

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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**APPLICATIONS FOR LEAVE TO  
APPEAL FILED**

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

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**The Golden Griddle Corporation**

Allan D.J. Dick  
Goodman and Carr

v. (26101)

**The Corporation of the City of Toronto (Ont.)**

Diane W. Dimmer  
City of Toronto Legal Dept.

FILING DATE 17.7.1997

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**Touche Ross & Co.**

Robert P. Armstrong, Q.C.  
Tory Tory DesLauriers & Binnington

v. (26118)

**Stephen Kripps et al. (B.C.)**

Glen A. Urquhart  
Singleton, Urquhart, MacDonald

FILING DATE 24.6.1997

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**Dr. David Gerald Brough**

C.E. Hinkson, Q.C.  
Harper Grey Easton

v. (26124)

**Brian Louis de la Giroday et al. (B.C.)**

David Lunny  
Devlin Jensen

FILING DATE 11.7.1997

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**William D. Thomas**

Sidney Green, Q.C.  
Inkster, Christie, Hughes, MacKay

v. (26125)

**Her Majesty The Queen in Right of the Province of  
Manitoba (Man.)**

W.G. McFetridge  
A.G. of Manitoba

FILING DATE 17.7.1997

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**Eddie McDowall**

Eddie McDowall

v. (26127)

**Tamara Terry-Anne Showdra (Ont.)**

Robert J. Gray  
Iacono Brown

FILING DATE 2.6.1997

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**Thomas Richard Nelson**

James Lockyer  
Pinkofsky, Lockyer

v. (26130)

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

Min. of the A.G. of Ontario

FILING DATE 28.7.1997

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**Raymond Desfossés**

Jack Waissman  
Laurin Frigon Waissman Cliche et Assoc.

v. (26131)

**Allan Rock, Minister of Justice of Canada  
(F.C.A.)**

David I. Lucas  
A.G. of Canada

FILING DATE 25.7.1997

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**Succession Clément Guillemette et al.**

Richard Mailhot  
Mailhot, Drapeau

c. (25617)

**J.M. Asbestos Inc. et al. (Qué.)**

Philippe Casgrain  
Byers Casgrain

DATE DE PRODUCTION 5.8.1997

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**Thisdèle et Monette Inc. et al.**

André Asselin  
Asselin & Asselin

c. (26133)

**Gan Canada Insurance Co.**

Harry P. Brown  
Iacono Brown

v. (26135)

**Corporation municipale de Val-David (Qué.)**

Stéphane Sansfaçon  
Prévost, Auclair, Fortin, D'Aoust

DATE DE PRODUCTION 25.7.1997

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**Priya Prasad (Ont.)**

R. Shawn Stringer  
Markowitz & Assoc.

FILING DATE 29.7.1997

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**Greif Containers Ltd.**

Leah Price  
Beard, Winter

v. (26065)

**Henry John Sava**

Henry John Sava

v. (26136)

**Her Majesty The Queen et al. (F.C.A.)**

Robin Carter  
Dept. of Justice

FILING DATE 30.7.1997

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**T.P. Bates personally and Borden & Elliot,  
Solicitors et al. (Ont.)**

T.P. Bates  
Borden and Elliot

FILING DATE 29.7.1997

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**Sahar Elguindi**

Harvey S. Stone  
Borden & Elliot

v. (26090)

**Benjamin Montplaisir-Lessard**

Michel Le Brun

c. (26137)

**Canada (Minister of Health) and Director of  
Bureau of Drug Surveillance (F.C.A.)**

M.I. Thomas  
Dept. of Justice

FILING DATE 31.7.1997

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**Sa Majesté La Reine (Qué.)**

Carole Lebeuf  
Subs. du procureur général du Québec

DATE DE PRODUCTION 8.8.1997

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**Delroy Cain**

Clayton C. Ruby  
Ruby & Edwardh

v. (26132)

**Francine Lessard**

Francine Lessard

c. (26138)

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

David Finley  
Min. of the A.G.

FILING DATE 28.7.1997

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**Sa Majesté La Reine et al. (Qué.)**

Carole Lebeuf  
Subs. du procureur général du Québec

DATE DE PRODUCTION 8.8.1997

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**Ville de Montréal**

Serge Barrière  
Jalbert, Séguin, Verdon, Caron, Mahoney,  
s.e.n.c.

c. (26139)

**Hydro-Québec et al. (Qué.)**

Dominique Piché  
Marchand, Lemieux

DATE DE PRODUCTION 6.8.1997

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**Patrick O'Brien et al.**

Frank S. Borowicz  
Davis & Co.

v. (26140)

**Board of School Trustees of School District No. 39  
(Vancouver) et al. (B.C.)**

J. Stuart Clyne, Q.C.  
Harris & Co.

FILING DATE 6.8.1997

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**Marcel Parisé**

Marc-Antoine St-Pierre  
Wenaas, St-Pierre & Assoc.

c. (26072)

**Sous-ministre du Revenu du Québec (Qué.)**

Michel Dansereau  
Veillette & Assoc.

DATE DE PRODUCTION 20.8.1997

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**Thomas A. Goodman et al.**

William S. Gange  
Suche Gange

v. (26141)

**Royal Insurance Co. of Canada (Man.)**

Aikins, MacAulay & Thorvaldson

FILING DATE 13.8.1997

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**Sydney Ryan Lunn**

John L. MacDougall, Q.C.  
MacLeod, MacDougall, Crane & Parkman

v. (26143)

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

Valerie A. Moore  
Crown Prosecutors' Office

FILING DATE 6.8.1997

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**Her Majesty The Queen**

Trevor Shaw  
Min. of the A.G.

v. (26146)

**Anthony Dexter Browne (Ont.)**

Russell Silverstein  
Pinkofsky, Lockyer, Kwinter

FILING DATE 14.8.1997

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**P.H.D.L. Holdings Ltd. et al.**

John L. MacDougall, Q.C.  
MacLeod, MacDougall, Crane & Parkman

v. (26142)

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

Paul Plourde, Q.C.  
A.G. of Canada

FILING DATE 6.8.1997

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**Placements Marcel Lauzon Ltée et al.**

Philippe Casgrain, c.r.  
Byers Casgrain

c. (26144)

**Gilles Bolduc et al. (Qué.)**

Hélène Lefebvre  
Ogilvy, Renault

DATE DE PRODUCTION 13.8.1997

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**Marilyn Williams**

Isabel J. Schurman  
Lapointe, Schachter, Champagne & Talbot

c. (26145)

**Sa Majesté La Reine (Qué.)**

Lucie Archambault  
P.G. du Québec

DATE DE PRODUCTION 13.8.1997

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**Nabisco Brands Canada Ltée et al.**

Karl Delwaide  
Martineau Walker

c. (26147)

**Fédération québécoise des producteurs de fruits et légumes de transformation et al. (Qué.)**

Claude Savoie  
Guy & Gilbert

DATE DE PRODUCTION 14.8.1997

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**Cape Breton Beverages Ltd. et al.**

Joel E. Fichaud, Q.C.  
Patterson Palmer Hunt Murphy

v. (26148)

**The A.G. of Nova Scotia, representing Her Majesty The Queen in Right of the Province of Nova Scotia (N.S.)**

Louise Walsh-Poirier  
Dept. of Justice

FILING DATE 19.8.1997

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**Michael John Mercury**

David M. Brown  
Stikeman, Elliott

v. (26149)

**Her Majesty The Queen in right of the province of Manitoba (Man.)**

Tom G. Hague  
A.G. of Manitoba

FILING DATE 20.8.1997

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**David Kevin Lindsay**

David Kevin Lindsay

v. (26150)

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

Dale Schille  
A.G. of Manitoba

FILING DATE 12.8.1997

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**Cynthia Dobson**

Henry J. Murphy  
Murphy Collette Murphy

v. (26152)

**Ryan Leigh MacLean Dobson by his litigation  
guardian, Gerald M. Price (N.B.)**

James W.A. MacAulay  
Bingham Rideout Brison Blair

FILING DATE 22.8.1997

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**Thomas William Zegil**

Walter C. Wieckowski

v. (26153)

**Diane Carol Opie (Ont.)**

Stephen M. Grant  
Gowling, Strathy & Henderson

FILING DATE 22.8.1997

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**Dame Chantal Deschamps**

René Martel  
Cleary Martel

c. (26154)

**Le procureur général du Canada (C.A.F.)(Qué.)**

Dominique Gagné  
Min. de la Justice

DATE DE PRODUCTION 25.8.1997

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**Martin Labelle**

Christian Desrosiers  
Desrosiers, Turcotte, Groulx

c. (26157)

**Sa Majesté La Reine (Qué.)**

Henri-Pierre Labrie  
Subs. procureur général

DATE DE PRODUCTION 25.8.1997

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

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

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**JULY 18, 1997 / LE 18 JUILLET 1997**

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

**Howard S. White**

**v. (25983)**

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

**NATURE OF THE CASE**

Criminal law - Ineffective assistance of counsel - Did the Court of Appeal apply the wrong test in its determination of whether the Applicant had been denied the effective assistance of counsel - Trial within a reasonable time - Did the Court of Appeal err in its analysis of s. 11(b) of the *Charter* by attributing the delay while the Applicant was a fugitive from Canadian justice to the Applicant.

**PROCEDURAL HISTORY**

December 17, 1993  
Ontario Court (General Division) (Roberts J.)

Conviction: fraud (3 counts)

March 10, 1997  
Ontario Court of Appeal  
(Weiler, Laskin, Charron JJ.A.)

Appeal dismissed

May 9, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**M.J.B. Enterprises Ltd.**

**v. (25975)**

**Defence Construction (1951) Limited and the said Defence Construction (1951) Limited  
carrying on business under the name of Defence Construction Canada and  
the said Defence Construction Canada (Alta.)**

**NATURE OF THE CASE**

Commercial law - Contracts - Invitation to tender - Privilege clause - Damages - Whether the Court of Appeal properly interpreted the privilege clause in an invitation for tenders - Whether damages should be calculated with reference to the cost of preparing the tender or the lost overhead revenue and profit.

**PROCEDURAL HISTORY**

December 15, 1994  
Court of Queen's Bench of Alberta (Rowbotham J.)

Applicant's claim dismissed



March 5, 1997  
Court of Appeal of Alberta  
(McClung, O'Leary, Hunt JJ.A.)

Appeal dismissed

May 2, 1997  
Supreme Court of Canada

Application for leave to appeal filed

June 17, 1997  
Supreme Court of Canada (McLachlin J.)

Motion to extend time to file additional material in  
support of application for leave to appeal granted

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**Laurentian Pacific Insurance Company and Gavin Lawrence Holmes**

**v. (25955)**

**General Accident Assurance Company of Canada**

**AND BETWEEN:**

**Randy Swan**

**v.**

**Gavin Lawrence Holmes and Cars for Less Ltd. (Alta.)**

**NATURE OF THE CASE**

Commercial Law - Insurance - Motor Vehicles - Which of two insurers should be responsible for a claim resulting from a motor vehicle accident - Vehicle's owner turned vehicle over to an employee of a service business who was driving the car in the course of carrying out the service activity at the time of an accident - Whether insurer of vehicle owner or of service company's employee responsible for claim - Section 181 of the *Highway Traffic Act*, R.S.A. 1980 c. H-7 - Section 309 of the *Insurance Act*, R.S.A. 1980, c. 1-5.

**PROCEDURAL HISTORY**

September 11, 1995  
Court of Queen's Bench of Alberta (Miller J.)

Declaration in favour of Cars for Less Ltd. and General  
Accident Assurance Company of Canada

March 21, 1997  
Court of Appeal of Alberta  
(Hetherington, Foisy and McFadyen JJ.A.)

Appeal dismissed

April 22, 1997  
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**

**Pierre Moreault Ltée**

**c. (25817)**

**Michel Sauvé et al.**

**- et -**

**La Régie des rentes du Québec (Qué.)**

**NATURE DE LA CAUSE**

Droit du travail - Pensions - Convention collective - Législation - Interprétation - Surplus accumulé dans une caisse de retraite - Stipulation pour autrui - Patrimoine d'affectation - Régime de retraite non contributif à prestations déterminées administré par une compagnie d'assurance-vie - Régime intégré comme annexe à la convention collective - La Cour d'appel, à la majorité, a-t-elle erré en concluant que l'employeur n'avait pas droit au surplus? - A-t-elle erré en concluant que la stipulation pour autrui créée en faveur des employés s'étendait au surplus de la caisse par l'effet de l'art. 3.13 du *Règlement adopté sous l'autorité de la Loi des régimes supplémentaires de rentes* et que l'employeur ne pouvait modifier unilatéralement le régime de façon à retirer ce droit acquis aux employés? - *Schmidt c. Air Products Canada Ltd.*, [1994] 2 R.C.S. 611.

**HISTORIQUE PROCÉDURAL**

Le 7 mars 1990 Cour supérieure du Québec (Tessier j.c.s.)	Action pour jugement déclaratoire des intimés accueillie
Le 9 décembre 1996 Cour d'appel du Québec (Gendreau, Mailhot [dissidente] et Chamberland jj.c.a.)	Appel rejeté
Le 7 février 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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

**The City of Calgary**

**v. (25979)**

**The Calgary Police Association (Alta.)**

**NATURE OF THE CASE**

Administrative law - Judicial review - Jurisdiction - Collective agreement - Workers' compensation - Whether Arbitration Board committed a jurisdictional error and/or a patently unreasonable decision in interpreting the collective agreement when it held that a sum paid in settlement of a civil action by the Workers' Compensation Board to the employee was neither "any benefit payable" under the *Workers' Compensation Act* nor "any damages awarded" to the employee.

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**PROCEDURAL HISTORY**

January 30, 1995 Arbitration Board (Tettensor Chairman, Neuman (dissenting) and McGown, nominees)	Ruling: \$125,000 payment pursuant to s. 17(5)(c) of the <i>Workers' Compensation Act</i> not a benefit payable under <i>Act</i>
June 6, 1995 Court of Queen's Bench of Alberta (Moore C.J.)	Applicant's application for judicial review allowed: grievance arbitration award of majority quashed, on the basis that payment is a benefit payable under the <i>Workers' Compensation Act</i>
March 12, 1997 Court of Appeal for Alberta (McClung, O'Leary and Hunt JJ.A.)	Appeal allowed: grievance arbitration award of the majority restored
May 9, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Bara Academy of Business Sciences Limited  
and Mary L. Bara**

**v. (26036)**

**Her Majesty the Queen in Right of Alberta  
and Andrew M. (Andy) Hendry (Alta.)**

**NATURE OF THE CASE**

Procedural law - Actions - Defence - Whether defence presented or Statement of Defence supported by an Affidavit sworn to by someone who has personal knowledge of the events which caused the Statement of Claim to be filed - Whether the Applicant Academy was a private vocational school or a private college - The Academy's ongoing predicament raises the questions of the constitutionality of the *Private Vocational Schools Act and Regulations*.

**PROCEDURAL HISTORY**

April 18, 1996 Court of Queen's Bench of Alberta (in Chambers) (Master Quinn)	Applicant Mary Bara's action dismissed; Applicants' application for summary judgment dismissed; Applicant company ordered to post security for costs in the amount of \$15,000 prior to taking further steps in action
November 6, 1996 Court of Queen's Bench of Alberta (Master Quinn)	Applicants' applications to seal court file and vary order of February 27, 1996, dismissed
March 21, 1997 Court of Queen's Bench of Alberta (Dea J.)	Applicants' appeal dismissed
May 7, 1997 Court of Appeal of Alberta (McClung, Russell and Costigan JJ.A.)	Appeal dismissed

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June 4, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Bara Academy of Business Sciences Limited  
and Mary L. Bara**

**v. (26037)**

**Her Majesty the Queen in Right of Alberta  
and Andrew M. (Andy) Hendry (Alta.)**

**NATURE OF THE CASE**

Procedural law - Action - Costs - Security for costs.

**PROCEDURAL HISTORY**

April 18, 1996  
Court of Queen's Bench of Alberta (in Chambers)  
(Master Quinn)

Applicant Mary Bara's action dismissed; Applicants' application for summary judgment dismissed; Applicant company ordered to post security for costs in the amount of \$15,000 prior to taking further steps in action

November 6, 1996  
Court of Queen's Bench of Alberta (Master Quinn)

Applicants' applications to seal court file and vary order of February 27, 1996, dismissed

March 21, 1997  
Court of Queen's Bench of Alberta (In Chambers)  
(Dea J.)

Applicants' appeal dismissed

May 7, 1997  
Court of Appeal of Alberta  
(McClung, Russell and Costigan JJ.A.)

Appeal dismissed

June 4, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Nandu Patel**

**v. (25997)**

**Department of National Health and Welfare Canada (F.C.A.)(Ont.)**

**NATURE OF THE CASE**

Administrative Law - Judicial Review - Evidence - Whether Canadian Human Rights Commission properly dismissed a complaint of discrimination when an Investigating Officer of the Commission recommended conciliation - Authority of Canadian Human Rights Commission to dismiss complaints - Proper basis for a dismissal.

**PROCEDURAL HISTORY**

September 26, 1995 Federal Court, Trial Division (Nadon J.)	Application for judicial review dismissed
September 12, 1996 Federal Court of Appeal (Stone, Robertson and McDonald JJ.A.)	Appeal dismissed; Application for leave to appeal to this Court dismissed
May 8, 1997 Supreme Court of Canada	Application for extension of time to file leave to appeal and application for leave to appeal filed

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

**Vicky Karpeta**

**v. (25985)**

**CIRC Radio Inc. (Ont.)**

**NATURE OF THE CASE**

Procedural Law - Pre-trial Procedure - Summary Judgment - Whether there were genuine issues for trial - Adequacy of reasons for dismissing action.

**PROCEDURAL HISTORY**

November 27, 1995 Ontario Court (General Division) Lissaman J.	Motion for summary judgment granted, action dismissed
March 12, 1997 Ontario Court of Appeal Moldaver and Blair, JJ.A.1, Morden A.C.J.)	Appeal dismissed
May 9, 1997 Supreme Court of Canada	Application for leave to appeal filed
May 14, 1997 Supreme Court of Canada	Motion for substitute service granted

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**Joseph Howard Peacock, Nicholas William Morin, John Robert McGillis,  
Barney Ward, Percy William Papin, Raymond Cardinal, Kathleen Thomas,  
Pearl Louise Cardinal, Clifford Ward, Romeo Morin on behalf of The Enoch Band  
of the Stony Plain Indian Reserve No. 135 and Enoch Tribal Administrative**

**v. (25962)**

**Irene Morin, Bank of Montreal, the Toronto Dominion Bank  
and Peace Hills Trust Company (Alta.)**

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**NATURE OF THE CASE**

Commercial law - Bank/banking operations - Bills of exchange - Statutes - Interpretation - *Bills of Exchange Act*, R.S.C. 1985, c.B-4, s.48(4) - Whether the Court of Appeal erred in finding that s.48(4) of the *Bills of Exchange Act* protects a Collecting Bank - Whether a short limitation in a federal statute prevails over a longer limitation in a provincial statute for a common law remedy - Whether the Court can relieve against the effect of section 48 if the Collecting Bank had actual notice of the forgeries within a year, but not written notice.

