duty of care of municipalities which enact inspection by-laws - Whether the Court of Appeal erred in law in finding that the Applicant had a duty to inspect in spite of the misrepresentations and conduct of the Respondent, Hospitality Investments Ltd.

PROCEDURAL HISTORY

December 7, 1993
Court of Queen's Bench of New Brunswick
(Jones J.)

Respondent Hospitality's negligence action against
the Applicant for failure to ensure compliance with
building by-law dismissed

June 13, 1995
Court of Appeal of New Brunswick
(Hoyt C.J.N.B., Ayles and Ryan JJ.A.)

Respondent Hospitality's appeal against the
Applicant allowed

August 10, 1995
Supreme Court of Canada

Application for leave to appeal filed

24907 **HER MAJESTY THE QUEEN v. STEVEN BRUCE HALLIDAY** (Crim.)(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

Criminal law - Offences - Did Court of Appeal err in finding legal requirement that Crown adduce "expert evidence" in support of charge of careless storage of a firearm?

PROCEDURAL HISTORY

March 17, 1994
Ontario Court (Provincial Division)
(Robinson P.C.J.)

Conviction: careless storage of a firearm

June 6, 1995
Court of Appeal for Ontario
(Finlayson, Abella and Austin JJ.A.)

Appeal allowed: conviction set aside and acquittal entered

October 10, 1995
Supreme Court of Canada

Application for leave to appeal filed

24736/24790 **EMAD ELGUINDY v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

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

The applications for leave to appeal are dismissed.

Les demandes d'autorisation d'appel sont rejetées.

NATURE OF THE CASE (24736)

Criminal law - Interpretation of section 57(2) of the *Criminal Code* - Whether there is duplicity in section 57(2) of the *Criminal Code* - Whether section 57(2) of the *Criminal Code* applies to statements in affidavits or statutory declarations - Whether the Crown was required to prove that the documents in question met the definition of "passport" in section 57(5) of the *Criminal Code*.

PROCEDURAL HISTORY

January 12, 1995
Ontario Court(Provincial Division)
(Ready J.)

Conviction:False Statement to procure passport

April 24, 1995
Court of Appeal for Ontario
(Carthy, Galligan, Austin JJ.A.)

Appeal against conviction dismissed
Leave to appeal sentence granted, appeal against sentence dismiss

May 7, 1995
Supreme Court of Canada

Application for leave to appeal filed

NATURE OF THE CASE (24790)

Criminal law - Fraud - Offences - Whether the required elements of *actus reus* and *mens rea* were sufficiently proven to support a conviction under section 380(1)(a) of the *Criminal Code* - Whether the element of deprivation necessary to establish the offence of fraud existed on the facts of the case - Whether the Court correctly interpreted the conditions of a recognizance of bail in convicting the Applicant under section 145(3) of the *Criminal Code*.

PROCEDURAL HISTORY

December 12 and 19, 1994
Ontario Court (Provincial Division)
(Allen J.)

Conviction: failure to comply with condition of recognizance; fraud over \$1000

April 28, 1995
Court of Appeal for Ontario
(Carthy, Galligan, Austin JJ.A.)

Appeal against conviction and sentence dismissed

May 7, 1995
Supreme Court of Canada

Application for leave to appeal filed

24789 **DONALD M. MANNING EXECUTOR OF THE WILL OF THE LATE JESSIE MANNING v.
THE CORPORATION OF DELTA (B.C.)**

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

The application for leave to appeal and all ancillary motions are dismissed with costs.

La demande d'autorisation d'appel et toutes requêtes accessoires sont rejetées avec dépens.

NATURE OF THE CASE

Municipal law - Power of municipality to act by resolution as opposed to bylaw - Whether imposition of development cost charges in respect of parks, under s. 983(2) of the *Municipal Act* precludes taking land for parks or payment of cash in lieu of such taking under s. 992 - Whether the subdivision servicing agreement entered into between the parties is a bar to a subsequent levy under s. 992 - Whether there was a manifest unfairness on the part of the approving officer and the municipality particularly in view of refusal to hear Applicant - *Canadian Charter of Rights and Freedoms - Bill of Rights*.

PROCEDURAL HISTORY

December 7, 1992
Supreme Court of British Columbia
(Owen-Flood J.)

Petition dismissed

April 6, 1995
Court of Appeal for British Columbia
(Macfarlane, Goldie and Rowles JJ.A.)

Appeal dismissed

June 19, 1995
Supreme Court of Canada

Application for leave to appeal filed

24850 **LINDA JUNE WHITE v. THE EQUITABLE LIFE INSURANCE COMPANY OF CANADA**
(Ont.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - Limitation of actions - Actions - Civil procedure - Insurance - Estoppel - Good faith - Relief from forfeiture - When does the limitation period arise pursuant to Section 203 of the *Insurance Act*, R.S.O. 1990, c. 1.8 - Whether the majority of Court of Appeal failed to make a finding that the Respondent, pursuant to the doctrine of good faith, could not unilaterally rescind an agreement entered into with the Applicant not to deny the Applicant's claim until full medical disclosure taken place - Whether the majority of the Court of Appeal failed to make a finding that the Respondent was estopped from denying the Applicant's claim and thus the commencement of the limitation period by entering into an agreement with the Applicant for the production of medical records - Whether the majority of the Court of Appeal failed to make a finding that the Applicant was entitled to relief from forfeiture pursuant to the *Insurance Act* arising from the unilateral termination of the agreement by the Respondent with respect to the denial of the Applicant's claim.