**PROCEDURAL HISTORY**

October 27, 1995 Court of Queen's Bench of Alberta (Costigan J.)	Judgment for Applicants against Irene Morin; Applicants' action against the Respondent Bank of Montreal dismissed
February 27, 1997 Court of Appeal of Alberta (Hetherington, Foisy and McFadyen JJ.A.)	Applicants' appeal dismissed
April 28, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Olds Aviation Ltd.**

**v. (25965)**

**Timothy D. McFetridge, Executor of the Estate of Kent George McBain Ward,  
deceased, and Jonathan Kent Neale Ward, an Infant, by his next friend, Timothy  
D. McFetridge and Catherine Joanne Neale Ward (Alta.)**

**NATURE OF THE CASE**

Commercial law - Insurance law - Procedural law - Appeal - Whether an insurer has a right to defend the insured pursuant to the defence obligation in the contract of insurance where there is a denial of coverage, without having to produce evidence of express authorization or ratification of authority by the insured.

**PROCEDURAL HISTORY**

April 12, 1996 Court of Queen's Bench of Alberta (Lee J.)	Respondents' action for damages allowed: damages assessed
November 27, 1996 Alberta Court of Appeal (Lieberman, Coté and Picard JJ.A.)	Respondents' motion to disallow appeal filed by Insurer's counsel on behalf of Applicant: Insurer's counsel ordered to secure fresh ratification of his notice of appeal within four weeks; appeal stayed pending ratification
February 28, 1997 Alberta Court of Appeal (Lieberman, Coté and Picard JJ.A.)	Insurer's motion to validate the appeal and Respondents' cross-motion to strike out appeal: Insurer's motion dismissed and appeal struck out as unauthorized

April 29, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**JULY 25, 1997 / LE 25 JUILLET 1997**

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

**Dennis David Wilson**

**v. (25970)**

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

**NATURE OF THE CASE**

Criminal law - Disclosure - Incest - Indecent assault - Whether the Court of Appeal erred in holding that the Applicant could not cross-examine the complainant on whether she agreed to DNA testing - Whether evidence of sexual impropriety between the Applicant and complainant prior to the period described in the indictment was admissible - Whether adoption records in the hands of the Ministry of Social Services were in the hands of the Crown for the purposes of disclosure - Whether the proper remedy if the Applicant was prevented from making full answer and defence was a stay of proceedings or whether a new trial should be ordered together with an order for DNA testing - Whether the Applicant should have been tried as a young offender.

**PROCEDURAL HISTORY**

September 21, 1995  
British Columbia Supreme Court (Melvin J.)

Convictions: incest, rape, indecent assault

March 27, 1997  
British Columbia Court of Appeal (McEachern C.J.B.C.,  
Prowse J.A. [dissenting], Hall J.A.)

Appeal dismissed

April 17, 1997  
Supreme Court of Canada

Notice of Appeal as of Right filed

June 20, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Jeannine Godin**

**v. (26005)**

**Minister of Health and Community Services,  
Law Society of New Brunswick, Legal Aid New Brunswick,  
Attorney General of New Brunswick and the Minister of Justice (N.B.)**

**NATURE OF THE CASE**

Constitutional Law - Family Law - Custody - Whether parents have a *Charter* right to state-funded counsel when opposing Ministerial applications to take or extend custody of their children.

**PROCEDURAL HISTORY**

December 15, 1995 Court of Queen's Bench of New Brunswick (Athey J.)	Applicant's motion dismissed
January 11, 1996 Court of Appeal (Rice J.A.)	Leave to appeal granted
March 14, 1997 Court of Appeal (Hoyt C.J., Ayles, Ryan, Turnbull, Bastarache JJ.A.)	Appeal dismissed
May 12, 1997 Supreme Court of Canada	Application 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**

**Léo Montambeault**

**c. (25808)**

**Pierre Brazeau et la Commission d'appel en matière de lésions professionnelles**

**et**

**Le Procureur général du Québec, la Commission de la santé et de la sécurité du travail  
et la Ville de Lévis (Qué.)**

**NATURE DE LA CAUSE**

Libertés publiques - Impartialité et indépendance de la Commission d'appel en matière de lésions professionnelles (ci-après la "CALP") - Financement, indépendance et encadrement des commissaires - Le mode de financement de la CALP, prévu à l'article 394 de la *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., chap. A-3.001 (ci-après la "L.A.T.M.P."), porte-t-il atteinte à son image de tribunal indépendant et impartial ? - Les articles 367 et 368 de la L.A.T.M.P. qui créent la CALP et le statut de commissaire, contiennent-ils des garanties suffisantes pour assurer leur indépendance dans le respect de l'article 23 de la *Charte des droits et libertés de la personne*, L.R.Q., chap. C-12? - La politique d'évaluation de rendement respecte-t-elle la sécurité financière des commissaires et, partant, leur indépendance face à l'exécutif? - L'encadrement institutionnel pouvait-il porter atteinte à la liberté du commissaire de décider seul des questions de faits et de droit qui lui étaient soumises ?

**HISTORIQUE PROCÉDURAL**

Le 8 juillet 1987 Commission de la santé et de la sécurité du travail	Décision portant que le demandeur n'a pas été victime d'une lésion professionnelle
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Le 18 février 1988 Bureau de révision de la Commission de la santé et de la sécurité du travail	Décision portant que le demandeur a été victime d'une lésion professionnelle
Le 4 juin 1990 Commission d'appel en matière de lésions professionnelles (Godin, commissaire)	Décision portant que le demandeur n'a pas été victime d'une lésion professionnelle
Le 26 avril 1995 Cour supérieure du Québec (Rioux J.C.S.)	Requête pour la délivrance d'un bref d'évocation contre la décision de la CALP et pour faire déclarer inconstitutionnels les articles 367, 368 et 394 de la <i>Loi sur les accidents du travail et les maladies professionnelles</i> rejetée
Le 11 décembre 1996 Cour d'appel du Québec (Beauregard et Rousseau-Houle J.J.C.A. et Biron J.C.A. ( <i>ad hoc</i> ))	Requête pour permission d'apporter une nouvelle preuve rejetée et appel rejeté
Le 4 février 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**Irénée Roy**

**c. (25843)**

**Jacques Sauvé (Qué.)**

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Appel - Requête en rejet d'appel en vertu de l'art. 501(5) du *Code de procédure civile*, L.R.Q. 1977, ch. C-25 - Action en dommages-intérêts intentée par le demandeur contre l'intimé pour faute professionnelle rejetée par la Cour supérieure - Requête de l'intimé visant à faire rejeter le pourvoi du demandeur interjeté devant la Cour d'appel en raison de son caractère abusif ou dilatoire - Pourvoi rejeté au motif qu'il n'a aucune chance de succès - La Cour d'appel a-t-elle erré en rejetant le pourvoi eu égard aux motifs d'appel multiples qui méritaient l'attention de la Cour?

**HISTORIQUE PROCÉDURAL**

Le 29 mai 1996 Cour supérieure du Québec (Richer j.c.s.)	Action en dommages-intérêts rejetée
Le 16 décembre 1996 Cour d'appel du Québec (Michaud, Mailhot et Rousseau-Houle jj.c.a.)	Requête en rejet d'appel accueillie
Le 12 février 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**M.B.B.**

**c. (25915)**

**Huguette Pagé (Qué.)**

**NATURE DE LA CAUSE**

Procédures - Procédure civile - Action en diffamation intentée contre l'intimée - Article 35 de la *Loi sur la protection de la jeunesse*, L.R.Q., chap. P-34.1 - Actes de l'intimée accomplis de bonne foi dans l'exécution de ses fonctions - Requête de l'intimée en irrecevabilité accueillie en Cour supérieure - Appel du demandeur - Requête de l'intimée en rejet d'appel fondée sur l'article 501.1 du *Code de procédure civile* accueillie en Cour d'appel et appel du demandeur rejeté - La Cour d'appel du Québec a-t-elle commis une erreur en accordant la requête de l'intimée en rejet d'appel?

**HISTORIQUE PROCÉDURAL**

Le 11 novembre 1996  
Cour supérieure du Québec (Turmel J.C.S.)

Requête de l'intimée en irrecevabilité accueillie et action du demandeur en diffamation rejetée

Le 24 février 1997  
Cour d'appel du Québec (Deschamps et Chamberland J.J.C.A. et Zerbisias [ad hoc] J.C.A.)

Requête de l'intimée en rejet d'appel fondée sur l'article 501.1 du *Code de procédure civile* accueillie et appel du demandeur rejeté

Le 18 mars 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

**Triple Five Corporation Ltd. and West Edmonton Mall Limited**

**v. (25991)**

**Simcoe & Erie Group, Simcoe & Erie Insurance Company, St. Paul Fire & Marine Insurance Company, Halifax Insurance Company, Halifax Insurance Company of Canada, Scottish & York Insurance Company Limited, U.S.F. & G. Insurance Company of Canada, United States Fidelity & Guarantee Company, Allstate Insurance Company of Canada, Allstate Insurance Company, Commonwealth Insurance Company, Reandex Home International Ltd., Laurentian Pacific Insurance Company, Continental Insurance Company, Canadian General Insurance Company, Phoenix Continental Management Ltd. (Alta.)**

**NATURE OF THE CASE**

Commercial law - Insurance - Contracts - Interpretation - "All-risks" policies - Proximate cause of loss is a design error - Design error not an excluded risk - Links in the chain of causation initiated by the design error are excluded risks - Whether the loss is covered - Whether the excluded risk of "latent defect" encompasses a flaw built into a manufactured product as a direct result of the design error - Whether the interpretation of standard form wording is a question of fact or law - Whether reasonableness is the standard of appellate review for the interpretation of standard insurance contract wording - Whether the failure of insurers to include a standard form exclusion in the property policies is relevant when interpreting the excluded risks stated in the policies - Whether the court should only interpret coverage provisions broadly in favour of the insured and excluded clauses strictly and narrowly against the insurer where the *contra proferentum* rule applies - Whether certain American insurance cases represent the law in Canada.

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**PROCEDURAL HISTORY**

October 17, 1994 Court of Queen's Bench for Alberta (Wilson J.)	Judgment for the Applicants for losses arising from accident and prejudgment interest; claim for business interruption losses and incidental costs dismissed
March 13, 1997 Court of Appeal of Alberta (Kerans, O'Leary and Picard JJ.A.)	Appeal dismissed
May 12, 1997 Supreme Court of Canada	Application for leave to appeal filed

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

**Fednav International Ltd.**

**v. (25961)**

**Sidmar N.V., TradeArbed Inc., all others having an interest in  
the cargo laden on board the M.V. "Federal Mackenzie" (F.C.A.)(Qué.)**

**NATURE OF THE CASE**

Commercial law - Maritime law - Contracts - Carriage of goods - Whether a written suit time extension letter is a separate contract from the initial contract of carriage by sea, or simply an amendment to that contract.

**PROCEDURAL HISTORY**

October 11, 1996 Federal Court, Trial Division (Tremblay-Lamer J.)	Respondents' motions for declarations that actions properly and in due time brought before Court, granted; Applicant's motions for summary judgment dismissed; Paragraph 4 of letters of extension held null and void
February 25, 1997 Federal Court of Appeal (Marceau and Desjardins JJ.A. and Chevalier D.J.)	Appeal dismissed
April 25, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**AUGUST 1, 1997 / LE 1 AOÛT 1997**

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

**James Webb**

**v. (25999)**

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

**NATURE OF THE CASE**

Criminal law - Informer privilege - Whether the Crown could claim informer privilege where the informer was a participant in the alleged criminal act - Whether disclosing the identity of the informer at trial affected the validity of the search warrant - Reply evidence - Whether the trial judge erred in allowing the Crown to call the informer in reply - Sentencing - Whether the Applicant should benefit from a change in the law of possession of stolen goods so as to receive a decrease in sentence.

**PROCEDURAL HISTORY**

September 27, 1994  
Ontario Court (General Division) (Epstein J.)

Conviction: possession of property obtained by crime (6 counts)

January 16, 1997  
Ontario Court of Appeal  
(Morden A.C.J.O., Finlayson and Abella JJ.A.)

Appeal dismissed

May 12, 1997  
Supreme Court of Canada

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

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**Federated Insurance Company of Canada**

**v. (25998)**

**Manitoba Public Insurance Corporation (Man.)**

**NATURE OF THE CASE**

Commercial law - Insurance - Contracts - Extent of insurers' liability pursuant to contracts of insurance - Whether a different test applies to the interpretation of the policy wording of a private insurer in competition with a public insurer than applies in the interpretation of the policy wording of two private insurers - What is the meaning of the term "Certificate of Insurance issued under *The Manitoba Public Insurance Corporation Act*"?

**PROCEDURAL HISTORY**

November 6, 1996  
Court of Queen's Bench of Manitoba  
(Steel J.)

Applicant's application to determine extent of insurance liability: Respondent declared primary insurer to the full extent of its coverage; Applicant declared an excess insurer

March 18, 1997  
Court of Appeal of Manitoba  
(Scott C.J.M., Twaddle and Helper JJ.A.)

Appeal allowed: Applicant and Respondent found to be liable up to the limit of the Applicant's policy, with the Respondent liable for any additional amount to the extent of its policy limit

May 15, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Sheldon S. Richmond et al.**

**v. (26017)**

**Attorney General of Canada (Public Service Commission of Canada,  
Department of National Defence, Revenue Canada, Customs & Excise) (F.C.A.)(Ont.)**

**NATURE OF THE CASE**

Civil rights - Labour law - Administrative law - Judicial review - Adverse effect discrimination - Duty to accommodate - Did the employer satisfy its duty to accommodate when it denied Jewish employees leave with pay to observe Yom Kippur and Rosh Hashana - Does paid leave for religious holidays result in reverse discrimination where employees could make up the time off for religious holidays - Does the duty to accommodate require the employer to make only a reasonable offer of accommodation, or is the employer required to provide the most beneficial accommodation up to the point of undue hardship.

**PROCEDURAL HISTORY**

February 13, 1996  
Federal Court of Canada Trial Division (Gibson J.)

Application for judicial review dismissed

March 26, 1997  
Federal Court of Appeal (Isaac C.J., Desjardins and  
Robertson [dissenting] JJ.A.)

Appeal dismissed

May 20, 1997  
Supreme Court of Canada

Application 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**

**Dr. V.I. Fabrikant**

**v. (25850)**

**Concordia University (Qué.)**

**NATURE OF THE CASE**

Procedural law - Did Barbeau J.C.S. err in hearing the Respondent's submissions on the motion to dismiss in the absence of the Applicant?- Should Beauregard J.C.A. have been recused from considering this case?- Did the lower courts err in dismissing the Applicant's action?

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**PROCEDURAL HISTORY**

November 16, 1995 Superior Court of Quebec (Barbeau J.C.S.)	Motion to dismiss Applicant's action granted
March 4, 1996 Superior Court of Quebec (Durocher J.C.S.)	Motion for revocation of judgment denied
September 26, 1996 Court of Appeal for Quebec (Beauregard, Nuss and Forget JJ.A.)	Motion to have Beauregard J.C.A. recused dismissed
January 8, 1997 Court of Appeal for Quebec (Beauregard, Nuss and Forget JJ.A.)	Appeal dismissed
February 7, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Marthe Mongrain**

**c. (25861)**

**Compagnie d'assurance générale Les Coopérants (Qué.)**

**NATURE DE LA CAUSE**

Code civil - Assurance - Hypothèques - Exercice de la clause de datation en paiement - Sinistre - Droit à l'indemnité d'assurance - Interprétation de la clause d'exclusion du contrat d'assurance - La Cour d'appel est-elle intervenue indûment dans les conclusions de fait du juge de première instance? - L'assurée perd-elle tout intérêt assurable ou tout droit à l'indemnité si, entre la date du sinistre et le moment où l'assureur peut être obligé de couvrir les dommages, elle perd l'immeuble assuré par suite de l'exercice de la clause de datation en paiement?

**HISTORIQUE PROCÉDURAL**

Le 7 septembre 1990 Cour du Québec (Trudel, J.C.Q.)	Action de la demanderesse en réclamation d'une indemnité d'assurance accueillie pour la somme de 13 807\$
Le 4 décembre 1996 Cour d'appel du Québec (Rothman, Proulx et Robert, JJ.C.A.)	Appel de l'intimée accueillie
Le 7 février 1997 Cour d'appel du Québec (Robert, J.C.A.)	Requête de la demanderesse en prorogation du délai d'appel en Cour suprême du Canada accueillie: délai prorogé au 25 février 1997
Le 25 février 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**B.C.**

**c. (25920)**

**M.E.K. (Qué.)**

**NATURE DE LA CAUSE**

Droit de la famille - Divorce - Aliments - Appel - Compétence - Une Cour d'appel a-t-elle compétence pour intervenir rétroactivement afin de modifier une ordonnance alimentaire rendue dans le cadre des mesures accessoires et ainsi établir un trop-perçu par la créancière alimentaire sans examiner l'ensemble des mesures accessoires établies par le juge de première instance? - Le défaut d'obtenir la suspension de l'exécution malgré l'appel d'une ordonnance alimentaire est-il sans conséquence pour le débiteur et sans conséquence quant aux pouvoirs d'une Cour d'appel d'intervenir rétroactivement? - Un trop-perçu de 18 737,34\$, par l'effet rétroactif du jugement de la Cour d'appel, est-il manifestement déraisonnable en raison de la situation de la demanderesse?

**HISTORIQUE PROCÉDURAL**

Le 7 juin 1995  
Cour supérieure du Québec (Halperin j.c.s.)

Action en divorce accueillie: intimé condamné à payer une pension alimentaire mensuelle de 3 300\$

Le 11 février 1997  
Cour d'appel du Québec  
(Beauregard, Otis et Zerbisias jj.c.a.)