PROCEDURAL HISTORY

February 25, 1994
Ontario Court of Justice (General Division) (Steele J.)

Action dismissed

May 3, 1995
Court of Appeal for Ontario
(Doherty, Weiler and Abella JJ.A
[dissenting])

Appeal dismissed

September 1, 1995
Supreme Court of Canada

Application for leave to appeal filed

24857

**CANADIAN NATIONAL RAILWAY COMPANY v. BURLINGTON NORTHERN RAILROAD
COMPANY (B.C.)**

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

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Commercial law - Contracts - Arbitration - Estoppel - Statutes - Party to arbitration agreement commencing legal proceedings in a court against another party to the agreement - Party to the legal proceedings applying to the Court to stay the proceedings pursuant to Article 8(1) of the *Commercial Arbitration Code*, contained in the *Commercial Arbitration Act*, R.S.C. 1985, c. 17 (2nd Supp.) - Action stayed and parties referred to arbitration with respect to draft arbitration questions - Appeal allowed and majority of the Court of Appeal concluding that arbitration agreement is inoperative on the basis of Applicant's refusal to comply with the agreement.

PROCEDURAL HISTORY

December 3, 1993
Supreme Court of British Columbia (Thackray J.)

Proceedings stayed; parties referred to arbitration

May 18, 1995
Court of Appeal for British Columbia (Carrothers and
Southin JJ.A.; Cumming J.A. dissenting)

Appeal allowed

September 8, 1995
Supreme Court of Canada

Application for leave to appeal
filed

24823 **KATHLEEN H.; DEBRA P. and LYDIA T.; C.H. v. DR. ROBERT ROBERTSON ROSS and
HER MAJESTY THE QUEEN** (Ont.)

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

THE COURT:

Upon the application of Kathleen H., Debra P., Lydia T. and C.H. for leave to appeal from the orders of The Honourable Roger E. Salhany dated May 19, 1994 and July 4, 1994, it is ordered that matters which are the subject of the said orders be and the same are hereby remanded to The Honourable Roger E. Salhany to be reconsidered and dealt with in accordance with this Court's judgment in *R. v. O'Connor*, S.C.C. appeal no. 24114, released December 14, 1995.

LA COUR:

Après examen de la demande présentée par Kathleen H., Debra P., Lydia T. et C.H. en vue d'obtenir l'autorisation de se pourvoir contre les ordonnances de l'honorable Roger E. Salhany datées des 19 mai et 4 juillet 1994, il est ordonné que les questions visées par ces ordonnances soient renvoyées à l'honorable Roger E. Salhany pour réexamen et décision conformément à l'arrêt de notre Cour *R. c. O'Connor*, n° 24114, rendu le 14 décembre 1995.

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Disclosure - Respondent Ross charged with sexual offences - Defence counsel obtaining pre-trial order requiring Crown to disclose complainants' unedited Crown Ward files and other documentation - Appropriate test for disclosure of confidential records originating from third parties, but in possession of Crown - Whether ss. 7, 8 and 15 of the *Charter* afford protection to privacy interests of complainants in sexual assault proceedings, when their confidential records are requested by defence - Whether unedited Crown Ward files of a complainant in a criminal proceeding are protected by rules of privilege or as privacy interests under common law? - Whether those portions of Crown Ward files, if any, relating to charges under the *Juvenile Delinquents Act* attract a statutory privilege under the *Young Offenders Act*, R.S.C. 1985, c. Y-1? - The appropriate remedy to ensure adequate protection of *Charter* privilege interests.

PROCEDURAL HISTORY

May 19, 1995
Ontario Court (General Division)
(Salhany J.)

Motion by Respondent Ross for disclosure of unedited
Crown Ward files of Applicants granted

July 4, 1995
Ontario Court (General Division)
(Salhany J.)

Motion by Respondent Ross for disclosure of
documents in possession of Crown granted in part.

August 31, 1995
Supreme Court of Canada

Applications for leave to appeal and stay filed on behalf
of Applicant, Kathleen H.

October 25, 1995
Supreme Court of Canada

Applications for leave to appeal, extension of time and
stay filed on behalf of Applicants, Debra P. and Lydia
T.

November 24, 1995
Supreme Court of Canada

Application for leave to appeal, extension of time and
stay filed on behalf of Applicant, C.H.

24886

**O.E.X. ELECTROMAGNETIC INC., FOUR STAR MANAGEMENT LTD., BYRON LESLIE
WILLIAMS, ELFORD SCOTT AND MONTAGUE SIMONS v. COOPERS & LYBRAND (A
PARTNERSHIP) DOING BUSINESS AS THE COOPERS & LYBRAND CONSULTING
GROUP, DOUGLAS R. HALLIDAY AND ERIC C. VANCE and O.E.X.
ELECTROMAGNETIC INC., FOUR STAR MANAGEMENT LTD., BYRON LESLIE
WILLIAMS, ELFORD SCOTT AND MONTAGUE SIMONS v. COOPERS & LYBRAND (A
PARTNERSHIP) DOING BUSINESS AS THE COOPERS & LYBRAND CONSULTING
GROUP, DOUGLAS R. HALLIDAY AND ERIC C. VANCE (B.C.)**

CORAM: L'Heureux-Dubé, Sopinka and McLachlin 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

Torts - Damages - Negligence - Negligent misrepresentation - Contributory negligence - Whether there is contributory negligence when a company relied upon negligent misrepresentations in a technical report prepared by experts - Whether set-off of different types of profits and losses between different plaintiffs is permitted in assessing damages.

PROCEDURAL HISTORY

July 20, 1990 Supreme Court of British Columbia (McKenzie J.)	Action on liability claim: Respondents found negligent and Applicants found contributorily negligent for 50% of any damage
September 25, 1991 Supreme Court of British Columbia (McKenzie J.)	Ruling under Rule 38 that two persons resident in the United States be examined there under oath
September 26, 1991 Supreme Court of British Columbia (McKenzie J.)	Applicants' request to amend statement of claim denied
November 26, 1991 Supreme Court of British Columbia (McKenzie J.)	Action on damages claim: Applicants' claims dismissed
October 20, 1992 Supreme Court of British Columbia (McKenzie J.)	Applicants' motion to adduce new evidence denied
June 2, 1995 Court of Appeal for British Columbia (Hinkson, Prowse, Donald JJ.A.)	Appeals from July 20, 1990, November 26, 1991 and October 20, 1992 judgments dismissed
September 28, 1995 Supreme Court of Canada	Application for leave to appeal filed
November 15, 1995 Supreme Court of Canada (Registrar)	Motion to extent time to file reply granted

24893 **DR. ATEF NASSAR v. THE COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA**
(Man.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - Limitation of actions - Physicians and surgeons - Procedure at hearing before Inquiry Committee under Manitoba *Medical Act* - Evidence and witnesses - *Functus officio* - Correctness of determinations and penalty.

PROCEDURAL HISTORY

July 9, 1993 College of Physicians and Surgeons of Manitoba	Applicant's name ordered erased from Register
October 11, 1994 Court of Queen's Bench of Manitoba (Simonsen J.)	Appeal dismissed; application for judicial review rejected
June 23, 1995 Court of Appeal of Manitoba (Huband, Philp and Helper JJ.A.)	Release of written reasons for June 6, 1995 decision dismissing appeal
October 2, 1995 Supreme Court of Canada	Application for leave to appeal filed

24895

DONALD A. ELLIOTT, ON BEHALF OF HIMSELF; ON BEHALF OF JOHN DOE AND ALL OTHERS UNKNOWN TO THE PLAINTIFF DONALD ELLIOTT WHO ARE THE SURVIVING CANADIAN AIRCREW OF BOMBER COMMAND IN WORLD WAR II, NAMELY MEMBERS OF THE ROYAL CANADIAN AIR FORCE AND OTHERS WHO ARE CANADIAN CITIZENS WHO SERVED IN THE ROYAL AIR FORCE v. THE CANADIAN BROADCASTING CORPORATION, THE NATIONAL FILM BOARD, THE CANADIAN FILM DEVELOPMENT CORPORATION, TELEFILM CANADA, SOCIÉTÉ RADIO-CANADA, GALAFILM INC., BRIAN McKENNA, TERRENCE McKENNA, MARY ARMSTRONG, D'ARCY O'CONNOR, DARCE FARDY, ARNIE GELBART, ANDRE LAMY, ADAM SYMANSKY, JOAN PENNEFATHER, GÉRARD VEILLEUX, SUSAN SHANKS, PATRICK RUSSELL, PATRICK WATSON, MERRILY WEISBORD, MERILYN SIMONDS MOHR, HARPERCOLLINS PUBLISHERS LTD, STEVEN M. MORRIS, DAVE DEFENDANT AND OTHERS UNKNOWN TO THE PLAINTIFF DONALD ELLIOTT WHO PRODUCED, DIRECTED OR COLLABORATED IN THE PRODUCTION OF A MADE-FOR-TELEVISION FILM CALLED "THE VALOUR AND THE HORROR: DEATH BY MOONLIGHT - BOMBER COMMAND"; THE SECRETARY OF STATE OF CANADA, MINISTER OF COMMUNICATIONS, THE HONOURABLE MONIQUE LANDRY, AND THE ATTORNEY GENERAL OF CANADA ON BEHALF OF HER MAJESTY THE QUEEN (Ont.)