Pourvoi accueilli en partie: pension alimentaire réduite à 2 300\$ rétroactivement à la date du jugement de première instance

Le 17 avril 1997  
Cour suprême du Canada  
(Gonthier j.)

Requête en sursis d'exécution refusée; requête en prorogation de délai renvoyée à la formation saisie de la demande

Le 29 mai 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Frymeta Kirschenbaum Green, ès qualités**

**v. (25841)**

**Dr. Hyman Surchin (Qué.)**

**NATURE OF THE CASE**

Civil Code - Negligence - Professional liability - Causation - Medical malpractice - What is a plaintiff's burden of proof to establish causation in medical malpractice cases - Could the patient's cardiac arrest have been avoided or delayed if the Respondent had not abandoned him - *Athey v. Leonati*, [1996] 3 S.C.R. 458 - *Snell v. Farrell*, [1990] 2 S.C.R. 311 - *Laferrrière v. Lawson*, [1991] 1 S.C.R. 541.

**PROCEDURAL HISTORY**

October 15, 1993  
Superior Court of Québec (Larouche J.)

Applicant's claim dismissed

January 27, 1997 Court of Appeal of Québec (Michaud J.C.Q., Mailhot and Rousseau-Houle JJ.C.A.)	Appeal dismissed
March 13, 1997 Supreme Court of Canada	Motion to extend time to file application for leave to appeal to May 7, 1997, granted
May 7, 1997 Supreme Court of Canada	Application for leave to appeal filed

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

**Ryan Robert Reed**

**v. (25820)**

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

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Dangerous driving - Reverse onus - Whether the Court of Appeal erred in placing a reverse onus on the Applicant to provide an exculpatory explanation for the accident - Whether the placing of that onus, which the Applicant was incapable of discharging, violated the Applicant's right to be presumed innocent or his right to security of the person.

**PROCEDURAL HISTORY**

February 9, 1996 British Columbia Supreme Court (Fraser J.)	Acquittal: dangerous driving causing death (3 counts)
January 22, 1997 British Columbia Court of Appeal (McEachern C.J.B.C., MacFarlane and Cumming JJ.A.)	Appeal allowed; convictions entered
February 10, 1997 Supreme Court of Canada	Notice of appeal as of right filed
May 9, 1997 Supreme Court of Canada	Application for leave to appeal filed
May 28, 1997 Supreme Court of Canada (Gonthier J.)	Motion for the extension of time granted

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**Gordon Denis Gillespie**

**v. (26061)**

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

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**NATURE OF THE CASE**

Canadian Charter - Criminal - Criminal Law - Procedural Law - Appeals - Right to Appeal - Whether ss. 372(3) of the *Criminal Code* is a reasonable limit on freedom of expression - Whether an appeal lies to the Court of Appeal for Manitoba from a decision by a single judge of that Court, in chambers, to dismiss an application for leave to appeal from a decision rendered in summary conviction appeal court.

**PROCEDURAL HISTORY**

November 28, 1995 Provincial Court of Manitoba (Tarwid J.)	Conviction of harassment, Sentence to a fine of \$300 and two years of probation with conditions
June 10, 1996 Court of Queens's Bench of Manitoba (Hewak C.J.)	Appeal dismissed
September 5, 1996 Court of Appeal for Manitoba (Scott C.J.)	Application for leave to appeal dismissed
April 21, 1997 Court of Appeal for Manitoba (Huband, Philp, Twaddle, Lyon, Monnin JJ.A.)	Motion to strike Notice of Appeal granted
June 19, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Louis Ludwik Furtak**

**v. (26117)**

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

**NATURE OF THE CASE**

Administrative Law - Appeal - Right to appeal from a Registrar's decision to return a Notice of Appeal - Right to appeal from a decision by a judge, in chambers, of the Manitoba Court of Appeal to the Court of Appeal.

**PROCEDURAL HISTORY**

June 5, 1996 Provincial Court of Manitoba (Rubin J.)	Charges stayed
October 22, 1996 Court of Queen's Bench (Schulman J.)	Appeal dismissed
November 21, 1996 Court of Appeal for Manitoba (Twaddle J.A.)	Application for leave to appeal denied
June 23, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Veronika Hublall, carrying on business under the firm name and style of Ronnie's Hair Salon**

**v. (25916)**

**Wilma Mills (Ont.)**

**NATURE OF THE CASE**

Torts - Action - Damages - Assessment - Assessment of damages by jury - Uniformity of damage awards throughout the provinces in cases similar fact patterns and legal issues - Should a judge have guidelines upon which to guide a jury through their deliberations in such proceedings?

**PROCEDURAL HISTORY**

February 25, 1992 Ontario Court, General Division (O'Brien J.)	In accordance with answers of jury, judgment for Respondent for \$50,000
January 28, 1997 Court of Appeal for Ontario (Houlden, Weiler and Moldaver JJ.A.)	Appeal dismissed
March 27, 1997 Supreme Court of Canada	Application for leave to appeal filed

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

**Anthony Carl Moore**

**v. (26044)**

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

**NATURE OF THE CASE**

Criminal law - Directed verdict - Unreasonable verdict - Whether the trial judge erred in refusing to grant the Applicant's application for a directed verdict - Whether the verdict was reasonable and supported by the evidence - First degree murder - Planning and deliberation - Whether the trial judge erred in failing to instruct the jury that evidence of an attempt to conceal the murder should not be considered as planning and deliberation - Procedure - Whether the Applicant's right to make full answer and defence was violated because he addressed the just first - Whether the Applicant can raise this issue when it was not raised at trial.

**PROCEDURAL HISTORY**

March 14, 1995 Supreme Court of British Columbia (Josephson J.)	Conviction: first degree murder
September 12, 1996 British Columbia Court of Appeal (Goldie, Ryan, Donald JJ.A.)	Appeal dismissed

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May 27, 1997  
Supreme Court of Canada

Application for leave to appeal filed

June 12, 1997  
Supreme Court of Canada (Iacobucci J.)

Motion for the extension of time granted

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**Hagop Kuyumcuoglu**

v. (25957)

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

**NATURE OF THE CASE**

Criminal law - Credibility .

**PROCEDURAL HISTORY**

February 6, 1996  
Ontario Court (Provincial Division) (Marshal P.C.J.)

Conviction: theft under \$5,000

September 12, 1996  
Ontario Court (General Division) (German J.)

Summary conviction appeal dismissed

January 27, 1997  
Ontario Court of Appeal  
(McKinlay, Doherty, Rosenberg JJ.A.)

Appeal dismissed

April 15, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Gabriel Sioui**

c. (25829)

**Le Sous-ministre du Revenu du Québec et le Procureur général du Québec (Qué.)**

**NATURE DE LA CAUSE**

Indiens - Droit fiscal - Droit constitutionnel - Libertés publiques - Taxe de vente - Ordonnance de fermeture d'un commerce exploité sur une réserve indienne et non inscrit au registre de la taxe de vente - Traité de Murray - Le Traité de Murray, combiné à l'art. 88 de la *Loi sur les Indiens*, L.R.C. 1985, ch. I-5, rend-il inapplicable au demandeur l'art. 422 de la *Loi sur la taxe de vente du Québec*, L.R.Q., ch. T-0.1? - L'article 68.1 de la *Loi sur le ministère du Revenu*, L.R.Q., ch. M-31, est-il inconstitutionnel, vu les articles 6 et 23 de la *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12? - La demande de cautionnement est-elle nulle?

**HISTORIQUE PROCÉDURAL**

Le 26 mai 1995  
Cour supérieure du Québec  
(Thibault j.c.s..)

Requête en injonction du sous-ministre du Revenu du Québec demandant la fermeture d'un commerce non inscrit au registre de la taxe de vente accueillie; ordonnance d'injonction émise pour la fermeture du commerce

Le 11 décembre 1996  
Cour d'appel du Québec  
(Beauregard, Rousseau-Houle et Biron jj.c.a.)

Appel rejeté

Le 10 février 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**AUGUST 8, 1997 / LE 8 AOÛT 1997**

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

**Michelle Marie Pierce**

**v. (25885)**

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

**NATURE OF THE CASE**

Criminal law - Sentencing - Conditional sentencing - Whether the imposition of a conditional sentence pursuant to s. 742.1 of the *Criminal Code* should involve a two-step process in which the court first determines the appropriate length of sentence taking into consideration ss. 718, 718.1 and 718.2, and then determines if the sentence should be served in the community pursuant to s. 742.1 without recourse to s. 718.2 - Whether the phrase "endanger the safety of the community" in s. 742.1 is restricted to a determination of whether the offender is likely to re-offend.

**PROCEDURAL HISTORY**

August 25, 1995  
Ontario Court (General Division) (Locke J.)

Conviction: fraud

October 10, 1995  
Ontario Court (General Division) (Locke J.)

Sentence: 21 months imprisonment

February 26, 1997  
Court of Appeal for Ontario  
(Finlayson, Abella, Goudge JJ.A.)

Appeal from conviction dismissed; appeal from sentence allowed; sentence varied to 12 months imprisonment

April 28, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Commercial Union Assurance Company of Canada**

**v. (26006)**

**City of Surrey, Ricketts-Sewell, Imperial Paving Ltd., Interpave Precast Systems, Labour Standards Board, Vanport Enterprises Ltd., Coast Tractor, Midpoint Sand & Gravel, Western Supplies Ltd., RDM Enterprises Ltd., KWH Pipe, Jack Cewe Ltd., Columbia Bitulithic, Construction Aggregates, Delta Turf Farms, Mainland Sand, Pacific View Contracting, McCallum Concrete, Action Excavating, Pacific Pre Benched Ltd., Nordell Trucking, View Point Sand & Gravel, ABC Pipe Cleaning, Arctic Portable Building, AE Concrete Precast Products, Thompson Trucking (B.C.)**

**NATURE OF THE CASE**

Commercial law - Contracts - Mechanics' liens - Subrogation - Set-off - Constructive receipt - Statutes - Interpretation - *Law and Equity Act*, R.S.B.C.1979, c.40, s.30 - Whether trust rights attach to the subject funds - Whether *Noranda Explorations Co. Ltd. v. Sigurdson*, [1976] 1 S.C.R. 296 applies - Whether the principle of constructive receipt applies.

**PROCEDURAL HISTORY**

March 14, 1996 Supreme Court of British Columbia (Huddart J.)	Declaration that the Applicant is not entitled to the disputed contract funds in priority to the Respondent subcontractors' claims
April 9, 1996 Court of Appeal for British Columbia (Legg J.A.)	Stay of proceedings, including stay of execution, moneys to remain in trust pending further order of Court of Appeal
March 19, 1997 Court of Appeal for British Columbia (McEachern C.J. [dissenting], Esson and Proudfoot JJ.A.)	Appeal dismissed
May 16, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Lillian Dorfman**

**v. (25903)**

**The National Trust Co. (Ont.)**

**NATURE OF THE CASE**

Procedural law - Actions - Appeal - Whether Court of Appeal erred in law in determining that the Applicant consented to the dismissal of her case - Whether Court of Appeal for Ontario erred in law in refusing to exercise its discretion to extend the time to the Applicant to permit her to apply for leave to appeal - Whether the Court of Appeal for Ontario erred in law in quashing appeal - Whether adequate reasons for Court of Appeal decision.

**PROCEDURAL HISTORY**

March 13, 1996 Ontario Court (General Division) (Boland J.)	Applicant's action dismissed with costs
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January 20, 1997  
Court of Appeal for Ontario  
(Brooke, Catzman and Austin JJ.A.)

Appeal quashed; Applicant's cross-motion for an extension of time to apply for leave to appeal dismissed

March 20, 1997  
Supreme Court of Canada

Application 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**

**Construction McNicoll Inc.**

**c. (25873)**

**The Royal Trust Company et Dresdner Bank Canada**

**et**

**L'Officier du Bureau de la publicité des droits de la circonscription foncière de Montréal (Qué.)**

**NATURE DE LA CAUSE**

Code civil - Privilèges de constructeur - Renonciation - Contrat - Interprétation - Une clause contractuelle en vertu de laquelle un entrepreneur renonce à enregistrer contre l'immeuble qu'il a construit, "des liens privilégiés ou autre charges" pour les montants retenus à même les paiements progressifs à titre de retenue de garantie ou autre retenues dûment justifiées, continue-t-elle de s'appliquer lorsque ces retenues sont devenues exigibles et non payées?

**HISTORIQUE PROCÉDURAL**

Le 17 juin 1993  
Cour supérieure du Québec (Legault, J.C.S.)

Requête des intimées en radiation de privilèges accueillie

Le 6 janvier 1997  
Cour d'appel du Québec  
(Michaud, J.C.Q., Otis et Nunn, JJ.C.A.)

Appel de la demanderesse rejeté

Le 6 mars 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

**Hotel Employees and Restaurant Employees International Union, Local 662, Jean Dearman, Gloria Rafuse,  
Cindy Milligan, Linda Rafuse, Patricia Hubley**

**v. (25993)**

**Future Inns Canada Inc.**

**-and-**

**Labour Relations Board (Nova Scotia), The Attorney General of Nova Scotia Representing Her Majesty the Queen in Right of the Province of Nova Scotia, Director of Public Prosecutions (N.S.)**

**NATURE OF THE CASE**

Administrative Law - Judicial Review - Obligation of administrative tribunal to provide reasons for decisions - Definition of a "significant issue".

**PROCEDURAL HISTORY**

August 9, 1996 Supreme Court of Nova Scotia (Hamilton J.)	Application for certiorari dismissed
February 26, 1997 Nova Scotia Court of Appeal (Chipman, Matthews, Flinn JJ.A.)	Appeal allowed
May 16, 1997 Supreme Court of Canada	Application for leave to appeal filed
June 4, 1997 Supreme Court of Canada (Cory J.)	Extension of time granted

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**Her Majesty the Queen**

**v. (26000)**

**Diversified Holdings Ltd. (F.C.A.)(B.C.)**

**NATURE OF THE CASE**

Taxation - Assessment - Business Tax - Purchase of non-capital losses - Whether business of an acquired company was carried on after amalgamation for the purpose of carrying forward and claiming pre-amalgamation, non-capital losses of the acquired company - Definition of "business" in subsection 111(5)(a)(i).

**PROCEDURAL HISTORY**

May 27, 1994 Tax Court of Canada (Beaubier J.)	Appeal from assessment allowed
March 18, 1997 Federal Court of Appeal (Strayer, Hugessen and Desjardins JJ.A.)	Appeal and cross-appeal dismissed
May 16, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Lynanne Beck**

**v. (26087)**

**Paul Wayne Beck (Sask.)**

**NATURE OF THE CASE**

Family law - Division of Property - Interspousal agreement - Whether the Court of Appeal improperly assessed the requirement for disclosure of assets with respect to interspousal contracts - Whether the Court of Appeal erred in concluding that the interspousal agreement was not unconscionable or grossly unfair.

**PROCEDURAL HISTORY**

July 4, 1996 Queen's Bench of Saskatchewan (Malone J.)	Applicant's action allowed in part: custody granted to the Respondent; interspousal agreement upheld; Applicant awarded spousal support
June 4, 1997 Court of Appeal for Saskatchewan (Gerwing, Sherstobitoff, Lane JJ.A.)	Applicant's appeal dismissed: interspousal agreement upheld; Toyota truck ordered to be added to list of assets
June 16, 1997 Supreme Court of Canada	Application for leave to appeal filed

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

**Syndicat de l'enseignement de Lanaudière et Martin Vaillancourt**

**c. (25874)**

**Commission scolaire de Le Gardeur (Qué.)**

**NATURE DE LA CAUSE**

Droit du travail- Arbitrage - Convention collective - Droit administratif - Contrôle judiciaire - Compétence - Écoles - Congédiement - Équité procédurale - Partialité - Au terme de la convention collective, l'arbitre a-t-il rendu une décision manifestement déraisonnable en concluant au droit du demandeur à l'équité procédurale et en concluant que le Conseil des commissaires convoqué pour décider de la résiliation de son contrat présentait les apparences de partialité? - Subsidiairement, en tout état de cause, l'arbitre nommé en vertu du *Code du travail* avait-il le pouvoir d'appliquer les règles de la common law et quelle est la norme de contrôle judiciaire alors applicable? - En l'espèce, l'arbitre a-t-il commis un excès de juridiction en déterminant que le demandeur avait droit à l'équité procédurale et que les conditions de celle-ci n'ont pas été remplies? - *Knight c. Indian Head School Division No. 19*, [1990] 1 R.C.S. 653.

**HISTORIQUE PROCÉDURAL**

Le 21 septembre 1993 Cour supérieure du Québec (Durand j.c.s.)	Requête en révision judiciaire à l'encontre d'une sentence arbitrale annulant, à la majorité, la résiliation du contrat d'engagement du demandeur accueillie
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Le 9 janvier 1997  
Cour d'appel du Québec  
(Brossard, Fish et Biron [*ad hoc*] j.j.c.a.)

Appel rejeté

Le 10 mars 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Vernon Frederick Gale, as Administrator De Bonis Non  
of the Estate of Brian Charles Gale, Kelly Ann Cloutier,  
Tyler Warren Cloutier, an infant who sues by his  
grandmother and next friend Therese Marie Gale,  
the said Vernon Frederick Gale, as Executor of the  
Last Will and Testament of the said Therese Marie Gale,  
Vernon Frederick Gale, Gordon Robert Gale, John Paul Gale,  
Vernon Harry Gale, Marguerite Ruth McAree  
and Theresa Rene Beerman,**

**v. (26002)**

**Robin Alexander Hominick, Ethel Hominick,  
John Lesko and Robert Joseph Lewis Pouliot (Man.)**

**NATURE OF THE CASE**

Canadian Charter - Civil - Statutes - Interpretation - Civil Rights - Whether the courts erred in concluding that the definition of "wife" as found in *The Fatal Accidents Act*, R.S.M. 1970, c. F50 did not include a common law wife - Whether the Court of Appeal erred in holding that the *Human Rights Code*, C.C.S.M., c. H175 is not retrospective legislation - Whether the courts erred in holding that s. 15 of the *Canadian Charter of Rights and Freedoms* did not apply.

**PROCEDURAL HISTORY**

April 10, 1996  
Court of Queen's Bench of Manitoba  
(Duval J.)

Applicant's motion allowed: declaration of entitlement to claim damages pursuant to the *The Fatal Accidents Act*, R.S.M. 1970, c. F50

April 8, 1997  
Court of Appeal of Manitoba  
(Scott C.J.M., Huband and Helper J.J.A.)