CORAM: L'Heureux-Dubé, Sopinka and McLachlin 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

Torts - Libel and slander - Negligence - Broadcasting - Defamation - Malicious Falsehood - Conspiracy - Breach of contract - Breach of warranty - Abuse of power - *Mandamus* - Breach of fiduciary duty - Republication of libel - Declaratory relief - Section 7 of the *Canadian Charter of Rights and Freedoms* - Whether there are special rules as to what constitutes libel in the context of an historical enquiry - Whether an action for defamation can be dismissed on summary application where a judge, upon simply viewing the film complained of, finds the allegations in the statement of claim unproven - Whether the lower courts erred in finding that harm to reputation can only be based on the tort of defamation, given *Spring v. Guardian Assurance Plc.*, [1994] 3 W.L.R. 354 (H.L.).

PROCEDURAL HISTORY

January 12, 1994 Ontario Court of Justice, General Division (Montgomery J.)	Action dismissed
June 13, 1995 Court of Appeal for Ontario	Appeal dismissed

(Grange, Labrosse, Abella JJ.A.)

October 3, 1995
Supreme Court of Canada

Application for leave to appeal filed

25095 **TAJDIN ESMAIL v. PETRO-CANADA** (Ont.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Contract - Procedural law - Remedies - Injunction - Whether the contractual duty of good faith includes a duty to bargain in good faith for renewal of a commercial contract - Whether the proper standard of proof on the merits of this case is that of "serious issue to be tried", or the mandatory injunction requirement of "high degree of assurance - Whether specific performance is available for breach of an agency agreement.

PROCEDURAL HISTORY

March 30, 1995
Ontario Court, General Division
(Spence J.)

Motion for interim injunction dismissed; Agreement extended pending application for leave to Divisional Court

May 1, 1995
Divisional Court (Rosenberg J.)

Leave to appeal granted

November 20, 1995
Divisional Court (O'Driscoll and White JJ. and Adams J. dissenting)

Appeal dismissed

January 8, 1996
Court of Appeal for Ontario
(Houlden, McKinlay and Abella JJ.A.)
Application for leave dismissed

January 23, 1996
Supreme Court of Canada

Application for leave filed

24971

SIDNEY L. JAFFE AND RUTH JAFFE and JOE C. MILLER, II, TERRENCE SCHMIDT, CHARLES W. GRANT, PATRICIA SILVER, PUTNAM COUNTY FLORIDA, SMITH, MANDLER, SMITH, WERNER, JACOBOWITZ & FIRED, P.A., KELLY SMITH, CHARLES BAIRD, GARRY KELLER, BONNIE ALLENDER, JOHN EUBANKS (Ont.)

CORAM: The Chief Justice and Gonthier and Iacobucci JJ.

The motion for reconsideration is denied.

La demande de réexamen est rejetée.

NATURE OF THE CASE

Procedural law - Can the Courts of Canada ignore, or take positions contrary to, the announced public policy of the government of Canada, which policies have been incorporated into agreements and extradition treaties with other nations requiring the return of a person unlawfully removed from Canada and the restoration of the *status quo ante* - Does the *Charter of Rights and Freedoms*, prohibit the use or consideration by Canadian Courts of decisions or orders issued by courts of a foreign country when these decisions or orders were obtained in violation of the *Charter of Rights and Freedoms*?- Is it a violation of the *Charter of Rights and Freedoms* for a citizen who has an appeal which is not frivolous and vexatious, to be ordered pursuant to the *Ontario Rules of Civil Procedure* to post cash security for costs notwithstanding that the citizen does not have the means to do so?

PROCEDURAL HISTORY

November 22, 1994
Court of Appeal for Ontario
(Grange J.A.)

Respondents' motion for security for costs in appeal
granted: Applicants required to post security

March 17, 1995
Court of Appeal for Ontario
(Brooke, Finlayson and Osborne JJ.A.)

Motion to set aside order of Grange J.A. dismissed

June 2, 1995
Court of Appeal for Ontario
(McKinlay J.A.)

Respondents' motion for dismissal of appeal granted

August 4, 1995
Court of Appeal for Ontario
(Carthy, Osborne and Austin JJ.A.)

Motion to set aside order of McKinlay J.A.
dismissed

October 30, 1995
Supreme Court of Canada

Application for leave to appeal filed

24565 **ALLAN JOSEPH LEGERE v. HER MAJESTY THE QUEEN** (Crim.)(N.B.)

CORAM: La Forest, Cory and Major JJ.

The application for reconsideration is dismissed.

La demande de nouvel examen est rejetée.

29.2.1996

Before / Devant: THE REGISTRAR

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

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

Vincent Lacquaniti

With the consent of the parties.

v. (25078)

Frank Devine (Ont.)

GRANTED / ACCORDÉE Time extended for a further 21 days from February 26, 1996 to March 18, 1996.

4.3.1996

Before / Devant: CORY J.

Motion to extend the time in which to apply for leave to appeal

Requête en prorogation du délai pour obtenir l'autorisation d'appel

Her Majesty The Queen

With the consent of the parties.

v. (25167)

Dante Tortone (Ont.)

GRANTED / ACCORDÉE Time extended to February 29, 1996.

4.3.1996

Before / Devant: CORY J.

**Motion to extend the time in which to apply for
leave to appeal**

**Requête en prorogation du délai pour obtenir
l'autorisation d'appel**

Dante Tortone

With the consent of the parties.

v. (25170)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to February 29, 1996.

4.3.1996

Before / Devant: CHIEF JUSTICE LAMER

**Motion for an order that these appeals are to be not deemed abandoned
Motion to extend the time in which to file the case on appeal and appellants' factums**

**Requête en déclaration que les présents appels sont censés ne pas avoir été abandonnés
Requête en prorogation du délai imparti pour déposer le dossier et les mémoires des appelants**

Re: Remuneration of Judges of the Provincial Court of P.E.I.

With the consent of the parties.

Re: Independence and Impartiality of the Provincial Court Judges of P.E.I.

(24508/24778) (P.E.I.)

GRANTED / ACCORDÉES

- (1) The appeals in these cases are deemed not abandoned; and
- (2) The deadline for filing the Case on Appeal and the Appellants' Factums be extended to March 31, 1996.

4.3.1996

Before / Devant: CHIEF JUSTICE LAMER

Motion for an order that this appeal is to be not deemed abandoned and motion to extend the time to file the case on appeal to March 1, 1996

Requête en déclaration que le présent appel est censé ne pas avoir été abandonné et requête visant à proroger au 1^{er} mars 1996 le délai imparti pour déposer le dossier

Michael McCarthy

With the consent of the parties.

v. (24995)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉES

5.3.1996

Before / Devant: CORY J.

Motion to extend the time in which to apply for leave to appeal

Requête en prorogation du délai pour obtenir l'autorisation d'appel

Craig William Ryback

v. (24815)

Zena Mae Ryback (B.C.)

DISMISSED / REJETÉE This decision is based not only on the lapse of time but also on the lack of merit in the application for leave.

6.3.1996

Before / Devant: GONTHIER J.

Motion to strike out

Requête en radiation

Bumper Development Corp. Ltd.

v. (25125)

The Union of India et al. (Alta.)

GRANTED / ACCORDÉE

The applicant's cross-motion requesting an oral hearing herein is denied.

The letter to Dr. Sharon A. Williams dated October 2, 1995 expressing a legal opinion constitutes argument and is not proper a matter for an affidavit in support of the leave to appeal application. It should, therefore, be struck from the record together with references thereto in the material filed including para. 6 of the supporting affidavit of Robert Borden sworn on January 25, 1996. The other material which is the subject of the motion to strike relates to the importance of the issues or is explanatory of the record. As to the material other than the opinion of Dr. William's filed in the record with the permission of the trial judge, though not admitted in evidence on the ground that it would not have altered the result, it may be found useful in giving consideration to the leave application. It is, therefore, "required" within the meaning of Rule 23(1)(c)(ii).

The motion to strike is, therefore, granted in part as follows:

The Order will go striking out the letter of Dr. Sharon A. Williams dated October 2, 1995 and references thereto including para. 6 of the affidavit of Robert Borden sworn on January 25, 1996.

Costs will follow the result. The applicant will have 14 days from this date to file a revised factum. Time for the respondents to file their material is extended accordingly.

6.3.1996

Before / Devant: CHIEF JUSTICE LAMER

Motion for an order that this appeal is to be not deemed abandoned**Requête en déclaration que le présent appel est censé ne pas avoir été abandonné**

David Michael Howell

With the consent of the parties

v. (25039)

Her Majesty The Queen (N.S.)

GRANTED / ACCORDÉE provided that the case on appeal is filed no later than April 15, 1996 and the appellant's factum is filed no later than May 15, 1996.

6.3.1996

Before / Devant: LE JUGE EN CHEF LAMER

Requête en inscription malgré le dépôt tardif du mémoire**Motion to inscribe notwithstanding the late filing of the factum**

Franck Côté et al.

c. (23707)

Sa Majesté La Reine (Qué.)

ACCORDÉE / GRANTED

À LA SUITE DES DEMANDES présentées par l'avocat des appelants en vue de faire inscrire la présente affaire au rôle de la session du printemps de cette année, et par l'avocat de l'intimée en vue d'autoriser le dépôt d'un mémoire d'au plus 60 pages, et après avoir lu toute la documentation déposée relativement auxdites demandes:

IL EST PAR LES PRÉSENTES ORDONNÉ QUE:

- (1) l'intimée soit autorisée à déposer un mémoire d'au plus soixante (60) pages, pourvu que ce mémoire soit déposé le 22 avril 1996 au plus tard;
- (2) le présent pourvoi soit inscrit au rôle pour audition le 17 juin 1996.

UPON APPLICATION by Counsel on behalf of the Appellants to have this case inscribed for hearing in the Spring Session of the current term and by Counsel on behalf of the Respondent to permit a factum of not more than 60 pages in length, and upon reading all of the materials filed in respect of the said applications :

IT IS HEREBY ORDERED THAT:

- (1) the respondent is permitted to file a factum of not more than sixty (60) pages, on condition that that factum is filed by no later than April 22, 1996; and
- (2) this appeal is inscribed for hearing on Monday, June 17, 1996.

7.3.1996

Before / Devant: THE REGISTRAR

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

Battlefords and District Co-Operative Ltd.

v. (24342)

Betty Lu Clara Gibbs et al. (Sask.)

Requête en prorogation du délai imparti pour déposer le mémoire de l'intimé

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to February 29, 1996.