Respondents' appeal allowed; Applicant's cross-appeal dismissed

May 14, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**MOTION FOR RECONSIDERATION -- REHEARING /  
DEMANDE DE RÉEXAMEN -- NOUVELLE AUDITION**

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

Lina Germain c. Procureur général du Québec (Qué.) (25693)

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

1. Leonardo G. Galuego v. Ms. Carol Hensley et al. (F.C.A.)(Ont.)(25806)
2. Réal Melanson c. Université de Montréal, et al. (Qué.)(25678)

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

Wade Gerald Fleet v. Her Majesty The Queen (Crim.)(N.S.)(25863)

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**AUGUST 15, 1997 / LE 15 AOÛT 1997**

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

**E.H.**

**v. (25321)**

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

**NATURE OF THE CASE**

Criminal law - Jurisdiction - Whether the Court of Appeal has jurisdiction to re-open an appeal that has been disposed of on its merits - Unreasonable verdict - Appellate review - Whether the Court of Appeal erred in concluding that its statutory duty to review convictions for reasonableness was not sufficiently broad to enable the court to reverse a conviction based on evidence that is of dubious quality and leaves the Court of Appeal with a sense of uneasiness - Whether the verdicts were reasonable - Whether the trial judge erred in relying on the expert evidence as supportive of the complainant's credibility.

**PROCEDURAL HISTORY**

March 2, 1994  
Ontario Court (General Division)  
(Stortini J.)

Conviction: buggery, incest, gross indecency, forcible confinement and assault causing bodily harm  
Sentenced: 5 1/2 years imprisonment

February 19, 1996  
Court of Appeal for Ontario  
(Goodman, Weiler J.J.A., and Moldaver J. [ad hoc.])

Appellant's appeal against conviction dismissed  
Respondent's appeal against sentence dismissed

April 19, 1996  
Supreme Court of Canada

Application for leave to appeal conviction appeal filed

October 17, 1996  
Court of Appeal for Ontario  
(Laskin J.A.)

Order granting an extension of time within which to file application for leave to appeal to Supreme Court of Canada

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March 21, 1997  
Court of Appeal for Ontario  
(Doherty, Austin, Charron JJ.A.)

Appellant's application to re-open appeal dismissed

April 27, 1997  
Supreme Court of Canada (Gonthier J.)

Application for extension of time granted

May 22, 1997  
Supreme Court of Canada

Application for leave to appeal conviction and application for leave to appeal dismissal of application to re-open appeal filed

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**Louis Rhingo (a.k.a. Louie Malier)**

**v. (26001)**

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

**NATURE OF THE CASE**

Criminal law - Jurisdiction - Whether the Court of Appeal has jurisdiction to re-open an appeal that has been disposed of on its merits - Not criminally responsible on account of mental disorder - Fitness to stand trial - Whether the trial judge erred in refusing to adjourn the fitness/responsibility hearing to allow the Applicant to retain new counsel - Whether the trial judge breached s. 672.24 of the *Criminal Code* by refusing to allow the Applicant an adjournment to retain new counsel - Whether the trial judge's failure to appoint counsel to represent the Applicant at the responsibility hearing rendered the hearing unfair .

**PROCEDURAL HISTORY**

December 22, 1992  
Ontario Court (Provincial Division) (McGowan P.C.J.)

Conviction: Uttering death threat. Applicant found not criminally responsible by reason of mental disorder

December 20, 1993  
Court of Appeal for Ontario  
(Morden A.C.J.O., Catzman and Arbour JJ.A.)

Appeal dismissed

March 21, 1997  
Court of Appeal for Ontario  
(Doherty, Austin and Charron JJ.A.)

Application to re-open appeal dismissed

May 20, 1997  
Supreme Court of Canada

Application for leave to appeal conviction and application for leave to appeal dismissal of application to re-open appeal filed; Motion for the extension of time filed

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**Vic Van Isle Construction Ltd.**

**v. (26015)**

**The Board of School Trustees of school district No.23 (Central Okanagan) (B.C.)**

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**NATURE OF THE CASE**

Commercial law - Whether Court of Appeal erred in law in subverting the “integrity” of the bidding system as referred to in *Ron Engineering & Construction (Eastern) Ltd. v. Ontario and Water Resources Commission*, [1981] 1 S.C.R. 111 by the application of the doctrine of estoppel.

**PROCEDURAL HISTORY**

November 20, 1995 Supreme Court of British Columbia (Wilson J.)	Applicant’s action dismissed
March 20, 1997 Court of Appeal for British Columbia (Gibbs J.A. [dissenting] and Rowles and Hall JJ.A.)	Appeal dismissed
May 20, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**County of Athabasca No. 12**

**v. (25913)**

**Lloyd Lachance (Alta.)**

**NATURE OF THE CASE**

Labour law - Master and servant - Wrongful dismissal - Whether the Court of Appeal erred in failing to overturn the trial judge’s decision on the issue of mitigation of damages.

**PROCEDURAL HISTORY**

September 29, 1995 Court of Queen’s Bench of Alberta (Lewis J.)	Respondent’s action for damages for wrongful dismissal allowed
January 31, 1997 Court of Appeal of Alberta (McClung, Irving and Picard JJ.A.)	Appeal dismissed
March 27, 1997 Supreme Court of Canada	Application 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**

**Hubert Meilleur, André Gamache et CÉSAMM**

**c. (26051)**

**Aéroports de Montréal et Société des promotions des aéroports de Montréal (Qué.)**

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**NATURE DE LA CAUSE**

Droit administratif - Contrôle judiciaire - Action directe en nullité - Obligation de consultation - Transfert d'activités entre deux aéroports - La société Aéroports de Montréal (ADM) est-elle assujettie aux obligations d'un organisme public? - ADM peut-elle passer outre à ses engagements découlant du cadre administratif et contractuel du processus de dévolution de la gestion des aéroports de Montréal? - Quelles sont les modalités et la teneur de l'obligation de consultation d'ADM? - ADM a-t-elle respecté son obligation de consulter? - Qui sont les créanciers de l'obligation de consultation d'ADM?

**HISTORIQUE PROCÉDURAL**

Le 12 février 1997 Cour supérieure du Québec (Viau j.c.s.)	Action directe en nullité et en injonction des demandeurs accueillie en partie
Le 23 avril 1997 Cour d'appel du Québec (Baudoin, Dussault et Chamberland jj.c.a.)	Appel accueilli; jugement de première instance cassé; action des demandeurs rejetée
Le 6 juin 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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

**The Children's Foundation**

**v. (26013)**

**Patrick Allan Bazley and The Superintendent of Family and Child Services  
in the province of British Columbia and Her Majesty the Queen in right of the province  
of British Columbia as represented by the Ministry of Social Services and Housing (B.C.)**

**NATURE OF THE CASE**

Torts - Vicarious liability - Intentional torts - Sexual assault of a child in the care of an employee in residential setting - Whether the Court of Appeal erred in law in rejecting the *Salmond* test and replacing it with a new test for determining whether an employee's intentional acts of sexual abuse were committed within the course of his or her employment - Whether the Court of Appeal erred in law by adopting and applying the wrong legal test in deciding that the employee's intentional acts of sexual abuse were committed within the course of his employment - Whether the Court of Appeal erred in law by finding that policy considerations did not support the adoption of a different legal test for considering whether a non-profit society was vicariously liable for the intentional acts of sexual abuse committed by its employees.

**PROCEDURAL HISTORY**

May 15, 1995 Supreme Court of British Columbia (Lowry J.)	Judgment on special case to Applicant, with damages to be assessed
March 25, 1997 Court of Appeal for British Columbia (Hollinrake, Finch, Donald, Newbury and Huddart, JJ.A.)	Appeal dismissed

May 26, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Gail Taylor-Jacobi, Randal Craig Jacobi and Jody Marlane Saur**

**v. (26041)**

**Boys' and Girls' Club of Vernon and Harry Charles Griffiths (B.C.)**

**NATURE OF THE CASE**

Torts - Vicarious liability - Intentional torts - Sexual assault of children by employee of a children's club - Whether the Court of Appeal erred in finding that the employee's tortious acts were not sufficiently connected to the duties given to him by the Respondent Club - Whether the Court of Appeal erred in rejecting the traditional test for vicarious liability and applying a new test.

**PROCEDURAL HISTORY**

October 25, 1995  
Supreme Court of British Columbia (Wilkinson J.)

Judgment for Applicants Jacobi and Saur; damages of \$40,707.90 and \$52,034.43, respectively

March 25, 1997  
Court of Appeal for British Columbia  
(Hollinrake, Finch [dissenting], Donald, Huddart and  
Newbury [dissenting], J.J.A.)

Appeal allowed; judgment set aside

May 27, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Marvin Lerch**

**v. (26007)**

**Cableshare Inc. (Ont.)**

**NATURE OF THE CASE**

Procedural law - Civil Procedure - Judgments and orders - Whether the Court of Appeal may vary or set aside a order pursuant to Rule 63.01(5) of the Ontario Rules of Civil Procedure by substituting its discretion for that of a single judge of the Court of Appeal - Whether the Court of Appeal was correct in overturning the decision of Labrosse J.A.

**PROCEDURAL HISTORY**

December 11, 1996  
Ontario Court of Justice (General Division)  
(Hockin J.)

Applicant's action for damages for wrongful dismissal allowed

February 17, 1997  
Ontario Court of Appeal (Labrosse J.A.)

Applicant's motion for security for costs dismissed;  
Applicant's motion to lift the automatic stay granted

March 24, 1997  
Ontario Court of Appeal  
(Robins, Doherty and Austin JJ.A.)

Respondent's motion to vary or set aside order of Labrosse J.A. granted: order set aside; Applicant permitted to file execution but take no action thereon pending disposition of the appeal

May 24, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Ghislain Norman Lévesque**

**v. (25936)**

**The Health Sciences Centre (Man.)**

**NATURE OF THE CASE**

Torts - Damages - Whether Respondent Hospital liable for the injuries suffered by the Applicant, as an involuntary psychiatric patient - Whether Manitoba Court of Appeal erred in law in finding that the quantum of damages are not so inordinately low as to justify appellate interference.

**PROCEDURAL HISTORY**

February 19, 1996  
Court of Queen's Bench of Manitoba (Scollin J.)

Applicant's action for damages dismissed

February 13, 1997  
Court of Appeal of Manitoba  
(Lyon, Helper and Kroft JJ.A.)

Appeal dismissed

April 7, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**MOTION FOR RECONSIDERATION -- REHEARING /  
DEMANDE DE RÉEXAMEN -- NOUVELLE AUDITION**

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

James Walter Taylor v. Her Majesty The Queen (Crim.)(N.S.)(25726)

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**AUGUST 22, 1997 / LE 22 AOÛT 1997**

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

**Attorney General of Canada**

**v. (25944)**

**CanadianOxy Chemicals Ltd.,  
CanadianOxy Industrial Chemicals Limited  
Partnership, and Canadian Occidental Petroleum Ltd. (Crim.)(B.C.)**

**NATURE OF THE CASE**

Criminal law - Search - Search warrant - Regulatory offence - Defences - Due diligence - Whether the majority of the Court of Appeal erred in holding that a search warrant under the *Criminal Code* s. 487(1)(b) did not authorize a search for evidence relating to a possible defence of due diligence in a regulatory offence.

**PROCEDURAL HISTORY**

July 2, 1996 Supreme Court of British Columbia (Sigurdson J.)	Search warrants quashed
March 26, 1997 Court of Appeal for British Columbia (Carrothers, Southin [dissenting], Goldie, J.J.A.)	Appeal dismissed
May 16, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**M.R.M.**

**v. (26042)**

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

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Young Offenders - Schools - Search and seizure - Are principals and teachers subject to the *Charter* in dealing with students - Whether a student's expectation of privacy in a school environment is significantly lower than in a non-school environment - Whether the search conducted on the Applicant was reasonable - Whether the vice-principal was acting as an agent of the police - Right to counsel - Whether the Applicant was detained by vice-principal or RCMP - Whether there was an obligation to inform the Applicant of his right to counsel.

**PROCEDURAL HISTORY**

April 26, 1996 Youth Court for the Province of Nova Scotia (Dyer J.F.C.)	Acquittal: Possession of a narcotic
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April 1, 1997  
Nova Scotia Court of Appeal  
(Pugsley, Chipman and Roscoe JJ.A.)

Appeal allowed; new trial ordered

May 30, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Les Forges du Lac Inc. et Janine Parent**

**c. (26085)**

**Sa Majesté la Reine (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Droit fiscal - Responsabilité pénale des personnes morales - Théorie de l'identification - Les demanderesse devaient-elles porter en appel les quatre chefs sur lesquels le premier juge a ordonné un arrêt conditionnel des procédures? - La responsabilité pénale des Forges du Lac Inc. pouvait-elle être établie par la théorie de l'identification, attendu que, globalement parlant, elle a été appauvrie par la conduite de la demanderesse Janine Parent qui, ayant agi au préjudice de la compagnie, ne peut être qualifiée d'âme dirigeante - La demanderesse Janine Parent peut-elle être coupable de l'infraction reprochée s'il est établi que la compagnie ne l'est pas ?

**HISTORIQUE PROCÉDURAL**

Le 31 juillet 1992  
Cour du Québec, chambre pénale et criminelle  
(Babin j.c.q.)

Déclaration de culpabilité des deux demanderesse en vertu de l'article 239(1)d) de la *Loi de l'impôt sur le revenu*, S.R.C. 1952, ch. 148

Le 5 novembre 1993  
Cour supérieure du Québec (Tremblay j.c.s.)

Appels rejetés

Le 18 avril 1997  
Cour d'appel du Québec  
(Proulx, Chamberland et Philippon jj.c.a.)

Pourvoi rejeté

Le 12 juin 1997  
Cour suprême du Canada

Demande d'autorisation déposée

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**Rapatax (1987) Inc.**

**v. (26035)**

**Cantax Corporation Ltd. (Alta.)**

**NATURE OF THE CASE**

Commercial law - Contracts - Termination of contract - Whether a contract of indeterminate duration is unilaterally terminable upon reasonable notice.

**PROCEDURAL HISTORY**

September 19, 1995 Court of Queen's Bench of Alberta (Hutchinson J.)	Applicant awarded damages of \$1,065,000 for breach of contract
March 27, 1997 Court of Appeal of Alberta (Harradence, Russell and Picard JJ.A.)	Appeal allowed, new trial ordered on the issues of reasonable notice and quantum of damages
May 26, 1997 Supreme Court of Canada	Application 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**

**Fiorenza Alloï Lussier**

**c. (25968)**

**Centre d'hébergement Champlain et  
Ghislaine Lussier**

**et**

**Procureur général du Québec et Centre François Séguenot (Qué.)**

**NATURE DE LA CAUSE**

Code civil - Procédure civile - Recours extraordinaires - *Habeas corpus* - Intégrité de la personne - Homologation d'un mandat en cas d'inaptitude - Hébergement de la demanderesse dans un centre pour personnes âgées - Consentement - L'*habeas corpus* est-il un recours approprié pour évaluer les décisions du mandataire, les réviser et y substituer celles qui, de l'avis du tribunal, seraient les meilleures?

**HISTORIQUE PROCÉDURAL**

Le 29 février 1996 Cour supérieure du Québec (Piché J.C.S.)	Requête de la demanderesse en <i>habeas corpus</i> accueillie en partie
Le 29 janvier 1997 Cour d'appel du Québec (Gendreau, Proulx et Robert [dissident] JJ.C.A.)	Appel de la demanderesse accueilli; requête en <i>habeas corpus</i> rejetée
Le 1 <sup>er</sup> mai 1997 Cour suprême du Canada	Requête en prorogation de délai et demande d'autorisation d'appel déposées

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**Zurich Compagnie d'Assurances**

**c. (25878)**

**Robert Schachter et Seymour Alper Inc.**

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**ET ENTRE:**

**Robert Schachter**

c.

**Seymour Alper Inc. et Zurich Compagnie d'Assurance (Qué.)**

**NATURE DE LA CAUSE**

Droit civil - Assurance - Contrat - Mandat - Interprétation - Caractère déterminé ou indéterminé du terme d'une police d'assurance - Degré de précision du terme - Articles 2480 et 2567 du *Code civil du Bas-Canada* - La Cour d'appel a-t-elle erré en remettant en cause la capacité du courtier d'assurance, agissant pour le compte de l'assuré, de négocier avec l'assureur l'échéance d'un contrat d'assurance? - La Cour d'appel a-t-elle également erré en omettant de s'appuyer sur les faits retenus par le tribunal de première instance, selon lesquels les communications entre le courtier d'assurance et la représentante de l'assureur avaient prolongé le contrat d'assurance à différentes reprises jusqu'au 9 avril 1993? - La Cour d'appel a-t-elle commis une erreur en intervenant dans l'appréciation des faits retenus par le tribunal de première instance?

**HISTORIQUE PROCÉDURAL**

Le 24 mai 1995 Cour supérieure du Québec (Denis, J.C.S.)	Action de Schachter en remboursement de dommages accueillie contre Seymour Alper, mais rejetée contre Zurich
Le 21 janvier 1997 Cour d'appel du Québec (Deschamps, Forget, J.J.C.A. et Biron [ad hoc] J.C.A.)	Appel de Alper Inc. contre Zurich accueilli; Appel de Schachter contre Zurich accueilli
Le 10 mars 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée par Zurich
Le 20 mars 1997 Cour suprême du Canada	Demande d'autorisation d'appel et/ou d'autorisation d'appel incident déposée par Schachter

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

**Jelka Pesic**

**v. (26020)**

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

**NATURE OF THE CASE**

Criminal law - Procedure - Trial - Whether the Court of Appeal erred in failing to find that the *Criminal Code* provision that requires the accused to address the jury first when a co-accused has presented evidence (s. 651(4)) infringes ss. 7 and 11(d) of the *Charter* - Whether the Court of Appeal erred in failing to find that the trial judge has a discretion to alter the order of addresses to the jury.

**PROCEDURAL HISTORY**

December 10, 1993 Supreme Court of British Columbia (Josephson J.)	Conviction: first degree murder
March 14, 1997 Court of Appeal for British Columbia (Rowles, Ryan, Proudfoot JJ.A.)	Appeal dismissed
May 13, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Milan Nenadic**

**v. (26021)**

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

**NATURE OF THE CASE**

Criminal law - Party to an offence - First degree murder - Inference of intent - Charge to the jury - Whether the trial judge erred in instructing the jury on the use of the permissive presumption in determining the intent of a party to first degree murder - Whether the jury was properly instructed on the application of s. 231(3) (contract killing) to a party to first degree murder.

**PROCEDURAL HISTORY**

December 10, 1993 Supreme Court of British Columbia (Josephson J.)	Conviction: first degree murder
March 14, 1997 Court of Appeal for British Columbia (Rowles, Ryan and Proudfoot JJ.A.)	Appeal dismissed
May 13, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Andrew C. Dekany**

**v. (26038)**

**Bank of Canada, The King's Health Centre Corporation and  
The King's Simcoe Holdings Corporation (Ont.)**

**NATURE OF THE CASE**

Property law - Landlord and tenant - Leases - Interpretation - Whether Court of Appeal erred in upholding interpretation of the termination clause in the Applicant's lease contrary to the well understood and accepted practice in the commercial real estate and leasing industry - Whether judge of first instance erred by not applying the well accepted common law principle that requires notices of termination to be given in compliance with the contractual provision in the lease - Rights of smaller tenants not to be evicted when faced with the conversion of a commercial office building.

**PROCEDURAL HISTORY**

January 24, 1997 Ontario Court (General Division) (Wein J.)	Applicant's application for declarative or injunctive relief denied
March 26, 1997 Court of Appeal for Ontario (Robins, Doherty and Austin JJ.A.)	Appeal dismissed
May 26, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Constantine Xinos**

**v. (26009)**

**The Ministry of Human Resources Development (F.C.A.)(Ont.)**

**NATURE OF THE CASE**

Canadian Charter - Civil - *Canada Pension Plan*, R.S.C. 1985, c.C-8 - Eligibility requirements for disability pension not applied to other pensions available under the *Canada Pension Plan* - Discrimination on the basis of mental or physical disability contrary to section 15(1) of the *Charter*.

**PROCEDURAL HISTORY**

January 22, 1996 Pension Appeals Board (Cameron, Rice and Sirois JJ.A.)	Appeal of decision of Minister of Employment and Immigration denying the Applicant a disability pension dismissed
March 19, 1997 Federal Court of Appeal (Strayer, Robertson and McDonald JJ.A.)	Application for judicial review dismissed
May 20, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**JUDGMENTS ON APPLICATIONS  
FOR LEAVE**

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

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**JULY 31, 1997 / LE 31 JUILLET 1997**

**25988**            **BRUCE CLARK - v. - HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM:            The Chief Justice and Cory 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 - Contempt of court - Jurisdiction.

**PROCEDURAL HISTORY**

February 21, 1997 Provincial Court of British Columbia (Friesen P.C.J.)	Applicant found guilty of contempt in the face of the court
March 14, 1997 Court of Appeal for British Columbia (Macfarlane, Gibbs and Proudfoot JJ.A.)	Appeal dismissed
May 9, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**25989**            **MARGARET JEAN CLARK - v. - HER MAJESTY THE QUEEN** (F.C.A.)(Ont.)

CORAM:            The Chief Justice and Cory 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**

Taxation - Assessment - Jurisdiction - Whether the courts below erred in their interpretation of *Delgamuukw et al. v. The Queen in right of British Columbia et al.*, (1993) 104 D.L.R. (4th), 470 (B.C.C.A).

**PROCEDURAL HISTORY**

November 14, 1994 Tax Court of Canada (Bowman J.T.C.C.)	Motion to preclude Court from having jurisdiction dismissed; Appeal from taxation assessment dismissed
May 7, 1997 Federal Court of Appeal (MacGuigan, Linden and Robertson JJ.A.)	Appeal dismissed
May 9, 1997 Supreme Court of Canada	Application for leave to appeal filed

**25782**            **THE GAZETTE, UNE DIVISION DE SOUTHAM INC. - c. - M.G., D.C., R.M., E.C., J.S., S.M. ET LA COMMUNAUTÉ URBAINE DE MONTRÉAL - et - M<sup>E</sup> ANNE-MARIE DAVID, ALEXANDRE SUAZO, OLGA GOMEZ, LILI SALINAS SUAZO ET LIGUE DES NOIRS DU QUÉBEC** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

*Charte canadienne des droits et libertés* - Liberté de la presse - Ordonnance de non-publication - Coroner désigné en vertu de la *Loi sur la recherche des causes et des circonstances des décès*, L.R.Q. (1977), ch. R-0.2, pour enquêter sur les circonstances d'un décès - Ordonnance du coroner, aux termes de l'art. 146, interdisant la publication et la diffusion de toute information permettant d'identifier les policiers impliqués dans les circonstances du décès - La Cour d'appel a-t-elle erré en concluant qu'un tribunal peut, par le biais d'une ordonnance de non-publication, interdire aux médias de publier des faits qui sont déjà connus du public? - La Cour d'appel a-t-elle erré en concluant qu'un tribunal peut empêcher les médias de publier des faits connus du public même si l'ordonnance de non-publication ne pourra jamais remplir l'objectif qu'elle vise?

**HISTORIQUE PROCÉDURAL**

Le 13 février 1996  
(David, coroner)

Ordonnance de non-publication rendue

Le 22 mars 1996  
Cour supérieure du Québec (Hurtubise j.c.s.)

Requête en évocation et en réparation accueillie et ordonnance de non-publication cassée

Le 28 novembre 1996  
Cour d'appel du Québec  
(Michaud, Mailhot et Rousseau-Houle jj.c.a.)

Appel accueilli et ordonnance de non-publication rétablie

Le 27 janvier 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**AUGUST 21, 1997 / LE 21 AOÛT 1997**

**26057**            **EURO-CAN-AM TRADING INC., MORRIS GLADWIN, DALE GLADWIN AND GRANT GLADWIN - v. - ATTORNEY GENERAL OF ONTARIO** (Crim.)(Ont.)

CORAM:            The Chief Justice and L'Heureux-Dubé and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

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**NATURE OF THE CASE**

Criminal law - Search and seizure - *Mutual Legal Assistance in Criminal Matters Act*, R.S.C. 1985, c. 30 (4th Supplement) as am. - Whether the failure to name a specific officer in the search warrant rendered the warrant invalid - Whether the failure to describe the offences other than by way of section numbers rendered the search warrant invalid - Does the Act provide a judge with the discretion to send seized materials to another country where they were obtained pursuant to an invalid warrant.

**PROCEDURAL HISTORY**

November 9, 1995 Ontario Court (General Division) (McRae J.)	Search warrant issued
January 30, 1996 Ontario Court (General Division) (O'Driscoll J.)	Hearing pursuant to s. 15 of <i>Mutual Legal Assistance in Criminal Matters Act</i> . Items seized ordered to be sent to United States
June 4, 1997 Ontario Court of Appeal (Finlayson, Labrosse and Austin JJ.A.)	Appeal dismissed

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**25928**            **NARINDER LAL v. DR. SULTAN ALVI and DR. RAMESH JOLLY** (Ont.)

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

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Commercial law - Contracts - Fiduciary obligations - Breach - Whether fiduciary obligation or constructive trust arose from informal arrangements to jointly invest in real estate speculation.

**PROCEDURAL HISTORY**

January 20, 1993 Ontario Court (General Division) (Day J.)	Declarations of entitlements to a share of the proceeds from a sale of realty
February 6, 1997 Court of Appeal for Ontario (Day, Abella, Moldaver JJ.A.)	Appeal to vary judgment dismissed
April 4, 1997 Supreme Court of Canada	Application for leave to appeal filed

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March 30, 1995  
Ontario Court of Justice (General Division)  
(MacKinnon J.)

McLeod's appeal from the decision of the Deputy Director of Titles allowed; decision set aside; McLeod's application granted; caution registered by Castlepoint ordered to be deleted and withdrawn from the register

February 5, 1997  
Ontario Court of Appeal  
(Weiler, Rosenberg, Moldaver JJ.A.)

Applicants' appeal from the decision of the Deputy Director of Titles allowed; remainder of appeal dismissed

April 1, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**AUGUST 22, 1997 / LE 22 AOÛT 1997**

**26051**            **HUBERT MEILLEUR, ANDRÉ GAMACHE ET CÉSAMM - c. - AÉROPORTS DE MONTRÉAL ET SOCIÉTÉ DES PROMOTIONS DES AÉROPORTS DE MONTRÉAL** (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**

Droit administratif - Contrôle judiciaire - Action directe en nullité - Obligation de consultation - Transfert d'activités entre deux aéroports - La société Aéroports de Montréal (ADM) est-elle assujettie aux obligations d'un organisme public? - ADM peut-elle passer outre à ses engagements découlant du cadre administratif et contractuel du processus de dévolution de la gestion des aéroports de Montréal? - Quelles sont les modalités et la teneur de l'obligation de consultation d'ADM? - ADM a-t-elle respecté son obligation de consulter? - Qui sont les créanciers de l'obligation de consultation d'ADM?

**HISTORIQUE PROCÉDURAL**

Le 12 février 1997  
Cour supérieure du Québec (Viau j.c.s.)

Action directe en nullité et en injonction des demandeurs accueillie en partie

Le 23 avril 1997  
Cour d'appel du Québec  
(Baudoin, Dussault et Chamberland jj.c.a.)

Appel accueilli; jugement de première instance cassé; action des demandeurs rejetée

Le 6 juin 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**AUGUST 28, 1997 / LE 28 AOÛT 1997**

**25736**            **DONALD NOEL ALBERT v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM:        La Forest, Gonthier and Major JJ.

The application for extension of time is granted and the application for leave to appeal and other related motions are dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel et les autres requêtes connexes sont rejetées.

**NATURE OF THE CASE**

Criminal law - Procedural law - Trial - Whether the trial judge erred in law in failing to dismiss a juror - Whether the trial judge erred in failing to instruct the jury on the criminal record of a witness - Whether the trial judge erred in failing to instruct the jury on similar fact evidence.

**PROCEDURAL HISTORY**

June 3, 1994 British Columbia Supreme Court (Skipp J.)	Conviction: one count of robbery and one count of using a firearm in the commission of an indictable offence
November 6, 1996 British Columbia Court of Appeal (McEachern, Esson, Prowse JJ.A.)	Appeal from conviction dismissed
April 3, 1997 Supreme Court of Canada (Iacobucci J.)	Motion for an extension of time to file application for leave to appeal to May 12, 1997 granted; motion to appoint counsel dismissed
May 15, 1997 Supreme Court of Canada	Application for leave to appeal filed and other ancillary motions

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**25924**            **THE GOVERNMENT OF THE NORTHWEST TERRITORIES v. PUBLIC SERVICE ALLIANCE OF CANADA and CANADIAN HUMAN RIGHTS COMMISSION** (F.C.A.)

CORAM:        La Forest, Gonthier and Major JJ.

The application for leave to appeal is dismissed with costs to the respondent Public Service Alliance of Canada.

La demande d'autorisation d'appel est rejetée avec dépens en faveur de l'intimé l'Alliance de la fonction publique du Canada.

**NATURE OF THE CASE**

Administrative law - Jurisdiction - *Canadian Human Rights Act*, R.S.C. 1985, c.H-6 - Judicial review - Reasonable apprehension of bias - Does section 63 of the *Canadian Human Rights Act* authorise the Canadian Human Rights Commission to investigate a complaint made by territorial public service workers against the Government of the Northwest

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Territories - Was there a reasonable apprehension of bias on the part of an investigator who prepared the investigation report on the basis of which the Canadian Human Rights Commission made its decision?

**PROCEDURAL HISTORY**

May 27, 1996 Federal Court of Canada (Trial Division) (Simpson J.)	Application for review allowed; decision of Canadian Human Rights Commission set aside
February 5, 1997 Federal Court of Appeal (Isaac C.J., Marceau and Desjardins JJ.A.)	Appeal and cross-appeal by Respondents allowed; Applicant's cross-appeal dismissed; application for judicial review dismissed
April 4, 1997 Supreme Court of Canada	Application for leave to appeal filed

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25938      **MARINE WORKERS' & BOILERMAKERS' INDUSTRIAL UNION, LOCAL NO. 1 v. BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION (B.C.)**

CORAM:      La Forest, Gonthier 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**

Administrative Law - Judicial Review - Natural Justice - Canada Labour Board - Canada Labour Board referred to a Commission's Report in its reasons for dismissing an application for certification - Canada Labour Board did not notify parties it would rely on the report nor did it hear argument regarding the report - Whether Canada Labour Board denied natural justice or fairness.

**PROCEDURAL HISTORY**

February 6, 1997 Federal Court of Appeal (Pratte, Décary, Robertson JJ.A.)	Application for judicial review dismissed
April 3, 1997 Supreme Court of Canada	Application for leave to appeal filed

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14.7.1997

Before / Devant: CHIEF JUSTICE LAMER

**Motion to state a constitutional question**

**Requête pour énoncer une question constitutionnelle**

Nelson M. Skalbania

v. (25539)

Her Majesty The Queen (B.C.)

**GRANTED / ACCORDÉE**

- 1) The application by the respondent to state a constitutional question is denied;
- 2) The application by the appellant for an order extending the time to state a constitutional question and the application to state a constitutional question are granted. Notices of intention to intervene are to be filed no later than August 29, 1997;
- 3) This appeal be inscribed for hearing during the Fall session of the 1997 term.
- 4) The questions formulated being:

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Is s. 686(4)(b)(ii) of the <i>Criminal Code</i> of Canada inconsistent with s. 7 of the <i>Canadian Charter of Rights and Freedoms</i> in arbitrarily providing that:           <ul style="list-style-type: none"> <li>. where a verdict is that of a judge and jury, a Court of Appeal <u>cannot</u> substitute a conviction for an acquittal; but</li> <li>. where a verdict is that of a court composed of a judge alone, the Court of Appeal <u>can</u> substitute a conviction for an acquittal?</li> </ul> </li> <li>2. If the answer to Question 1 is “yes”, is the infringement demonstrably justified as a reasonable limit pursuant to s. 1 of the <i>Canadian Charter of Rights and Freedoms</i>?</li> </ol> | <ol style="list-style-type: none"> <li>1. Est-ce que le sous-al. 686(4)(b)(ii) du <i>Code criminel</i> du Canada est incompatible avec l’art. 7 de la <i>Charte canadienne des droits et libertés</i> du fait qu’il prévoit arbitrairement:           <ul style="list-style-type: none"> <li>. que, dans le cas d’un verdict rendu par un juge et un jury, la cour d’appel <u>ne peut pas</u> remplacer un acquittement par une déclaration de culpabilité;</li> <li>. mais que, dans le cas d’un verdict rendu par un juge seul, la cour d’appel <u>peut</u> remplacer un acquittement par une déclaration de culpabilité?</li> </ul> </li> <li>2. Si la réponse à la question 1 est «oui», est-ce qu’il s’agit d’une limitation raisonnable et justifiée au sens de l’article premier de la <i>Charte canadienne des droits et libertés</i>?</li> </ol> |
|---|---|

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16.7.1997

Before / Devant: MAJOR J.

**Motion for an order maintaining confidentiality of certain documents**

**Requête visant à obtenir une ordonnance préservant la confidentialité de certains documents**

Apotex Inc.

With the consent of the parties.

v. (25348)

Eli Lilly and Company (Ont.)

**GRANTED / ACCORDÉE**

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16.7.1997

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to file the case on appeal**

**Requête en prorogation du délai imparti pour déposer le dossier d'appel**

Jeffrey Rose

With the consent of the parties.

v. (25448)

Her Majesty The Queen (Ont.)

**GRANTED / ACCORDÉE** Time extended to June 30, 1997.

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16.7.1997

Before / Devant: LE REGISTRAIRE

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

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

Porto Seguro Companhia, De Seguros Gerais

Avec le consentement des parties.

c. (25340)

Belcan S.A. (Qué.)

**GRANTED / ACCORDÉE** Délai prorogé au 30 juin 1997.

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16.7.1997

Before / Devant: CHIEF JUSTICE LAMER

**Motion to state a constitutional question**

**Requête pour énoncer une question constitutionnelle**

The Attorney General of Ontario

v. (25838)

M. and H. (Ont.)

**GRANTED / ACCORDÉE**

1. Does the definition of “spouse” in s. 29 of the *Family Law Act* R.S.O. 1990, c. F.3, infringe or deny s. 15(1) of the *Canadian Charter of Rights and Freedoms*?
2. If the answer to Question 1 is yes, is the infringement or denial demonstrably justified in a free and democratic society pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms*?

1. Est-ce que la définition de «conjoint» à l’art. 29 de la *Loi sur le droit de la famille*, L.R.O. 1990, ch. F.3, a pour effet de nier les droits garantis au par. 15(1) de la *Charte canadienne des droits et libertés* ou d’y porter atteinte?
2. Si la réponse à la question 1 est oui, est-ce que cette négation ou atteinte est justifiée dans le cadre d’une société libre et démocratique au sens de l’article premier de la *Charte canadienne des droits et libertés*?

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17.7.1997

Before / Devant: LE JUGE MAJOR

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

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

Marcel Parisé

Avec le consentement des parties.

c. (26072)

Sous-ministre du Revenu du Québec (Qué.)

**GRANTED / ACCORDÉE** Délai prorogé au 30 juillet 1997.

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24.7.1997

Before / Devant: LE JUGE CORY

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

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

Eugenia Ajders Zieiba

c. (26071)

Procureur général du Québec et al. (Qué.)

**GRANTED / ACCORDÉE**

Le délai pour déposer une requête en autorisation d'appel est prorogé au 4 septembre 1997.

La requérante doit payer les dépens de cette requête aux intimés.

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24.7.1997

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

v. (26064)

Nova Corporation of Alberta (Ont.)

**GRANTED / ACCORDÉE**

Order will go extending the time to apply for leave to appeal to the 22nd September 1997. The costs of the application to extend the time will be payable by the applicant.

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25.7.1997

Before / Devant: CORY J.

**Motion for a stay of execution**

**Requête en vue de surseoir à l'exécution**

Minister of Health & Community Services

v. (26119)

Michelle Patles-Francis et al. (N.B.)

**GRANTED / ACCORDÉE**



The Judge of first instance awarded custody of the two children to their natural mother, Michelle Patles-Francis. The majority of the Court of Appeal upheld this decision with Justice Bastarache vehemently dissenting.

Section 55(2) of the *Family Services Act* of New Brunswick provides for a maximum of 24 months of custody. If that 24-month period has elapsed, then it is doubtful whether this Court would have jurisdiction to extend the Order for custody. However, I agree with the applicant that the custody commenced the 4th August 1995 and expires 48 months from that date. This Court does, therefore, have jurisdiction to consider and, if appropriate, extend the current custody order.

It is true that s. 59(3) of the *Family Services Act* precludes the New Brunswick Court of Appeal from staying the Order of the Trial Judge, yet pursuant to s. 65(1) of the *Supreme Court Act*, this Court can direct a stay.

There is evidence given by Dr. Steinhauer, the chief psychiatrist at Toronto Sick Children's Hospital, that the children will suffer irreparable harm if they are returned to their mother.

The balance of convenience and the likelihood of irreparable damage to the children indicate that an Order should be issued in the following terms:

- 1) Staying the proceedings in this action until such time as the application for leave to appeal has been considered.
- 2) Extending the current custody order in favour of the appellants until the application for leave to appeal has been determined.
- 3) If the application for leave to appeal is refused, then the stay of proceedings and the current custody order will terminate.
- 4) If the application for leave of appeal is granted, it will be for the members of the court granting leave to determine whether the stay of proceedings and the current custody order should remain in force pending the determination of the appeal.
- 5) The application for leave to appeal is to be expedited.

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29.7.1997

Before / Devant: THE DEPUTY REGISTRAR

**Motion to extend the time in which to serve and file the case on appeal and the appellant's factum**

William Mullins-Johnson

v. (25860)

Her Majesty The Queen (Ont.)

**Requête en prorogation du délai imparti pour déposer le dossier d'appel et le mémoire de l'appellant**

With the consent of the parties.

**GRANTED / ACCORDÉE** Motion granted on condition that the parties are ready to proceed during the session beginning in January 1998.

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29.7.1997

Before / Devant: THE DEPUTY REGISTRAR

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

Hartford Accident & Indemnity Co.

v. (26012)

Maritime Life Assurance Co. (N.S.)

**Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimée et la réplique de l'appelante**

With the consent of the parties.

**GRANTED / ACCORDÉE** Time extended to August 18, 1997 to serve and file the respondent's response and September 12, 1997 to serve and file the applicant's reply.

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8.8.1997

Before / Devant: LE JUGE GONTHIER

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

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

Thisdèle et Monette Inc. et al.

c. (26133)

Corporation municipale de Val-David (Qué.)

**GRANTED / ACCORDÉE** Délai prorogé au 25 juillet 1997.

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8.8.1997

Before / Devant: THE REGISTRAR

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

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

Lillian Dorfman

v. (25903)

National Trust Co. (Ont.)

**GRANTED / ACCORDÉE** Time extended to July 14, 1997.

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8.8.1997

Before / Devant: GONTHIER J.

**Motion to strike out passages from a factum**

**Requête en radiation de passages d'un mémoire**

Terence Lawrence Caslake

v. (25023)

Her Majesty The Queen (Man.)

**DISMISSED / REJETÉE**

By his motion, the appellant seeks to strike paragraphs 2 to 8 inclusive of the respondent's factum, together with those paragraphs in Part III of the respondent's factum which rely upon the same, on the ground that they refer to facts not included in the case on appeal. It appears from reading these paragraphs that they refer to the same evidence as is summarized in paragraphs 1 to 5 of the appellant's factum, adding a few particulars for completeness but which are not substantial. Nor is there any contradiction or inconsistency between the two statements.

The evidence referred to is essentially narrative providing context for the events which followed and form the object of the issues in appeal. The appellant having himself referred to this evidence, though without disclosing that it is not included in the case on appeal, it ill-behoves him, having regard to the above, to complain of the respondent dealing with it in like manner.

The motion is accordingly dismissed.

8.8.1997

Before / Devant: THE REGISTRAR

**Motion to dispense with printing**

**Requête en dispense d'impression**

Dancorp Developments Ltd.

With the consent of the parties.

v. (25355)

Metropolitan Trust Co. of Canada et al. (B.C.)

**GRANTED / ACCORDÉE**

1. The appellant be permitted to file by August 2, 1997, one set of the Appeal Books and Transcripts, as filed in the B.C. Court of Appeal.
2. The appellant be permitted to file by August 29, 1997, a supplementary case on appeal, including the reasons and orders of the Courts below and the pleadings, exhibits and evidence that they intend to rely upon;
3. The appellant be permitted to file their factum by September 12, 1997;
4. The respondent be permitted to file, together with their factum, a supplementary case on appeal containing any additional exhibits and evidence they intend to rely upon.

12.8.1997

Before / Devant: LE REGISTRAIRE

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

Yves Bisson

c. (25821)

Sa Majesté La Reine (Qué.)

**ACCORDÉE / GRANTED** Délai prorogé au 23 juillet 1997.**Motion to extend the time in which to file the appellant's factum**

Avec le consentement des parties.

12.8.1997

Before / Devant: LE JUGE L'HEUREUX-DUBÉ

**Requête en vue de surseoir à l'exécution**

Claude Deslauriers

c. (26115)

Roch Labelle et al. (Qué.)

**REJETÉE / DISMISSED**

Après examen du dossier et en particulier l'avis de requête en sursis d'exécution, des jugements rendus par les intimés, le Tribunal des Professions, la Cour supérieure et la Cour d'appel du Québec, ainsi que la réponse des intimés,

Considérant, entre autres, que l'appel devant la Cour d'appel du Québec est fixé pour audition en janvier 1998;

Considérant que le dossier ne révèle aucune demande préalable auprès de la Cour d'appel du Québec pour l'obtention de l'ordonnance présentement recherchée devant notre cour;

Considérant que la Cour d'appel du Québec a déjà rejeté une requête en exécution provisoire du jugement de la Cour supérieure du Québec;

Considérant que la présente requête est essentiellement au même effet que celle déjà rejetée par la Cour d'appel du Québec;

**Motion for a stay of execution**

Following a review of the record and in particular the notice of motion for a stay of execution, of the judgments rendered by the respondents, the Professions Tribunal, the Superior Court and the Quebec Court of Appeal, as well as the respondents' response,

Whereas, *inter alia*, the appeal before the Quebec Court of Appeal is set for hearing in January 1998;

Whereas the record does not show any previous application to the Quebec Court of Appeal for the order currently being sought in this Court;

Whereas the Quebec Court of Appeal has already dismissed a motion for provisional execution of the judgment of the Quebec Superior Court;

Whereas this motion is essentially to the same effect as the one already dismissed by the Quebec Court of Appeal;

Considérant qu'il y a lieu de maintenir le status quo en l'absence de faits nouveaux;

Whereas the *status quo* should be maintained in the absence of new facts;

En conséquence, la requête est rejetée avec dépens.

Accordingly, the motion is dismissed with costs.

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14.8.1997

Before / Devant: L'HEUREUX-DUBÉ J.

**Motion to strike out**

**Requête en radiation**

Sean Michael Gellvear

v. (25973)

Her Majesty The Queen (Alta.)

**GRANTED / ACCORDÉE**

Upon review of the relevant documents, the motion is granted since no appeal as of right lies as regards the grounds alleged in the "further notice" filed by the appellant. The whole without prejudice to his right to apply for leave to appeal on such grounds, provided it is done according to law.

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14.8.1997

Before / Devant: L'HEUREUX-DUBÉ 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**

Sean Michael Gellvear

v. (25973)

Her Majesty The Queen (Alta.)

**GRANTED / ACCORDÉE** Time extended to August 30, 1997.

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14.8.1997

Before / Devant: LE REGISTRAIRE

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

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

Intercredit Establishment Vaduz

c. (26134)

Ville de Pincourt et al. (Qué.)

**GRANTED / ACCORDÉE**

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15.8.1997

Before / Devant: L'HEUREUX-DUBÉ J.

**Motion to extend the time to file the notice of appeal**

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

Sean Michael Gellvear

v. (25973)

Her Majesty The Queen (Alta.)

**GRANTED / ACCORDÉE** Time extended to May 3, 1997.

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15.8.1997

Before / Devant: LE JUGE L'HEUREUX-DUBÉ

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

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

Edward Yorke et al.

c. (25951)

Sa Majesté La Reine (Qué.)

**DISMISSED / REJETÉE**

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18.8.1997

Before / Devant: LE REGISTRAIRE

**Requête pour déposer un mémoire de 11 pages**

**Motion to file a 11-page factum**

Donald C. Loisel

c. (26070)

Société Canada Trust (Qué.)

**GRANTED / ACCORDÉE**

La requête pour obtenir une ordonnance permettant au demandeur la permission de produire une réplique de 11 pages est accordée.

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18.8.1997

Before / Devant: LE REGISTRAIRE

**Requête en prorogation du délai imparti pour déposer la réplique du requérant**

**Motion to extend the time in which to file the applicant's reply**

Donald C. Loisel

c. (26070)

Société Canada Trust (Qué.)

**GRANTED / ACCORDÉE** Délai prorogé au 15 juillet 1997.

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19.8.1997

Before / Devant: THE REGISTRAR

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

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

Jeffrey Rose

With the consent of the parties.

v. (25448)

Her Majesty The Queen (Ont.)

**GRANTED / ACCORDÉE** Time extended to August 15, 1997.

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20.8.1997

Before / Devant: LE REGISTRAIRE

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

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

J.-André Emond

Avec le consentement des parties.

c. (26067)

Sa Majesté La Reine (Qué.)

**ACCORDÉE / GRANTED**

22.8.1997

Before / Devant: THE REGISTRAR

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

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

R. West & Associates Inc. et al.

With the consent of the parties.

v. (25193)

Telecom Leasing Canada Ltd. (B.C.)

**GRANTED / ACCORDÉE** Time extended to August 15, 1997.

25.8.1997

Before / Devant: McLACHLIN J.

**Motion for leave to intervene**

**Requête en autorisation d'intervention**

BY/PAR: Canadian Institute of Chartered  
Accountants

IN/DANS: Touche Ross & Co.

v. (26118)

Stephen Kripps et al. (B.C.)

**ADJOURNED / AJOURNÉE**

The application is adjourned pending the decision on the application for leave to appeal.

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26.8.1997

Before / Devant: IACOBUCCI J.

**Motion to appoint counsel**

**Requête en nomination d'un procureur**

Michael Martinoff

v. (26068)

Chief Provincial Firearms Officer for B.C. et al. (B.C.)

**GRANTED / ACCORDÉE**

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26.8.1997

Before / Devant: LE REGISTRAIRE

**Requête en prorogation du délai imparti pour déposer le mémoire d'un intervenant**

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

Éditions Vice-Versa Inc. et al.

Avec le consentement des parties.

c. (25579)

Pascale-Claude Aubry (Qué.)

**GRANTED / ACCORDÉE** Délai prorogé au 26 septembre 1997.

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26.8.1997

Before / Devant: IACOBUCCI J.

**Motion for directions**

**Demande pour obtenir des directives**

Philippe Adrian et al.

v. (24711)

Zittler, Siblin & Associates Inc. (Ont.)

**GRANTED / ACCORDÉE**

1. The Ministry of Labour for the Province of Ontario, Employment Standards Branch be added as a party to this appeal;
  2. The Ministry may serve and file a factum on or before September 30, 1997.
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27.8.1997

Before / Devant: IACOBUCCI J.

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

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

Garry Richard Underwood

With the consent of the parties.

v. (25787)

Her Majesty The Queen (Alta.)

**GRANTED / ACCORDÉE** Time extended to August 25, 1997.

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**NOTICE OF APPEAL FILED SINCE  
LAST ISSUE**

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

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1.8.1997

**John Campbel**

**v. (25780)**

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

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18.8.1997

**Yves Rheal Cote**

**v. (25854)**

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

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18.8.1997

**Deltonia R. Cook**

**v. (25852)**

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

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28.8.1997

**Her Majesty The Queen**

**v. (25922)**

**Cory Anthony Gallant (P.E.I.)**

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28.8.1997

**Her Majesty The Queen**

**v. (25931)**

**Patrick Arnold MacDougall (P.E.I.)**

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**NOTICES OF INTERVENTION  
FILED SINCE LAST ISSUE**

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

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BY/PAR: Attorney General of Alberta  
Attorney General for Ontario  
Procureur général du Québec

IN/DANS: **Nelson M. Skalbania**

**v. (25539)**

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

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**NOTICE OF DISCONTINUANCE  
FILED SINCE LAST ISSUE**

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

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28.8.1997

**Nabisco Brands Canada Ltée et al.**

**c. (26147)**

**Fédération québécoise des producteurs de fruits et  
légumes de transformation et al. (Qué.)**

(demande d'autorisation)

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Reasons for judgment are available

Les motifs de jugement sont disponibles

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AUGUST 28, 1997 / LE 28 AOÛT 1997

24913

**THE WORKERS' COMPENSATION BOARD AND THE GOVERNMENT OF SASKATCHEWAN v. 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 FOR SASKATCHEWAN - and - THE WORKERS' COMPENSATION BOARD OF ALBERTA, THE WESTRAY FAMILIES, AND SHEILA FULLOWKA, DOREEN SHAUNA HOURIE, TRACEY NEILL, JUDIT PANDEV, ELLA MAY CAROL RIGGS, DOREEN VODNOSKI** (Sask.)

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

The appeal is allowed, the judgment of the Court of Appeal is set aside and the judgment of Scheibel J. is restored, with costs to the appellants both here and in the Court of Appeal, L'Heureux-Dubé J. dissenting.

Le pourvoi est accueilli, l'arrêt de la Cour d'appel est annulé et le jugement du juge Scheibel est rétabli. Les appelants ont droit aux dépens en notre Cour et en Cour d'appel. Le juge L'Heureux-Dubé est dissidente.

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*Ville de Verdun c. Gilles Doré* (Qué.) (24860)

**Répertorié: Doré c. Verdun (Ville) / Indexé as: Doré v. Verdun (City)**

Judgment rendered July 10, 1997 / Jugement rendu le 10 juillet 1997

**REVISED VERSION / VERSION RÉVISÉE**

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Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka and Gonthier JJ.

*Municipal law -- Civil remedies against municipality -- Bodily injury -- Prescription -- Victim injured in fall on city sidewalk -- Whether three-year prescription provided for in Civil Code of Québec in respect of bodily injury applicable -- Whether art. 2930 of Civil Code of Québec takes precedence over s. 585 of Cities and Towns Act -- Civil Code of Québec, S.Q. 1991, c. 64, arts. 300, 2930 -- Cities and Towns Act, R.S.Q., c. C-19, s. 585.*

*Prescription -- Bodily injury -- Municipality -- Victim injured in fall on city sidewalk -- Whether three-year prescription provided for in Civil Code of Québec in respect of bodily injury applicable -- Whether art. 2930 of Civil Code of Québec takes precedence over s. 585 of Cities and Towns Act -- Civil Code of Québec, S.Q. 1991, c. 64, arts. 300, 2930 -- Cities and Towns Act, R.S.Q., c. C-19, s. 585.*

*Interpretation -- Civil Code of Québec -- Usefulness of Minister of Justice's commentaries in interpreting provisions of Civil Code of Québec -- Parliamentary history.*

*Interpretation -- Civil Code of Québec -- Difference between English and French versions -- Scope of English version of provision narrower than that of French version -- Interpretation principle based on meaning shared by both versions rejected -- French version preferred to English version because consistent with legislature's intention -- Civil Code of Québec, S.Q. 1991, c. 64, art. 2930.*

*Interpretation -- Legislation -- Conflict -- Provision of Cities and Towns Act applicable "any provision of law to the contrary notwithstanding" -- Subsequent provision of Civil Code of Québec on same subject applicable "Notwithstanding any stipulation to the contrary" -- Whether more recent provision takes precedence -- Civil Code of Québec, S.Q. 1991, c. 64, art. 2930 -- Cities and Towns Act, R.S.Q., c. C-19, s. 585.*

On January 28, 1994, the respondent fell on one of the sidewalks of the appellant city and broke his right leg. On February 14, he sent the appellant a default notice. The appellant denied any liability and, in June 1994, the respondent brought an action against the appellant seeking damages for bodily injury. The appellant filed a motion to dismiss the respondent's action on the ground that the respondent had not sent it notice in writing within 15 days from the date of the accident as required by s. 585 of the *Cities and Towns Act* ("C.T.A."). The Superior Court dismissed the motion, concluding that art. 2930 *C.C.Q.* takes precedence over s. 585. Article 2930 provides that "Notwithstanding any stipulation to the contrary, where an action is founded on the obligation to make reparation for bodily injury caused to another, the requirement that notice be given prior to the bringing of the action or that proceedings be instituted within a period not exceeding three years does not hinder a prescriptive period provided for" in art. 2925 *C.C.Q.* The Superior Court's decision was affirmed by the Court of Appeal.

*Held:* The appeal should be dismissed.

Article 300 *C.C.Q.*, which sets out the general framework of the law applicable to legal persons established in the public interest, including municipalities, states two principles: first, such persons are primarily governed by "the special Acts by which they are constituted and by those which are applicable to them"; second, the *Civil Code of Québec* is applicable where such Acts "require to be complemented" with regard to matters falling under private law, particularly the status and property of such persons and their relations with other persons. Article 1376 *C.C.Q.* complements art. 300 and specifies that where obligations are concerned, the *Civil Code of Québec* is the *jus commune* applicable to legal persons. Likewise, art. 2877 *C.C.Q.* indicates that the general principles of prescription are applicable to legal persons established in the public interest "subject to express provision of law". However, the fact that the *jus commune* is supplementary in nature does not mean that the legislature cannot give a specific provision of the *Civil Code of Québec* precedence over special Acts applicable to municipalities, provided that it expresses a sufficiently clear and precise



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intention to that effect. That is what it has done in art. 2930 *C.C.Q.*, which is applicable to municipalities despite an explicit provision on the same subject in the *Cities and Towns Act* -- s. 585.

In enacting art. 2930 *C.C.Q.*, the legislature clearly expressed its intention through the wording of the article. Article 2930 must take precedence over “any stipulation to the contrary” (“*toute disposition contraire*”). Despite the use of the word “stipulation” in the English version of the article, the legislature did not intend to limit the article’s scope to contractual exclusions. Since art. 2884 *C.C.Q.* already provides that prescriptive periods are of public order and cannot be altered by agreement, it must be concluded that the legislature’s intention in art. 2930 was indeed to cover both legislative and contractual provisions and that an unfortunate word choice was made in the English version. Concluding otherwise would make art. 2930 largely redundant. Article 2930 deals with prescription, which is essentially a matter of private law. It is a mandatory provision of public order. It is an exception to the first principle set out in art. 300 *C.C.Q.* and therefore takes precedence over s. 585 *C.T.A.* This interpretation of art. 2930 is consistent with the legislature’s intention in the new Code, namely to ensure that fair compensation is provided for bodily injury, which is a form of interference with a person’s physical integrity. Article 2930 must be interpreted broadly so that its purpose -- putting an end to the injustices that resulted from the notice requirement in s. 585 -- can be achieved. Finally, even though s. 585 states that the prior notice requirement is applicable “any provision of law to the contrary notwithstanding”, art. 2930 *C.C.Q.* must prevail, since by expressly giving art. 2930 precedence -- “Notwithstanding any stipulation to the contrary” -- the legislature has specified that the subsequent general legislation derogates from the prior special Act.

The interpretation given to art. 2930 *C.C.Q.* is also consistent with the Minister of Justice’s commentaries on the article. While the interpretation of the *Civil Code of Québec* must be based first and foremost on the wording of its provisions, there is no reason to systematically disregard the Minister’s commentaries, since they can sometimes be helpful in determining the legislature’s intention, especially where the wording of the article is open to differing interpretations. However, the commentaries are not an absolute authority. They are not binding on the courts, and their weight can vary, *inter alia* in light of other factors that may assist in interpreting the provisions of the *Civil Code of Québec*.

APPEAL from a judgment of the Quebec Court of Appeal, [1995] R.J.Q. 1321, [1995] Q.J. No. 433 (QL), affirming a judgment of the Superior Court, [1994] R.J.Q. 2984, [1994] Q.J. No. 1152 (QL). Appeal dismissed.

*Pierre Le Page*, for the appellant.

*Daniel Paquin*, for the respondent.

*Colin K. Irving*, for the interveners.

*Solicitors for the appellant: Hébert Denault, Montréal.*

*Solicitors for the respondent: Alarie, Legault & Associés, Montréal.*

*Solicitors for the interveners: McMaster, Meighen, Montréal.*

Présents: Le juge en chef Lamer et les juges La Forest, L’Heureux-Dubé, Sopinka et Gonthier.

*Droit municipal -- Recours civils contre une municipalité -- Préjudice corporel -- Prescription -- Victime blessée en chutant sur un trottoir d’une ville -- La prescription de trois ans prévue au Code civil du Québec en matière de préjudice corporel est-elle applicable? -- L’article 2930 du Code civil du Québec a-t-il préséance sur l’art. 585 de la Loi sur les cités et villes? -- Code civil du Québec, L.Q. 1991, ch. 64, art. 300, 2930 -- Loi sur les cités et villes, L.R.Q., ch. C-19, art. 585.*

*Prescription -- Préjudice corporel -- Municipalité -- Victime blessée en chutant sur un trottoir d’une ville -- La prescription de trois ans prévue au Code civil du Québec en matière de préjudice corporel est-elle applicable? -- L’article*

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2930 du Code civil du Québec a-t-il préséance sur l'art. 585 de la Loi sur les cités et villes? -- Code civil du Québec, L.Q. 1991, ch. 64, art. 300, 2930 -- Loi sur les cités et villes, L.R.Q., ch. C-19, art. 585.

*Interprétation -- Code civil du Québec -- Utilité des Commentaires du ministre de la Justice dans l'interprétation des dispositions du Code civil du Québec -- Travaux préparatoires.*

*Interprétation -- Code civil du Québec -- Divergence entre les versions française et anglaise -- Version anglaise du texte ayant une portée plus restreinte que la version française -- Principe d'interprétation favorisant le sens commun des deux versions écarté -- Version française préférée à la version anglaise parce que conforme à l'intention du législateur -- Code civil du Québec, L.Q. 1991, ch. 64, art. 2930.*

*Interprétation -- Législation -- Conflit -- Disposition de la Loi sur les cités et villes applicable «nonobstant toute disposition de la loi à ce contraire» -- Disposition subséquente du Code civil du Québec portant sur le même sujet applicable «Malgré toute disposition contraire» -- La disposition la plus récente a-t-elle priorité? -- Code civil du Québec, L.Q. 1991, ch. 64, art. 2930 -- Loi sur les cités et villes, L.R.Q., ch. C-19, art. 585.*

Le 28 janvier 1994, l'intimé fait une chute sur l'un des trottoirs de la ville appelante et se fracture la jambe droite. Le 14 février, il fait parvenir à l'appelante une mise en demeure. L'appelante nie toute responsabilité et, en juin 1994, l'intimé intente contre l'appelante un recours en dommages-intérêts pour préjudice corporel. L'appelante dépose une requête en irrecevabilité à l'encontre de la poursuite de l'intimé, pour le motif que ce dernier ne lui a pas envoyé un avis écrit dans les 15 jours suivant la date de l'accident, comme le requiert l'art. 585 de la *Loi sur les cités et villes* («L.c.v.»). La Cour supérieure rejette la requête, concluant que l'art. 2930 C.c.Q. a préséance sur les dispositions de l'art. 585. L'article 2930 prévoit que «Malgré toute disposition contraire, lorsque l'action est fondée sur l'obligation de réparer le préjudice corporel causé à autrui, l'exigence de donner un avis préalablement à l'exercice d'une action, ou d'intenter celle-ci dans un délai inférieur à trois ans, ne peut faire échec au délai de prescription prévu» à l'art. 2925 C.c.Q. La Cour d'appel confirme la décision de la Cour supérieure.

*Arrêt:* Le pourvoi est rejeté.

L'article 300 C.c.Q., qui établit le cadre général du droit applicable aux personnes morales de droit public, qui comprennent les municipalités, énonce deux principes: d'une part, elles sont avant tout régies par «les lois particulières qui les constituent et par celles qui leur sont applicables»; d'autre part, le *Code civil du Québec* est applicable «lorsqu'il y a lieu de compléter» ces lois sur des matières relevant du droit privé, notamment quant à leur statut, leurs biens et leurs rapports avec les autres personnes. L'article 1376 C.c.Q. complète l'art. 300 et spécifie que dans le domaine des obligations, le *Code civil du Québec* constitue le droit commun applicable aux personnes morales. De même, l'art. 2877 C.c.Q. indique que les principes généraux en matière de prescription sont applicables aux personnes morales de droit public «sous réserve des dispositions expresses de la loi». Le fait que le droit commun ait un caractère subsidiaire ne nie toutefois pas au législateur la possibilité de donner préséance à une disposition spécifique du *Code civil du Québec* sur les lois particulières s'appliquant aux municipalités s'il démontre une intention suffisamment claire et précise à ce sujet. C'est le cas de l'art. 2930 C.c.Q. qui est applicable aux municipalités et cela malgré une disposition explicite de la *Loi sur les cités et villes* portant sur ce sujet -- l'art. 585.

En adoptant l'art. 2930 C.c.Q., le législateur a clairement exprimé son intention dans le texte même de l'article. L'article 2930 doit avoir préséance sur «toute disposition contraire» («*any stipulation to the contrary*»). Malgré l'utilisation du mot «*stipulation*» dans la version anglaise de l'article, le législateur n'a pas voulu limiter la portée du texte aux seules exclusions conventionnelles. En effet, puisque l'art. 2884 C.c.Q. prévoit déjà que les délais de prescription sont d'ordre public et ne peuvent être modifiés par convention, il faut conclure que l'intention du législateur à l'art. 2930 était bien de viser toute disposition, aussi bien législative que contractuelle, et qu'un malencontreux choix de mot s'est glissé dans la version anglaise. Si on concluait autrement, l'art. 2930 serait en grande partie redondant. L'article 2930 porte sur un domaine fondamentalement de droit privé, soit la prescription. Cette disposition est impérative et d'ordre public. Elle déroge au premier principe édicté à l'art. 300 C.c.Q. et a donc préséance sur l'art. 585 L.c.v. Cette interprétation de l'art. 2930 est conforme à l'intention du législateur dans le nouveau Code, soit d'assurer une juste indemnisation du préjudice corporel, lequel constitue une atteinte à l'intégrité physique de la personne. L'article 2930

doit recevoir une interprétation large qui lui permette d'atteindre son objet, soit mettre un terme aux abus qu'entraînait l'exigence d'un avis à l'art. 585. Enfin, bien que l'art. 585 prévoit que l'exigence quant à l'avis préalable s'applique «nonobstant toute disposition de la loi à ce contraire», c'est l'art. 2930 qui doit primer puisqu'en donnant préséance à l'art. 2930 en termes exprès -- «Malgré toute disposition contraire» -- le législateur a ainsi spécifié que la loi générale postérieure dérogerait à la loi spéciale antérieure.

L'interprétation donnée à l'art. 2930 *C.c.Q.* est par ailleurs conforme aux *Commentaires du ministre de la Justice* concernant cet article. Bien que l'interprétation du *Code civil du Québec* doit avant tout se fonder sur le texte même des dispositions, il n'y a cependant aucune raison d'écarter systématiquement les *Commentaires du ministre de la Justice*, puisqu'ils peuvent parfois constituer un élément utile pour cerner l'intention du législateur, particulièrement lorsque le texte de l'article prête à différentes interprétations. Toutefois, ces commentaires ne constituent pas une autorité absolue. Ils ne lient pas les tribunaux et leur poids pourra varier, notamment, au regard des autres éléments pouvant aider l'interprétation des dispositions du *Code civil du Québec*.

POURVOI contre un arrêt de la Cour d'appel du Québec, [1995] R.J.Q. 1321, [1995] A.Q. n° 433 (QL), qui a confirmé un jugement de la Cour supérieure, [1994] R.J.Q. 2984, [1994] A.Q. n° 1152 (QL). Pourvoi rejeté.

*Pierre Le Page*, pour l'appelante.

*Daniel Paquin*, pour l'intimé.

*Colin K. Irving*, pour les intervenants.

*Procureurs de l'appelante: Hébert Denault, Montréal.*

*Procureurs de l'intimé: Alarie, Legault & Associés, Montréal.*

*Procureurs des intervenants: McMaster, Meighen, Montréal.*

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*Government of Saskatchewan v. Elaine Pasiechnyk, et al, and between The Workers' Compensation Board v. Elaine Pasiechnyk, et al* (Sask.)(24913)

**Indexed as: Pasiechnyk. v. Saskatchewan (Workers' Compensation Board) /**

**Répertorié: Pasiechnyk. c. Saskatchewan (Workers' Compensation Board)**

Judgment rendered August 28, 1997 / Jugement rendu le 28 août 1997

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Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, McLachlin and Major JJ.

*Administrative law -- Judicial review -- Privative clause -- Compensation scheme barring actions against employers if compensation received -- Compensation received and action launched alleging breach of statutory duty -- Workers' Compensation Board determining actions statute barred -- Standard of review (patent unreasonableness or correctness) applicable -- If patent unreasonableness, was the Board's decision patently unreasonable -- If correctness, was the Board's decision correct -- Workers' Compensation Act, 1979, S.S. 1979, c. W-17.1, ss. 2(f)(ii), (g), (j), (k)(i), (ii), (iii), (t), 3(1), 22(1) (b), (h), (i), (2), 28, 44, 57, 167, 168, 180.*

SaskPower workers were killed and others injured by a falling crane owned by Pro-Crane. Injured workers and dependants of deceased workers qualified for and received workers' compensation benefits. The respondents launched an action against SaskPower, Pro-Crane, and the Saskatchewan Government. The claim against the government alleged that it failed to meet its duties under *The Occupational Health and Safety Act* by failing to inspect the crane adequately. The government, Pro-Crane and SaskPower successfully applied to the Workers' Compensation Board for a determination of whether the actions were barred by the Act. The Court of Queen's Bench dismissed the respondents' application for judicial review. The Court of Appeal allowed the respondents' appeal with respect to the action against the government but not with respect to the actions against Pro-Crane and SaskPower. This appeal involves only the action against the Government of Saskatchewan. The issues considered here were: (1) whether the standard of review to be applied was patent unreasonableness or correctness, and (2) whether, applying the proper criteria, the Board's decision should be reviewed.

*Held* (L'Heureux-Dubé J. dissenting): The appeal should be allowed.

*Per* Lamer C.J. and La Forest, **Sopinka**, Gonthier and Major JJ.: The standard of review applicable depends on whether the subject matter of the administrative tribunal's decision was subject to a privative clause having full privative effect. If so, the decision is only reviewable if it is patently unreasonable or if the tribunal has made an error in the interpretation of a legislative provision limiting the tribunal's powers. In either circumstance the tribunal will have exceeded its jurisdiction.

A "full" or "true" privative clause declares that decisions of the tribunal are final and conclusive from which no appeal lies and all forms of judicial review are excluded. Where the legislation employs words that purport to limit review but fall short of the traditional wording of a full privative clause, it is necessary to determine whether the words were intended to have full privative effect or a lesser standard of deference. The presence of a privative clause does not preclude review on the basis of an error of law if the provision under review is one that limits jurisdiction. The test as to whether the provision in question is one that limits jurisdiction is: was the question which the provision raises one that was intended by the legislators to be left to the exclusive decision of the Board? In applying the test, a functional and pragmatic approach is to be taken. Factors such as the purpose of the statute creating the tribunal, the reason for its existence, the area of expertise and the nature of the problem are all relevant in arriving at the intent of the legislature.

The privative clause here (s. 22) was clearly intended to and applies to all issues that fall to be decided under the Act unless the issue is one that limits jurisdiction. The words "final and conclusive" in s. 168 do not indicate that the section was to have its own "stand-alone" privative clause. The wording of s. 168 responds directly to the test: did the legislature intend to commit the matter exclusively to the Board?

The Board's exclusive jurisdiction to decide the question of whether the statutory bar applies is supported by the history and purpose of workers' compensation. The Board's composition, tenure, and powers demonstrate that it has very considerable expertise in dealing with all aspects of the workers' compensation system.

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A determination that an action is statute barred involves a determination of the very issues that go into determining whether the injured person is eligible for compensation. Every potential defendant, however, is not relieved of liability once the injured person has been found eligible for compensation. The Act contemplates that some rights of action will remain.

The question before the Board on an application under s. 168 is whether the plaintiff is eligible for compensation, and whether the defendant is immune from suit by virtue of being a contributor to the workers' compensation system. In both cases, the Board is passing on a matter that relates intimately to the purposes and structure of the workers' compensation system and that is expressed in terms whose meaning is inseparable from their meaning elsewhere in the Act.

The questions of eligibility for compensation and of whether an action is barred are within the Board's exclusive jurisdiction. The issue as to whether the proposed action is barred is also one that is committed to the Board for final decision and not reviewable unless it is patently unreasonable.

The Board asked itself four questions: (1) was the plaintiff a worker within the meaning of the Act; (2) if so, was the injury sustained in the course of employment; (3) is the defendant an employer within the meaning of the Act; and, (4) if so, does the claim arise out of acts or defaults of the employer or the employer's employees while engaged in, about or in connection with the industry or employment in which the employer or worker of such employer causing the injury is engaged. These were the appropriate questions and the Board's decision could not be said to be patently unreasonable.

The government, although not an "industry" in the ordinary sense of the term, must be understood to be an industry within the context of the workers' compensation scheme. It is expressly included as an "employer" under the Act and pays premiums into the fund. The question, however, is whether the action is barred by s. 167. The "dual capacity" theory, which would divide the role of the government in accordance with its public and private duties, has no application here. The existence of a private law duty and hence a cause of action is not in issue.

It was not necessary to find that the Board was correct in order to uphold its decision. Applying the appropriate standard, clearly the Board's decision is not patently unreasonable.

*Per McLachlin J.:* The dual capacity argument -- if the government is sued as employer, the Board can exclude actions in courts on the patently unreasonable standard, but if it is sued as regulator, the courts have equal expertise and the Board cannot exclude court actions -- cannot stand. It would undermine the Board's power to determine whether actions are barred and introduce uncertainty into the system. Ultimately, the historic trade-off between secure no-fault compensation for all injuries and fault-based recovery in the courts would be undermined. Further, the embrasive wording of s. 180 indicates that the legislators intended to endow the Board with exclusive power to decide whether employee actions arising from workplace mishaps proceed, notwithstanding their legal characterization. The Board therefore had to consider whether the facts of the case and the relationship between the parties supported the conclusion that the action is barred.

*Per L'Heureux-Dubé J. (dissenting):* The approach in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, should be applied with the emphasis not on the legislative intent behind the privative clause but rather on the general intent underlying the legislative scheme as a whole. Since, as a matter of constitutional law, a legislature may not protect an administrative body from review on matters of jurisdiction, it cannot decide freely which matters are jurisdictional and which come within the Board's exclusive jurisdiction. Here, whether an action is barred by s. 168 of the Act may or may not be within the Board's exclusive jurisdiction depending on the precise nature of the question and its relation to the Board's expertise. The question before the Board -- whether the Government of Saskatchewan, even though it may not be sued as an employer by reason of s. 44 of the *Workers' Compensation Act*, may be sued at common law in its capacity as regulator -- is one for which the Board has no special expertise. Since the matter is not one that falls within the Board's protected jurisdiction, the proper criteria for review should be correctness, not patent unreasonableness.

The Board erred in declaring that any action against the government *qua* regulator is barred by the Act. At common law, the government owes a duty of care under certain circumstances and this duty may give rise to an action

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for negligence. Nothing in the Act abolishes this particular right of action. Indeed, reliance on ss. 44, 167 and 180, which explicitly exclude all rights of action “against the employers” begs the question as to whether the government can be sued in a capacity other than that of an employer. The purpose of the Act does not militate against such a right of action. Absent any provision excluding the common law right of action, the reasons for justifying an implicit exclusion would have to be strong. Here, the “historic trade off” between employers and employees that resulted in the scheme would not be compromised by the possibility of actions against government *qua* regulator. There is no reason why employers would complain of such actions and want the regime abolished for that reason.

APPEAL from a judgment of the Saskatchewan Court of Appeal (1995), 131 Sask. R. 275, 95 W.A.C. 275, 127 D.L.R. (4th) 135, [1995] 7 W.W.R. 1, 30 Admin. L.R. (2d) 157, [1995] S.J. No. 342 (QL), dismissing an appeal from a judgment of Scheibel J., [1993] S.J. No. 624 (QL), dismissing an application for judicial review of a decision of The Workers’ Compensation Board of Saskatchewan. Appeal allowed, L’Heureux-Dubé J. dissenting.

*Robert G. Richards*, for the appellant The Workers’ Compensation Board.

*Darryl Brown*, for the appellant the Government of Saskatchewan.

*E. F. Anthony Merchant, Q.C.*, and *Kevin A. Clarke*, for the respondents Elaine Pasiachnyk, Rhonda McFarlane, Ronald MacMillan, Gordon Thompson, Orval Shevshenko, Clifford Sovdi, Aaron Hill and Larry Marcyniuk.

Written submission only by *Thomson Irvine* for the respondent the Attorney General for Saskatchewan.

*William P. Ostapek*, for the intervener the Workers’ Compensation Board of Alberta.

*Raymond F. Wagner*, for the interveners the Westray Families.

*J. Philip Warner, Q.C.*, for the interveners Sheila Fullowka, Doreen Shauna Hourie, Tracey Neill, Judit Pandev, Ella May Carol Riggs and Doreen Vodnoski.

*Solicitors for the appellant The Workers’ Compensation Board: MacPherson, Leslie & Tyerman, Regina.*

*Solicitor for the appellant the Government of Saskatchewan: The Attorney General for Saskatchewan, Regina.*

*Solicitors for the respondents Elaine Pasiachnyk, Rhonda McFarlane, Ronald MacMillan, Gordon Thompson, Orval Shevshenko, Clifford Sovdi, Aaron Hill and Larry Marcyniuk: Merchant Law Group, Regina.*

*Solicitor for the respondent the Attorney General for Saskatchewan: The Attorney General for Saskatchewan, Regina.*

*Solicitors for the respondent Pro-Crane Inc.: Hleck, Kanuka, Thuringer, Regina.*

*Solicitors for the respondent Saskatchewan Power Corporation: Rendek, McCrank, Regina.*

*Solicitor for the intervener the Workers’ Compensation Board of Alberta: The Workers’ Compensation Board of Alberta, Edmonton.*

*Solicitors for the interveners the Westray Families: Wagner & Associates Inc., Halifax.*

*Solicitors for the interveners Sheila Fullowka, Doreen Shauna Hourie, Tracey Neill, Judit Pandev, Ella May Carol Riggs and Doreen Vodnoski: Bishop & McKenzie, Edmonton.*

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Présents: le juge en chef Lamer et les juges La Forest, L'Heureux-Dubé, Sopinka, Gonthier, McLachlin et Major.

*Droit administratif -- Contrôle judiciaire -- Clause privative -- Régime d'indemnisation interdisant les poursuites contre les employeurs lorsqu'une indemnisation a été reçue -- Indemnisation reçue et poursuite intentée alléguant la violation d'une obligation imposée par la loi -- La Workers' Compensation Board a conclu que les poursuites étaient interdites par la loi -- Norme de contrôle (caractère manifestement déraisonnable ou décision correcte) à appliquer -- Si c'est la norme du caractère manifestement déraisonnable, la décision de la Commission était-elle manifestement déraisonnable? -- Si c'est la norme de la décision correcte, la décision de la Commission était-elle correcte? -- Workers' Compensation Act, 1979, S.S. 1979, ch. W-17.1, art. 2f)(ii), g), j), k)(i), (ii), (iii), t), 3(1), 22(1) b), h), i), (2), 28, 44, 57, 167, 168, 180.*

Des employés de SaskPower ont été tués et d'autres ont été blessés par la chute d'une grue appartenant à Pro-Crane. Les travailleurs blessés et les personnes à charge des travailleurs décédés ont touché les indemnités pour accident du travail auxquelles ils étaient admissibles. Les intimés ont intenté une action contre SaskPower, Pro-Crane et le gouvernement de la Saskatchewan. Ils alléguaient dans l'action dirigée contre le gouvernement que celui-ci avait manqué aux obligations qui lui incombaient en vertu de l'*Occupational Health and Safety Act* en n'inspectant pas la grue correctement. Le gouvernement, Pro-Crane et SaskPower ont demandé avec succès à la Commission de décider que les actions étaient interdites par la Loi. La Cour du Banc de la Reine a rejeté la demande de contrôle judiciaire présentée par les intimés. La Cour d'appel a accueilli l'appel des intimés en ce qui concerne l'action intentée contre le gouvernement, mais non en ce qui concerne les actions intentées contre Pro-Crane et SaskPower. Le présent pourvoi ne concerne que l'action dirigée contre le gouvernement de la Saskatchewan. Dans le présent pourvoi, il s'agit de savoir (1) si la norme de contrôle applicable est celle du caractère manifestement déraisonnable ou celle de la décision correcte, et (2) si, après application du bon critère, la décision de la Commission devrait être révisée.

*Arrêt* (le juge L'Heureux-Dubé est dissidente): Le pourvoi est accueilli.

Le juge en chef Lamer et les juges La Forest, **Sopinka**, Gonthier et Major: Pour déterminer la norme de contrôle applicable il faut trancher la question de savoir si l'objet de la décision du tribunal administratif était assujéti à une clause privative ayant un effet privatif intégral. Si la réponse est affirmative, la décision du tribunal n'est alors susceptible de contrôle que si elle est manifestement déraisonnable ou si le tribunal a commis une erreur dans l'interprétation d'une disposition législative limitant ses pouvoirs. Dans l'un ou l'autre cas, le tribunal administratif aura excédé sa compétence.

La clause privative «intégrale» ou «véritable» déclare que les décisions du tribunal administratif sont définitives et péremptoires, qu'elles ne peuvent pas faire l'objet d'un appel et que toute forme de contrôle judiciaire est exclue dans leur cas. Lorsque la loi utilise des mots qui visent à limiter le contrôle, mais qui ne correspondent pas au libellé traditionnel d'une clause privative intégrale, il faut déterminer si ces mots visaient un effet privatif intégral ou une norme de retenue moins élevée. La présence d'une clause privative n'empêche pas le contrôle fondé sur une erreur de droit si la disposition faisant l'objet du contrôle est une disposition limitative de compétence. Le critère servant à déterminer si la disposition en cause est une disposition limitative de compétence est le suivant: la question soulevée par la disposition est-elle une question que le législateur voulait assujéti au pouvoir décisionnel exclusif de la Commission? Pour appliquer ce critère, il faut avoir recours à une méthode fonctionnelle et pragmatique. Des facteurs comme l'objet de la loi qui crée le tribunal, la raison d'être de ce tribunal, son domaine d'expertise et la nature du problème qui lui est soumis sont tous pertinents pour déterminer l'intention du législateur.

La clause privative en l'espèce (l'art. 22) était nettement destinée à s'appliquer et s'applique à toutes les questions qui doivent être tranchées en vertu de la Loi, à moins qu'il ne s'agisse d'une question qui limite la compétence. Les mots [TRADUCTION] «définitive et péremptoire» à l'art. 168 n'indiquent pas que l'article devait avoir sa propre clause privative «indépendante». Le libellé de l'art. 168 satisfait directement au critère: le législateur a-t-il voulu renvoyer l'affaire exclusivement à la Commission?

La compétence exclusive de la Commission pour trancher la question de savoir si l'interdiction de la Loi s'applique est étayée par l'historique et l'objet de l'indemnisation des accidents du travail. La composition et les pouvoirs

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de la Commission ainsi que la durée des fonctions de ses membres montrent bien qu'elle possède une expertise vraiment considérable en matière de traitement de tous les aspects du régime d'indemnisation des accidents du travail.

La décision qu'une action est interdite par la loi exige qu'on tranche les questions mêmes qu'implique la question de savoir si la personne blessée est admissible à une indemnité. Tout défendeur éventuel n'est cependant pas exonéré de toute responsabilité une fois qu'on a conclu que la personne blessée est admissible à une indemnité. La Loi prévoit que certains droits d'action demeureront.

La question dont la Commission est saisie dans une demande fondée sur l'art. 168 est de savoir si le demandeur est admissible à une indemnité et si le défendeur est à l'abri de toutes poursuites judiciaires du fait qu'il cotise au régime d'indemnisation des accidents du travail. Dans les deux cas, la Commission se prononce sur une question qui se rapporte étroitement aux objectifs et à l'économie du régime d'indemnisation des accidents du travail et cela est exprimé dans des termes dont le sens est inséparable de celui qu'ils ont ailleurs dans la Loi.

La question de l'admissibilité à une indemnité et la question de savoir si une action est interdite relèvent de la compétence exclusive de la Commission. La question de savoir si l'action projetée est interdite est également une question qui est renvoyée à la Commission pour qu'elle rende une décision définitive à cet égard, et n'est susceptible de contrôle judiciaire que si elle est manifestement déraisonnable.

La Commission s'est posé quatre questions: (1) Le demandeur était-il un travailleur au sens de la Loi? (2) Dans l'affirmative, la blessure a-t-elle été subie en cours d'emploi? (3) Le défendeur est-il un employeur au sens de la Loi? (4) Dans l'affirmative, l'action intentée résulte-t-elle d'actes ou d'omissions de la part de l'employeur ou d'employés de l'employeur qui participent directement ou indirectement à l'industrie ou à l'emploi auxquels est rattaché l'employeur ou le travailleur d'un tel employeur à l'origine de la blessure? C'étaient les bonnes questions à se poser et on ne pouvait pas dire que la décision de la Commission était manifestement déraisonnable.

Bien qu'il ne soit pas une «industrie» au sens ordinaire du terme, le gouvernement doit être considéré comme étant une industrie dans le contexte du régime d'indemnisation des accidents du travail. Il est inclus expressément comme «employeur» au sens de la Loi et il verse des cotisations à la caisse des accidents. La question est cependant de savoir si l'action est interdite par l'art. 167. La théorie du «cumul des fonctions», qui divise le rôle du gouvernement selon l'obligation de droit public et l'obligation de droit privé qui lui incombent, ne s'applique pas en l'espèce. L'existence d'une obligation de droit privé et donc d'une cause d'action n'est pas en cause.

Il n'est pas nécessaire de conclure que la Commission avait raison pour confirmer la validité de sa décision. Si on applique la norme appropriée, il est clair que la décision de la Commission n'est pas manifestement déraisonnable.

*Le juge McLachlin:* Les arguments fondés sur la théorie du cumul des fonctions -- si le gouvernement est poursuivi en sa qualité d'employeur, la Commission peut interdire les poursuites judiciaires selon le critère du caractère manifestement déraisonnable mais s'il est poursuivi en sa qualité d'autorité réglementaire, les tribunaux ont également l'expertise nécessaire, et la Commission ne peut pas faire obstacle aux poursuites judiciaires -- ne peuvent pas être retenus. L'application de cette théorie porterait atteinte au pouvoir de la Commission de décider si les poursuites judiciaires sont interdites et elle introduirait l'incertitude dans le régime. En définitive, le compromis historique entre la sécurité d'une indemnisation sans égard à la responsabilité pour toutes les blessures et l'obligation de s'adresser aux tribunaux pour obtenir une indemnisation fondée sur la faute serait remis en cause. De plus, la large portée du libellé de l'art. 180 indique que le législateur voulait investir la Commission du pouvoir exclusif de décider si les employés peuvent intenter des actions à la suite d'accidents survenus en milieu de travail, sans égard à leur qualification juridique. La Commission devait donc trancher la question de savoir si les faits en cause et les rapports entre les parties permettaient de conclure que l'action est interdite.

*Le juge L'Heureux-Dubé (dissidente):* La méthode énoncée dans l'arrêt *U.E.S., Local 298 c. Bibeault*, [1988] 2 R.C.S. 1048, doit être appliquée et il faut mettre l'accent non pas sur l'intention du législateur quant à la clause privative, mais plutôt sur l'intention générale qui sous-tend le régime législatif dans son ensemble. Étant donné que, du point de vue constitutionnel, le législateur ne peut pas soustraire un organisme administratif à tout contrôle relatif à des questions



de compétence, il ne peut pas décider librement quelles questions sont des questions de compétence et lesquelles relèvent de la compétence exclusive de l'organisme en question. En l'espèce, la question de savoir si une action est interdite par l'art. 168 de la Loi peut ou non relever de la compétence exclusive de la Commission selon la nature exacte de la question qui lui est soumise et son lien avec l'expertise de la Commission. La question dont la Commission était saisie -- savoir si le gouvernement de la Saskatchewan, même s'il ne peut pas être poursuivi à titre d'employeur en raison de l'art. 44 de la *Workers' Compensation Act*, peut être poursuivi en vertu de la common law à titre d'autorité réglementaire -- est une question à l'égard de laquelle la Commission n'a aucune expertise particulière. Puisque la question ne relève pas de la compétence protégée de la Commission, le critère de contrôle à appliquer devrait être le critère de la décision correcte et non celui du caractère manifestement déraisonnable.

La Commission a commis une erreur en déclarant que toute action contre le gouvernement à titre d'autorité réglementaire est interdite par la Loi. En common law, le gouvernement a, dans certaines circonstances, une obligation de diligence, et cette obligation peut donner naissance à une action pour négligence. Rien dans la Loi ne supprime ce droit d'action particulier. En fait, le recours aux art. 44, 167 et 180, qui excluent expressément tout droit d'action [TRADUCTION] «contre les employeurs» soulève la question de savoir si le gouvernement peut être poursuivi à un titre autre que celui d'employeur. L'objet de la Loi ne milite pas contre un tel droit d'action. En l'absence d'une disposition excluant le droit d'action reconnu en common law, les motifs susceptibles de justifier une exclusion implicite devraient être importants. En l'espèce, le «compromis historique» entre employeurs et employés, qui a abouti au régime, ne serait pas menacé par la possibilité que des actions soient intentées contre le gouvernement en sa qualité d'autorité réglementaire. Il n'y a aucune raison pour laquelle les employeurs se plaindraient de telles actions et voudraient que le régime soit aboli pour ce motif.

POURVOI contre un arrêt de la Cour d'appel de la Saskatchewan (1995), 131 Sask. R. 275, 95 W.A.C. 275, 127 D.L.R. (4th) 135, [1995] 7 W.W.R. 1, 30 Admin. L.R. (2d) 157, [1995] S.J. No. 342 (QL), qui a rejeté l'appel formé contre un jugement du juge Scheibel, [1993] S.J. No. 624 (QL), qui avait rejeté une demande de contrôle judiciaire d'une décision de la Workers' Compensation Board de la Saskatchewan. Pourvoi accueilli, le juge L'Heureux-Dubé est dissidente.

*Robert G. Richards*, pour l'appelante la Workers' Compensation Board.

*Darryl Brown*, pour l'appelant le gouvernement de la Saskatchewan.

*E. F. Anthony Merchant, c.r.*, et *Kevin A. Clarke*, pour les intimés Elaine Pasiachnyk, Rhonda McFarlane, Ronald MacMillan, Gordon Thompson, Orval Shevshenko, Clifford Sovdi, Aaron Hill et Larry Marcyniuk.

Argumentation écrite seulement par *Thomson Irvine* pour l'intimé le procureur général de la Saskatchewan.

*William P. Ostapek*, pour l'intervenante la Workers' Compensation Board de l'Alberta.

*Raymond F. Wagner*, pour les intervenantes les familles Westray.

*J. Philip Warner, c.r.*, pour les intervenantes Sheila Fullowka, Doreen Shauna Hourie, Tracey Neill, Judit Pandey, Ella May Carol Riggs et Doreen Vodnoski.

*Procureurs de l'appelante la Workers' Compensation Board: MacPherson, Leslie & Tyerman, Regina.*

*Procureur de l'appelant le gouvernement de la Saskatchewan: Le procureur général de la Saskatchewan, Regina.*

*Procureurs des intimés Elaine Pasiachnyk, Rhonda McFarlane, Ronald MacMillan, Gordon Thompson, Orval Shevshenko, Clifford Sovdi, Aaron Hill et Larry Marcyniuk: Merchant Law Group, Regina.*

*Procureur de l'intimé le procureur général de la Saskatchewan: Le procureur général de la Saskatchewan, Regina.*

*Procureurs de l'intimée Pro-Crane Inc.: Hleck, Kanuka, Thuringer, Regina.*

*Procureurs de l'intimée la Saskatchewan Power Corporation: Rendek, McCrank, Regina.*

*Procureur de l'intervenante la Workers' Compensation Board de l'Alberta: La Workers' Compensation Board de l'Alberta, Edmonton.*

*Procureurs des intervenantes les familles Westray: Wagner & Associates Inc., Halifax.*

*Procureurs des intervenantes Sheila Fullowka, Doreen Shauna Hourie, Tracey Neill, Judit Pandev, Ella May Carol Riggs et Doreen Vodnoski: Bishop & McKenzie, Edmonton.*

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The next session of the Supreme Court of Canada commences on October 6, 1997.  
La prochaine session de la Cour suprême du Canada débute le 6 octobre 1997.

**The next bulletin of proceedings will be published in September 1997 /  
Le prochain bulletin des procédures sera publié en septembre 1997.**

## DEADLINES: APPEALS

## DÉLAIS: APPELS

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The Fall Session of the Supreme Court of Canada will commence October 6, 1997.

La session d'automne de la Cour suprême du Canada commencera le 6 octobre 1997.

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:

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:

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

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

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

**Le mémoire de l'appelant** doit être déposé dans les quatre mois du dépôt de l'avis d'appel.

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

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

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

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

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.

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.

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**THE STYLES OF CAUSE IN THE PRESENT TABLE ARE THE STANDARDIZED STYLES OF CAUSE (AS EXPRESSED UNDER THE "INDEXED AS" ENTRY IN EACH CASE).**

**Judgments reported in [1997] 1 S.C.R. Part 5**

Canadian Union of Public Employees, Local 301 v. Montreal (City), [1997] 1 S.C.R. 793

Farber v. Royal Trust Co., [1997] 1 S.C.R. 846

R. v. McDonnell, [1997] 1 S.C.R. 948

R. v. Noble, [1997] 1 S.C.R. 874

**LES INTITULÉS UTILISÉS DANS CETTE TABLE SONT LES INTITULÉS NORMALISÉS DE LA RUBRIQUE "RÉPERTORIÉ" DANS CHAQUE ARRÊT.**

**Jugements publiés dans [1997] 1 R.C.S. Partie 5**

Farber c. Cie Trust Royal, [1997] 1 R.C.S. 846

R. c. McDonnell, [1997] 1 R.C.S. 948

R. c. Noble, [1997] 1 R.C.S. 874

Syndicat canadien de la fonction publique, section locale 301 c. Montréal (Ville), [1997] 1 R.C.S. 793

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SUPREME COURT OF CANADA SCHEDULE  
CALENDRIER DE LA COUR SUPREME

- 1997 -

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NOVEMBER - NOVEMBRE						
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DECEMBER - DECEMBRE						
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JANUARY - JANVIER						
S D	M L	T M	W M	T J	F V	S S
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MARCH - MARS						
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APRIL - AVRIL						
S D	M L	T M	W M	T J	F V	S S
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12	H 13	14	15	16	17	18
19	20	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	M 4	5	6	7	8	9
10	11	12	13	14	15	16
17	H 18	19	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
	M 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				

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  
7 motion and conference days /  
journées requêtes, conférences  
3 holidays during sitting days /  
jours fériés durant les sessions