6.3.96

Before / Devant: CORY J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY/PAR: The Estate of Kristen French et al.

IN/DANS: Canadian Broadcasting Corporation

v. (24305)

Attorney General for New Brunswick
et al. (N.B.)

DISMISSED / REJETÉE

As executors of their estates, the parents of Kristen French and Leslie Mahaffy seek leave to intervene in this appeal.

All Canadians were outraged by the tragic murders of Kristen French and Leslie Mahaffy. All Canadians are joined in their sympathy for the parents of these young girls. Everyone can readily understand the terrible sense of loss, anger and frustration which must be felt by the applicants.

Nonetheless, intervenor status is not granted automatically. Indeed, in many cases it is neither necessary nor helpful to the Court to grant leave to intervene. Usually, all the relevant arguments will be put forward by counsel acting on behalf of the parties. In some situations, to grant intervenors' status would be so unfair to the parties that it should not be considered. That is the situation in this case.

Leave to appeal was granted the appellants almost a year ago on the 30th of March 1995. That is significant for shortly after that date notice of this result together with a very brief summary of the case would have been published in the Supreme Court of Canada Bulletin of Proceedings. On the 3rd of October an order was granted to state a constitutional question. On the 16th of October the appellants' factum was duly filed and in that same month notices of intervention on the constitutional question were filed on behalf of the Attorney General of Canada, the Attorney General of Quebec, the Attorney General of Ontario, the Attorney General of British Columbia, the Attorney General of Manitoba, the Attorney General of Alberta and the Attorney General of Saskatchewan. The appeal was inscribed in November 1995 and the date of 29 March 1996 was set for hearing the appeal. It was not until the 20th of February that the applicants' material was filed seeking leave to intervene.

The proposed intervenor wishes to file evidence which was adduced in a hearing before Mr. Justice Gravelly of the Ontario Court General Division. It is clear that much of the evidentiary record which the applicant proposes to file is composed of expert evidence relating to issues which were not addressed by the parties to this appeal in the Courts below. It relates in part to proprietary and copyright interest in videotapes in the possession of the police, counsel for Paul Bernardo and the Ontario Court of Justice General Division. The application in the Ontario Court pertains to sealing orders and publication bans more than to the exclusion of the public and the media from court proceedings which is the prime subject of this appeal.

It is apparent that the evidence which it is sought to introduce would raise issues which are not relevant to the appeal itself. This would seriously prejudice the parties. Even if the parties wished to respond to the evidence the applicant wishes to file they not possibly obtain expert evidence in time for the hearing of the appeal. The appeal cannot be based upon evidence which was not before the courts below. To do so would place an impossible burden on the parties. As well, it would be unfair to the courts below who would not have an opportunity to consider and comment upon it. Those comments would of course be of value to this court.

Nor would an adjournment provide a ready and simple solution. It is impossible to substitute another appeal for this one at such short notice. Many Canadians would like to put forward their positions in cases which they believe present issues of public importance. Yet, because of the scarcity of time and the need to carefully allocate judicial time they cannot be heard as quickly as they would like if at all. It would be unfair to all the others parties in other cases awaiting their turn before this court to routinely or readily grant an adjournment in order to grant an application for intervenor status brought at the eleventh hour.

In summary, to allow this intervention at this late stage would be unfair to the parties in this appeal, to parties in appeals awaiting hearing, to the courts below and to this court. Further I am not at all convinced that the interventions would be of benefit to the court.

I would note in passing that the concept that an application made at this late date should not be accepted as a result of the unfairness it would occasion the parties is not a novel one. There is recent precedent for reaching just such a conclusion in *R. v. Gladstone* (March the 20th, 1995). The application is therefore dismissed.

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

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

19.2.1996

Sa Majesté La Reine

c. (25162)

Joseph Haroun (Crim.)(Qué.)

DE PLEIN DROIT

v. (25185)

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

AS OF RIGHT

29.2.1996

Terry McDonnell

v. (24814)

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

29.2.1996

Frances Ellen MacDonnell

v. (25165)

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

AS OF RIGHT

4.3.1996

Brian William Frederick Allender

v. (25179)

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

AS OF RIGHT

6.3.1996

Robert William Latimer

v. (24818)

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

6.3.1996

Allan East

**NOTICE OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

**AVIS DE DÉSISTEMENT DÉPOSÉS
DEPUIS LA DERNIÈRE PARUTION**

29.2.1996

Ivan Joseph Morin

v. (24894)

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

(motion)

6.3.1996

Paulo Ernesto Cochrane

v. (24643)

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

(motion)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

21.2.1996 (Revisé /Revised 4.3.1996)

CORAM: Le juge en chef Lamer et les juges La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory et Iacobucci

Jean-Denis Gagnon

Roxanne Hardy et Nicole Languérand, pour l'appelant.

c. (23597)

Sa Majesté La Reine (Crim.)(Qué.)

Robert Parrot, pour l'intimée.

LE JUGE EN CHEF (oralement) -- Eu égard à la nouvelle preuve devant nous, la seule conclusion possible est d'ordonner un nouveau procès, et un nouveau procès est ordonné. L'appel est accueilli.

THE CHIEF JUSTICE (orally) -- In view of the fresh evidence before the Court, the only possible conclusion is that a new trial should be ordered, and a new trial is ordered. The appeal is allowed.

28.2.1996

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

Her Majesty The Queen

Jack Watson, Q.C. and J. Steven Koval, Q.C., for the appellant.

v. (24296)

James Keegstra

Douglas H. Christie, for the respondent and the appellant on cross-appeal.

- and between -

Jack Watson, Q.C. and J. Steven Koval, Q.C., for the respondent on cross-appeal.

James Keegstra

Robert J. Frater and Erin McKey, for the intervener the A.G. of Canada.

v.

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

Michael Bernstein, for the intervener the A.G. for Ontario.

Mark J. Sandler and Marvin Kurz, for the intervener the Human Rights of B'nai Brith Canada.

THE CHIEF JUSTICE (orally) -- Mr. Christie, as you always do, you made a very highly professional presentation and we appreciate the quality of your presentation. Nevertheless your cross-appeal will be failing and we need not hear from you, Mr. Watson and the others, and I call upon our brother Iacobucci J. to give the reasons of the Court.

LE JUGE EN CHEF (oralement) -- Maître Christie, nous apprécions la qualité de votre exposé qui, comme d'habitude, a été fait de manière très professionnelle. Néanmoins, votre pourvoi incident échoue, et il ne sera pas nécessaire de vous entendre M^e Watson et les autres. J'invite mon collègue le juge Iacobucci à exposer les motifs de notre Cour.

IACOBUCCI J. -- We are all of the view that this appeal should be allowed. With respect to the handling by the trial judge of the requests made by the jury for a copy of the transcript of the evidence of Robert David and for a copy of the applicable section of the *Criminal Code*, we agree substantially with the dissenting reasons of Foisy J.A. in the Alberta Court of Appeal.

R.S.C., 1985, c. C-46, contravenes s. 11(d) of the *Canadian Charter of Rights and Freedoms*, we are of the opinion that the decision of the Court in *R. v. Keegstra*, [1990] 3 S.C.R. 697, is a complete answer. In that decision, the Court concluded that, although s. 319(3)(a) was inconsistent with s. 11(d) of the *Charter*, it was justified as a reasonable limit within the meaning of s. 1. The decision of the Court in *R. v. Laba*, [1994] 3 S.C.R. 965, is distinguishable from the case at bar.

With respect to the argument that the reverse onus contained in s. 319(3)(a) of the *Criminal Code*,

With respect to the other arguments raised by the respondent in support of the Court of Appeal's decision, we reject these arguments as they are without merit. Specifically, the argument for a stay because of delay cannot be raised since it is a remedy that does not support the order of the Court of Appeal directing a new trial. The trial judge made no error in charging the jury with respect to the various elements contained in s. 319 of the *Criminal Code*. Notwithstanding any delay in disclosure of the evidence of Dr. Segal, we agree with the trial judge that there was no prejudice in the circumstances.

Accordingly, the appeal is allowed and the cross-appeal is dismissed, the judgment of the Alberta Court of Appeal is set aside, and the conviction is restored, and the matter is remitted to the Court of Appeal so that the accused's sentence appeal can be disposed of.

LE JUGE IACOBUCCI -- Nous sommes tous d'avis qu'il y a lieu d'accueillir le présent pourvoi. En toute déférence pour la manière dont le juge du procès a traité les demandes faites par le jury en vue d'obtenir une transcription du témoignage de Robert David et une copie de l'article applicable du *Code criminel*, nous souscrivons, pour l'essentiel, aux motifs de dissidence du juge Foisy de la Cour d'appel de l'Alberta.

En ce qui concerne l'argument voulant que l'inversion du fardeau de la preuve prévue à l'al. 319(3)a) du *Code criminel*, L.R.C. (1985), ch. C-46, contrevienne à l'al. 11d) de la *Charte canadienne des droits et libertés*, nous sommes d'avis que la décision de la Cour dans *R. c. Keegstra*, [1990] 3 R.C.S. 697, y répond entièrement. Dans cette décision, la Cour a conclu que, même si l'al. 319(3)a) était incompatible avec l'al. 11d) de la *Charte*, il était justifié en tant que limite raisonnable au sens de l'article premier. La décision de la Cour dans *R. c. Laba*, [1994] 3 R.C.S. 965, peut être distinguée de la présente affaire.

Quant aux autres arguments que l'intimé a avancés à l'appui de la décision de la Cour d'appel, nous les rejetons étant donné qu'ils ne sont pas fondés. Plus précisément, l'argument en faveur d'un arrêt des procédures pour cause de délai ne saurait être avancé parce qu'il s'agit d'une réparation qui n'étaye pas l'ordonnance de nouveau procès de la Cour d'appel. Le juge du procès n'a commis aucune erreur en donnant au jury des directives relativement aux divers éléments de l'art. 319 du *Code criminel*. Indépendamment de tout délai écoulé avant la communication du témoignage de M. Segal, nous sommes d'accord avec le juge du procès pour dire qu'aucun préjudice n'a été causé dans les circonstances.

En conséquence, le pourvoi principal est accueilli et le pourvoi incident rejeté, l'arrêt de la Cour d'appel de l'Alberta est annulé et la déclaration de culpabilité rétablie, et l'affaire est renvoyée devant la Cour d'appel pour qu'elle puisse statuer sur l'appel que l'accusé a interjeté contre sa sentence.

We would answer the constitutional question (paraphrased) as follows:

1. Does s. 319(3)(a) of the *Criminal Code*, R.S.C., 1985, c. C-46, infringe s. 11(d) of the *Canadian Charter of Rights and Freedoms*.

Response: The answer is yes.

2. If so, is s. 319(3)(a) of the *Criminal Code* a reasonable limit on the s. 11(d) *Charter* right pursuant to s. 1 of the *Charter*.

Response: The answer is yes.

Nous sommes d'avis de répondre ainsi à la question constitutionnelle (paraphrasée):

1. L'alinéa 319(3)a) du *Code criminel*, L.R.C. (1985), ch. C-46, viole-t-il l'al. 11d) de la *Charte canadienne des droits et libertés*?

Réponse: Oui.

2. Dans l'affirmative, l'al. 319(3)a) du *Code criminel* constitue-t-il une restriction raisonnable du droit garanti par l'al. 11d) de la *Charte*, conformément à l'article premier de la *Charte*?

Réponse: Oui.

29.2.1996

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

Giovanni Marinaro

Timothy E. Breen, for the appellant.

v. (24322)

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

W. Graeme Cameron, for the respondent.

SOPINKA J. (orally for the Court) -- The appeal is allowed for the reasons of Chief Justice Dubin. The conviction and judgment of the Court of Appeal are set aside and a new trial is ordered.

LE JUGE SOPINKA (oralement au nom de la Cour) -- Le pourvoi est accueilli pour les raisons exposées par le juge en chef Dubin. La déclaration de culpabilité et l'arrêt de la Cour d'appel sont annulés et un nouveau procès est ordonné.

1.3.1996

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

Paul A. Martin

Manuel A. Azevedo for the appellant.

v. (24671)

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

S. David Frankel, Q.C. and John M. Loo for the respondent.

SOPINKA J. (orally for the Court) --We are all of the view that the appeal should be dismissed. Assuming without deciding that there was a breach of s. 8 of the *Canadian Charter of Rights and Freedoms*, we agree with the majority of the Court of Appeal that admission of the evidence would not bring the administration of justice into disrepute.

LE JUGE SOPINKA (oralement au nom de la Cour)--
Nous sommes tous d'avis qu'il y a lieu de rejeter le pourvoi. À supposer sans en décider qu'il y a eu violation de l'art. 8 de la *Charte canadienne des droits et libertés*, nous sommes d'accord avec la Cour d'appel à la majorité pour dire que l'utilisation de la preuve n'est pas susceptible de déconsidérer l'administration de la justice.

WEEKLY AGENDA

**ORDRE DU JOUR DE LA
SEMAINE**

AGENDA for the week beginning March 11, 1996.
ORDRE DU JOUR pour la semaine commençant le 11 mars 1996.

Date of Hearing/
Date d'audition

Case Number and Name/
Numéro et nom de la cause

The Court is not sitting this week

La Cour ne siège pas cette semaine

NOTE:

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

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

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 : **April 1, 1996**
Service : March 11, 1996
Filing : March 18, 1996
Respondent : March 25, 1996

Motion day : **May 6, 1996**
Service : April 15, 1996
Filing : April 22, 1996
Respondent : April 29, 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 : **1^{er} avril 1996**
Signification : 11 mars 1996
Dépôt : 18 mars 1996
Intimé : 25 mars 1996

Audience du : **6 mai 1996**
Signification : 15 avril 1996
Dépôt : 22 avril 1996
Intimé : 29 avril 1996

The spring session of the Supreme Court of Canada will commence April 22, 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. For appeals in which the notice of appeal was filed before July 26, 1995, the factum must be filed within five months.

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. For appeals in which the notice of appeal was filed before July 26, 1995, the factum must be filed within two weeks.

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 de printemps de la Cour suprême du Canada commencera le 22 avril 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. Pour les appels dont l'avis d'appel a été déposé avant le 26 juillet 1995, le mémoire doit être déposé dans les cinq mois.

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. Pour les appels dont l'avis d'appel a été déposé avant le 26 juillet 1995, le mémoire doit être déposé dans les deux semaines.

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 SUPRÊME DU CANADA

- 1996 -

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

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

MARCH - MARS						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
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3	M 4	5	6	7	8	9
10	11	12	13	14	15	16
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24	25	26	27	28	29	30
31						

APRIL - AVRIL						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
	M 1	2	3	4	H 5	H 6
H 7	H 8	9	10	11	12	13
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21	22	23	24	25	26	27
28	29	30				

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

JUNE - JUIN						
S-D	M-L	T-M	W-M	T-J	F-V	S-S
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

Hearing of appeal days:
Journée d'audition de pourvois:



Motion days:
Journées de requêtes:



Holidays:
Congés statutaires:

