SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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FILING DATE 13.8.1998

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FILING DATE 6.8.1998

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Vuntut Gwitchin First Nation
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James Shaw
Dept. of Justice

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Taylor McCaffrey

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Theresa Dust, Q.C.
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FILING DATE 25.8.1998

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William James Bradford Canning
William James Bradford Canning

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Robert Brunet, c.r.
Brunet & Brunet, société nominale

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Mason Poplaw
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Sidney Green, Q.C.
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FILING DATE 31.8.1998

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Chouinard Cardinal Avocats

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Joel J. Goldenberg
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Michael C. Birley
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Ville de Saint-Laurent
Jean Rochette
Dunton Rainville, s.e.n.c.

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Luc Lefebvre
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Graham Mackenzie as executor of the Estates of Angus Joseph Mackenzie and Marie Mackenzie, and in his personal capacity
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Boris Orlov

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Rene Lin & Ingrid S.M. Lin

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Legal Department - Toronto-Dominion Bank

FILING DATE 4.9.1998

Sylvio Richer
Sylvio Richer

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Reinhardt Lutzer

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Chamkaur Kainth

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Marie-Therese Boris
Dept. of Justice

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Doug French et al.
Timothy S.B. Danson
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Susan G. Ficek
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Naresh Kaushal
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FILING DATE 9.9.1998

Coffrages Roca Inc. et al.
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Ravinsky Ryan

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Subs. procureur général

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Cislyn Spence
Cislyn Spence

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Commission des droits de la personne et des droits de la jeunesse (Que.)
Marc-André Dowd

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The CSL Group Inc. et al.
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Marler & Associates

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Her Majesty The Queen in right of Canada (F.C.A.)(Que.)
Morris Rosenberg
Dept. of Justice

FILING DATE 8.9.1998

G.G.
G.G.

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Micheline Parizeau
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The Minister of National Revenue
Christopher Rupar
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Anthony Dixon et al. (Ont.)
John Hawker
Lipman, Zener & Waxman

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Tammy Lynn Ferris
Simon R. Buck
Wilson & Buck

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S. David Frankel, Q.C.
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FILING DATE 11.9.1998

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Lovey Cridge

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Lawrence Pierce

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The Coronation Insurance Company et al.
François Demers
Spiegel Sohmer

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Marlene Gagnon et al. (Qué.)
Michel St-Pierre
Beauvais, Truchon & Associés

DATE DE PRODUCTION 11.9.1998

The Coronation Insurance Company et al.
François Demers
Spiegel Sohmer

c. (26841)

Ginette Pelletier (personnellement en qualité de tutrice à Marie-Chantale Filion) et al. (Qué.)
Michel St-Pierre
Beauvais, Truchon & Associés

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The Coronation Insurance Company et al.
François Demers
Spiegel Sohmer

c. (26842)

Brigitte Bouchard (personnellement en qualité de tutrice à Michael Boily, Genevieve Boily et Jean-Philippe Boily) et al. (Qué.)
Michel St-Pierre
Beauvais, Truchon & Associés

DATE DE PRODUCTION 11.9.1998

S.A. Louis Dreyfus & Cie.
George R. Hendy, Esq.
Goodman Phillips & Vineberg

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Gary D.D. Morrison, Esq.
Heenan Blaikie

FILING DATE 14.9.1998

Gauthier & Associates
Raj Anand
Weir & Foulds

v. (26844)

482511 Ontario Limited, carrying on business under the firm name and style of Dunpar Construction (Ont.)
Ronald G. Chapman

FILING DATE 14.9.1998

John R. McColl
Bryan Finlay, Q.C.
Weir & Foulds

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The Corporation of the Town of Gravenhurst (Ont.)
Christopher G. Riggs, Q.C.
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La Caisse populaire de Saint-Boniface Limitée
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New Investors Committee of Mater's Mortgages (NIC)
Ronald G. Chapman

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KPMG Inc. et al. (Ont.)
Kevin P. McElcheran
Blake, Cassels & Graydon

FILING DATE 18.8.1998

Sassine Georges Sreih
Sassine Georges Sreih

c. (26762)

Sa Majesté la Reine (Qué.)
Germain Tremblay
Cour municipale de Montréal

DATE DE PRODUCTION 19.6.1998

AUGUST 24, 1998 / LE 24 AOÛT 1998

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

Her Majesty The Queen

v. (26473)

Joann Kimberley White (Crim.)(B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Right to remain silent - Self-incrimination - Whether the Court of Appeal erred in finding that statements compelled by the operation of s. 61 of the *Motor Vehicle Act* (reporting requirement) are not properly admissible in evidence on a criminal trial for reasons analogous to those in *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154 - Whether the Court of Appeal erred in finding that the trial judge did not err in placing the onus on the Crown to prove a statement was not made under s. 61 of the *Motor Vehicle Act* - Whether the Court of Appeal erred in finding that the trial judge did not err in his determination of what constitutes a statement made under the compulsion of s. 61 of the *Motor Vehicle Act*.

PROCEDURAL HISTORY

May 29, 1996 Provincial Court of British Columbia (Calgren P.C.J.)	Acquittal: failing to remain at the scene of an accident
January 20, 1998 Court of Appeal for British Columbia (Lambert, Esson, and Southin [dissenting] JJ.A.)	Appeal dismissed
June 17, 1998 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

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Albany George Conrad

v. (26643)

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

NATURE OF THE CASE

Criminal law - Preliminary inquiry - Whether the Court of Appeal erred in determining that the chambers judge did not err in holding that there was some evidence on each of the constituent elements of the two counts in the information from which a conviction could result - Whether the Court of Appeal erred in determining that the chambers judge correctly applied the proper test in relation to the test for committal for trial.

PROCEDURAL HISTORY

November 19, 1996 Provincial Court of Alberta (Reilly J.)	Applicant committed for trial for cultivation and possession of marijuana

March 10, 1997 Court of Queen's Bench of Alberta (Rooke J.)	Applicant's application to quash order for committal dismissed
April 16, 1998 Court of Appeal of Alberta (McFadyen, O'Leary and Fruman JJ.A.)	Appeal from certiorari application in relation to committal for trial dismissed
June 8, 1998 Supreme Court of Canada	Application for leave to appeal filed

Color Your World Corp.

v. (26584)

Canadian Broadcasting Corporation, Don Spandier and Norma Kent (Ont.)

NATURE OF THE CASE

Torts - Libel and slander - Broadcasting - Whether image, sound and sequence in a television news programme are capable of conveying a defamatory meaning where the words used do not by themselves convey a defamatory meaning - Whether the Court of Appeal erred in law in holding that absent distortion by audio-visual aspects of a television broadcast, the content of the words used should be deemed the primary conveyor of the programme's meaning.

PROCEDURAL HISTORY

February 7, 1994 Ontario Court (General Division) (Somers J.)	Damages awarded
February 12, 1998 Court of Appeal for Ontario (Robins, Abella and Moldaver JJ.A.)	Appeal allowed
April 14, 1998 Supreme Court of Canada	Application for leave to appeal filed

CORAM: L'Heureux-Dubé, Gonthier and Bastarache JJ. /
Les juges L'Heureux-Dubé, Gonthier et Bastarache

Bharat Goel, personally, Anita Goel, Sasha Goel, Vishya Goel, and
Tushar Goel, minor under the age of 18 years, by their Litigation Guardian, Bharat Goel

v. (26717)

Marion MacNeil and Paul MacNeil (Ont.)

NATURE OF THE CASE

Torts - Damages - Motor vehicle - Canadian Charter - Civil - Did Court of Appeal err in dismissing the appeals of the Applicants? Were the Applicants discriminated against by the judges at the Court of Appeal?

PROCEDURAL HISTORY

June 26, 1997 Ontario Court of Justice (General Division) (Kruzick J.)	Minor Applicants awarded $1,000 each in damages
March 18, 1998 Court of Appeal for Ontario (Morden, Robins and Charron JJ.A.)	Motion for adjournment of appeal denied; Motion of the Childrens' Lawyer for an order quashing the appeal granted; Appeal dismissed
May 14, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Bharat Goel, Personally, Anita Goel, Sasha Goel, Vishya Goel, and Tushar Goel, minor under the age of 18 years, by their Litigation Guardian, Bharat Goel

v. (26719)

Lawrence H. Mandel, Solicitor, and David R. Tanzen, Solicitor, and Thompson Rogers, Law Firm; John J. Freeman; Daniel J. Holland; Chris Blom; Timothy P. Boland, Solicitor, and Peddle, Mark & Boland, Law Firm, and Bharat Goel (Ont.)

NATURE OF THE CASE

Labour law - Barristers and solicitors - Commercial law - Insurance - Canadian Charter - Civil - Whether Court of Appeal erred in dismissing the appeals of the Applicants - Were the Applicants discriminated against by the judges at the Court of Appeal?

PROCEDURAL HISTORY

December 10, 1996 Ontario Court (General Division) (O'Connor J.)	Applicants ordered to attend examinations for discovery
February 20, 1997 Ontario Court (General Division) (Carnwath J.)	Action dismissed as Applicants failed to attend discoveries
March 18, 1998 Court of Appeal for Ontario (Morden, Robins and Charron JJ.A.)	Appeal dismissed
May 14, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Ram Goel and Anita Goel as Litigation Guardian for the minor Plaintiffs Sasha Goel, Vishya Goel, and Tushar Goel

v. (26720)

Timothy P. Boland, Solicitor, Peddle Mark Boland, Law Firm, and Dominion of Canada, Insurance Co., Bharat Goel (Ont.)

NATURE OF THE CASE

Torts - Damages - Motor vehicle - Barristers and solicitors - Commercial law - Insurance - Canadian Charter - Civil - Did the Court of Appeal err in dismissing the appeals of the Applicants? Were the Applicants discriminated against by the judges at the Court of Appeal?

PROCEDURAL HISTORY

May 23, 1997 Ontario Court (General Division) (Caswell J.)	Action dismissed
March 18, 1998 Court of Appeal for Ontario (Morden A.C.J.O. and Robins and Charron JJ.A.)	Appeal dismissed
May 14, 1998 Supreme Court of Canada	Application for leave to appeal filed

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CORAM: Cory, Major and Binnie JJ. /
Les juges Cory, Major et Binnie

Shell Canada Limited

v. (26596)

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

NATURE OF THE CASE

Taxation - Statutes - Business tax - *Income Tax Act*, s. 20(1)(c) (interest deduction) - Statutory interpretation - Interest - Meaning of "interest" - Meaning of "reasonable" - Whether the Applicant's interest payments qualified for a deduction from income pursuant to s. 20(1)(c) of the *Income Tax Act* - Whether the Federal Court of Appeal erred in disallowing the deduction - Whether the Federal Court of Appeal erred in considering the "economic realities of the taxpayer's situation" rather than the strict legal form of the taxpayer's arrangements - Whether the definition of "interest" at common law should be expanded to include other collateral costs and benefits to the taxpayer arising from a borrowing.

PROCEDURAL HISTORY

April 28, 1997 Tax Court of Canada (Christie A.C.J.T.C.C.)	Appeals from reassessments allowed and matter referred back to Minister for reassessment
February 18, 1998 Federal Court of Appeal (Stone, Strayer and Linden JJ.A.)	Appeal allowed; judgment of Tax Court set aside and matter referred back to Minister for reassessment
April 16, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Franz Dobnik

v. (26613)

Darcy's Import Co. Ltd., carrying on business under the name and style of The Interface Financial Group (Ont.)

NATURE OF THE CASE

Commercial Law - Contracts - Creditor and debtor - Guaranty/suretyship - Loan - Extent to which the creditor must pursue and exhaust default remedies against the principal debtor before demanding payment from the guarantor.

PROCEDURAL HISTORY

June 27, 1997 Ontario Court (General Division) (MacFarland J.)	Summary judgment granted
February 26, 1998 Court of Appeal for Ontario (Carty, Lacrosse and Larkin JJ.A.)	Appeal dismissed
April 27, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Will-Kare Paving & Contracting Limited

v. (26601)

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

NATURE OF THE CASE

Taxation - Statutes - Interpretation - Whether the Court of Appeal erred in holding that manufacturers who supply goods manufactured by them in conjunction with the provision of services to their customers are not entitled to the deductions under ss.20(1)(a), 125.1 and 127(5) of the *Income Tax Act* - Whether the Court of Appeal erred in interpreting these sections strictly without taking their full context into account - Whether the Court of Appeal erred in its application of legislative history - Whether the Court of Appeal erred in adopting a presumption that the words "goods for sale" in these sections and the Regulations relating to them were intended to have the common law meaning of a "sale of goods" under the law of contract.

PROCEDURAL HISTORY

March 22, 1996 Tax Court of Canada (Sarchuk J.T.C.C.)	Appeals for assessments made under the *Income Tax Act* for 1988, 1989 and 1990 taxation years dismissed
February 20, 1998 Federal Court of Appeal (Strayer, Desjardins and Robertson JJ.A.)	Appeal dismissed
April 21, 1998 Supreme Court of Canada	Application for leave to appeal filed

AUGUST 31, 1998 / LE 31 AOÛT 1998

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

John Riley Shewfelt

v. (26606)

Her Majesty The Queen in Right of Canada (B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Remedies - Damages - Federal prison inmate denied right to vote in federal election due to provision of the *Canada Elections Act* - Provision subsequently declared unconstitutional - Inmate claiming damages against the Crown as a remedy under s. 24(1) of the *Charter* for his lost opportunity to vote - Whether the minimum remedy for a person who holds the "right to a remedy" under s. 24(1) of the *Charter* is a nominal remedy (declaratory, injunctive or compensatory)?- Whether direct state liability is available under the *Charter*?

PROCEDURAL HISTORY

February 28, 1997 Supreme Court of British Columbia (Holmes J.)	Application and action dismissed
March 5, 1998 Court of Appeal for British Columbia (Southin, Prowse, Ryan JJ.A.)	Appeal dismissed
April 29, 1998 Supreme Court of Canada	Application for leave to appeal filed

The Guarantee Company of North America

v. (26654)

Gordon Capital Corporation

- and -

Chubb Insurance Company of Canada and
Laurentian General Insurance Company Inc. (Ont.)

NATURE OF THE CASE

Commercial law - Contracts - Insurance - Limitation of actions - Whether the party who has rescinded a contract is entitled to rely on a limitation of action term within the rescinded contract - When a loss is considered discovered for the purposes of triggering the running of a limitations period.

PROCEDURAL HISTORY

February 17, 1997 Ontario Court (General Division) (O'Brien J.)	Motion for summary judgment allowed, declaratory relief granted
March 23, 1998 Court of Appeal for Ontario (Carthy, Labrosse and Goudge, JJ.A.)	Appeal allowed, motion for summary judgment dismissed
May 22, 1998 Supreme Court of Canada	Application for leave to appeal filed
July 15, 1998 Supreme Court of Canada	Application for leave to cross-appeal filed

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Dell R. Spencer

v. (26496)

**Lorraine King (formerly Lorraine Olmstead) and
Mockler, Allen & Dixon (formerly Hoyt, Mockler, Allen & Dixon) (N.B.)**

NATURE OF THE CASE

Property law - Real property - Damages - Whether the Appeal Court of New Brunswick erred in law by failing to consider key factors when determining the damages due to the Applicant for the Respondents' negligence.

PROCEDURAL HISTORY

December 13, 1990 Court of Queen's Bench of New Brunswick (Trial Division) (Stevenson J.)	Respondents found negligent
April 16, 1992 Court of Queen's Bench of New Brunswick (Trial Division) (Creaghan J.)	Applicant's damages assessed at $4,452.50
November 27, 1992 Court of Appeal of New Brunswick (Rice and Ayles JJ.A., Richard C.J.Q.B. [*ad hoc*])	Appeal dismissed
February 16, 1998 Supreme Court of Canada	Application for leave to appeal filed

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

André Légaré et als

c. (26593)

Commission de l'assurance-emploi Canada
et
Procureur général du Canada (C.A.F.)(Qué.)

NATURE DE LA CAUSE

Législation - Assurance-chômage - Interprétation - Admissibilité au bénéfice des prestations - Portée de l'expression "directement intéressé" au paragraphe 31(2) de la *Loi sur l'assurance-chômage*, L.R.C. (1985), chap. U-1 - Les salariés d'une entreprise, représentés par un syndicat, sont-ils directement intéressés par la grève d'autres salariés de la même entreprise, représentés par un autre syndicat, si certaines des revendications du groupe de salariés en grève sont similaires à celles revendiquées par l'autre groupe? La Cour d'appel fédérale a-t-elle commis une erreur en rejetant l'appel des prestataires?

HISTORIQUE PROCÉDURAL

Le 11 juillet 1995 Conseil arbitral (Caron, présidente, Ringuette et Hébert, membres)	Admissibilité des demandeurs aux prestations refusée
Le 3 janvier 1996 Conseil arbitral (Caron, présidente, Ringuette et Hébert, membres)	Confirmation de la décision du 11 juillet 1995 à la suite d'une réaudition
Le 23 janvier 1996 Juge-arbitre (Marin, juge-arbitre)	Appel des demandeurs rejeté
Le 17 février 1998 Cour d'appel fédérale (Pratte, Marceau et Létourneau, JJ.C.A.)	Requête en révision judiciaire rejetée
Le 17 avril 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Jean Bellerose et als

c. (26594)

Commission de l'assurance-emploi Canada
et
Procureur général du Canada (C.A.F.)(Qué.)

NATURE DE LA CAUSE

Législation - Assurance-chômage - Interprétation - Admissibilité au bénéfice des prestations - Portée de l'expression "directement intéressé" au paragraphe 31(2) de la *Loi sur l'assurance-chômage*, L.R.C. (1985), chap. U-1 - Les salariés d'une entreprise, représentés par un syndicat, sont-ils directement intéressés par la grève d'autres salariés de la même entreprise, représentés par un autre syndicat, si certaines des revendications du groupe de salariés en grève sont similaires à celles revendiquées par l'autre groupe? La Cour d'appel fédérale a-t-elle commis une erreur en rejetant l'appel des prestataires?

HISTORIQUE PROCÉDURAL

Le 11 juillet 1995 Conseil arbitral (Caron, présidente, Ringuette et Hébert, membres)	Admissibilité des demandeurs aux prestations refusée
Le 3 janvier 1996 Conseil arbitral (Caron, présidente, Ringuette et Hébert, membres)	Confirmation de la décision du 11 juillet 1995 à la suite d'une réaudition
Le 23 janvier 1996 Juge-arbitre (Marin, juge-arbitre)	Appel des demandeurs rejeté
Le 17 février 1998 Cour d'appel fédérale (Pratte, Marceau et Létourneau, JJ.C.A.)	Requête en révision judiciaire rejetée
Le 17 avril 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Edwin K. Lewis

v. (26603)

**Her Majesty The Queen in Right of the
Province of Prince Edward Island (P.E.I.)**

NATURE OF THE CASE

Torts - Damages - Negligence - Crown - Statutory Immunity - Statutory immunity for acts done in good faith - *Crown Proceedings Act*, R.S.P.E.I. 1988, c. C-32, s. 4(4) - *Plant Disease Eradication Act*, R.S.P.E.I. 1988, c. P-7, ss. 5(2), 19(2) - Private law duty of care and public law duty of care - Standard of care - Duty of care - "Policy/operational" decisions - Applicant ordered to spray his potato crop with a chemical to combat bacterial ring rot, a highly contagious plant disease -Whether the lower courts disposed of the case properly.

PROCEDURAL HISTORY

August 11, 1995 Prince Edward Island Supreme Court - Trial Division (Matheson J.)	Applicant's action for damages allowed
February 25, 1998 Prince Edward Island Supreme Court - Appeal Division (Mitchell, McQuaid JJ.A., Carruthers C.J. (dissenting))	Respondent's appeal allowed
April 21, 1998 Supreme Court of Canada	Application for leave to appeal filed

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

Peter Wing Lo

v. (26616)

ScotiaMcLeod Inc. (B.C.)

NATURE OF THE CASE

Procedural law - Appeal - Whether the Court of Appeal correctly denied an extension of time to appeal summary judgment.

PROCEDURAL HISTORY

November 14, 1997 Supreme Court of British Columbia (Morrison J.)	Respondent's application for summary judgment granted; Applicant's cross-application dismissed
February 6, 1998 Court of Appeal for British Columbia (Hall J.A.)	Application for indigent status with respect to order of Morrison J. dismissed
March 6, 1998 Court of Appeal for British Columbia (Rowles J.A.)	Application for an extension of time to file an appeal from the order of Morrison J. dismissed
April 21, 1998 Supreme Court of Canada	Application for leave to appeal filed
July 13, 1998 Supreme Court of Canada	Response and alternative application for order under Rule 51.1 filed

Ranjit S. Ahluwalia & Others

v. (26621)

Richmond Cabs Ltd., Coral Cabs Ltd. (B.C.)

NATURE OF THE CASE

Commercial Law - Securities - Nature of shares - Procedural Law - Refusal to adjourn an appeal - Whether issues were subject to the doctrine of issue estoppel - Whether an agreement was an obligation to pay dispatch and administrative fees.

PROCEDURAL HISTORY

February 8, 1996 Supreme Court of British Columbia (MacDonald J., in chambers)	Motion for judgment granted; Damages awarded
March 26, 1998 British Columbia Court of Appeal (Southin, Rowles and Ryan JJ.A.)	Application to adjourn appeal dismissed; Appeal dismissed
April 30, 1998 Supreme Court of Canada	Application for leave to appeal filed

Ranjit S. Ahluwalia

v. (26620)

Richmond Cabs Ltd. (B.C.)

NATURE OF THE CASE

Procedural Law - Denial of extension of time to file appeal books and factum - Whether issue to be raised on appeal was subject to issue estoppel.

PROCEDURAL HISTORY

June 10, 1994 Supreme Court of British Columbia (Newbury J.)	Action for specific performance or damages dismissed
December 3, 1996 Supreme Court of British Columbia (Bauman J.)	Motion to add defendants granted; Motion to dismiss claim and injunction dismissed
February 13, 1998 Court of Appeal for British Columbia (Donald J.A., in chambers)	Extension of time to file appeal books and factum to appeal from motion to add defendants dismissed
April 7, 1998 Court of Appeal for British Columbia (Hinds, Hollinrake, Finch JJ.A.)	Application to vary order denying time extension dismissed
April 30, 1998 Supreme Court of Canada	Application for leave to appeal filed

SEPTEMBER 8, 1998 / LE 8 SEPTEMBRE 1998

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

James Puskas

v. (26373)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Search and Seizure - Exclusion of evidence - Whether an individual's backyard is subject to the same expectation of privacy as that of the home - Whether the Court of Appeal erred in applying a city-life standard of reasonableness to rural life.

PROCEDURAL HISTORY

February 17, 1997 Ontario Court (General Division) (Marshall J.)	Acquittal: cultivating a narcotic; possession of a narcotic for the purpose of trafficking

November 19, 1997 Court of Appeal for Ontario (Morden A.C.J.O., Carthy, Moldaver JJ.A.)	Appeal allowed; new trial ordered
December 10, 1997 Supreme Court of Canada	Notice of appeal as of right filed
May 4, 1998 Supreme Court of Canada	Notice of appeal quashed
June 25, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Delbert Ross Chatwell

v. (26492)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Unreasonable delay - Whether the standard of appellate review in unreasonable delay cases is correctness or deference.

PROCEDURAL HISTORY

January 10, 1997 Ontario Court (General Division) (Salhany J.)	Stay of proceedings entered on a charge of sexual interference and sexual assault
January 22, 1998 Court of Appeal for Ontario (Finlayson, Rosenberg and Goudge JJ.A.)	Appeal allowed; matter remitted for trial
February 20, 1998 Supreme Court of Canada	Notice of appeal as of right filed
May 4, 1998 Supreme Court of Canada	Notice of appeal quashed
June 25, 1998 Supreme Court of Canada	Application for leave to appeal filed

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M.V.

v. (26527)

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

NATURE OF THE CASE

Criminal law - Arson - Statutes - Interpretation - Whether arson in s. 434 of the *Criminal Code* requires a reduction in the value of the property - Whether the Court of Appeal erred in defining the elements of the crime of arson as effectively requiring no element of moral turpitude whatsoever - Whether the Court of Appeal erred in defining the crime of arson so broadly s to impinge on provincial jurisdiction to legislate in the area of property and civil rights - Whether the Court of Appeal erred by finding ambiguity in the definition of arson in the *Criminal Code* and not strictly construing it.

PROCEDURAL HISTORY

December 16, 1994 Provincial Court (Lafrance-Cardinal J.)	Acquittal: arson
February 20, 1998 Court of Appeal for Ontario (Finlayson, Rosenberg and Goudge JJ.A.)	Appeal allowed; acquittal set aside and a new trial ordered
March 23, 1998 Supreme Court of Canada	Notice of appeal as of right filed
May 4, 1998 Supreme Court of Canada	Notice of appeal as of right quashed
June 30, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Lawrence S. Etienne and Mary Elizabeth Kelso

v. (26627)

Dr. John L. Remus and Dr. Gonzalo Perales (Ont.)

NATURE OF THE CASE

Procedural law - Appeal - Civil trial by jury - Jury findings reversed on appeal - Did the Court of Appeal err in setting aside the verdict of the jury? - Did the Court of Appeal err by entertaining and accepting the submissions of counsel for the Respondents on the sufficiency of the answers to the questions put to the jury, when no objection was made at trial or in the factum delivered to the Court of Appeal?

PROCEDURAL HISTORY

September 29, 1995 Ontario Court (General Division) (Platana J.)	Applicant's action in damages against Respondent Remus allowed; action against Respondent Perales dismissed
February 13, 1998 Court of Appeal for Ontario (Morden A.C.J.O., Austin and Charron JJ.A.)	Appeal allowed, matter remitted to trial on question of damages; cross-appeal dismissed
April 29, 1998 Supreme Court of Canada	Application for leave to appeal and for an extension of time to file application, filed

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**John Thomas Horn, Barbara MacDowell, Jeffrey MacDowell,
Donald Shaw, and Bruce William Grant McCreary**

v. (26670)

**Mary Dreifelds, and Michael Dreifelds, Christopher Dreifelds and
Andrea Dreifelds, minors, by their Litigation Guardian, Mary Dreifelds**

- and -

Sam B. Burton (Ont.)

NATURE OF THE CASE

Constitutional law - Division of powers - Maritime law - Torts - Jurisdiction - Limitation of actions - prescription - Did the Court of Appeal err in failing to recognize the maritime connection between the deceased's status as a passenger of the "Southern Princess" at the time of his death and the duty of the Master of the ship chartered for the purpose of conducting a scuba diving expedition in Canadian waters to take reasonable care for his safety, and in particular, to rescue him from perils of the sea - Whether, in light of this court's decision in *ITO - International Terminal Operations Ltd.* v. *Miida Electronics Inc.*, [1986] 1 S.C.R. 752, the decision of Court of Appeal for Ontario in this case undercuts the uniformity of Canadian maritime law - Whether the decision will lead to uncertainty in the application of Canadian maritime law - Is there inherent jurisdiction in a Court to extend a statutory limitation period in the absence of specific curative provisions?

PROCEDURAL HISTORY

April 10, 1996 Ontario Court (General Division) (Lissaman J.)	Motions under Rule 21 dismissed; extension of time to file *Family Law Act* action granted
March 6, 1998 Court of Appeal for Ontario (McMurtry C.J.O., Laskin and Goudge JJ.A.)	Appeal dismissed
May 5, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Sam B. Burton

v. (26680)

Mary Dreifelds, and Michael Dreifelds, Christopher Dreifelds and Andrea Dreifelds, minors, by their Litigation Guardian, Mary Dreifelds

- and -

John Thomas Horn, Barbara MacDowell, Jeffrey MacDowell, Donald Shaw, and Bruce William Grant McCreary (Ont.)

NATURE OF THE CASE

Constitutional law - Division of powers - Maritime law - Torts - Jurisdiction - Limitation of actions - prescription - Is there a meaningful distinction to be drawn between actions based on negligence in the handling of cargo under a contract for the carriage of goods by sea and actions based on negligence in the handling of passengers under a contract for the carriage of persons by sea - Would such a distinction oust federal jurisdiction over the subject matter - Did the Court of Appeal err in failing to recognize that actions *in personam* against the owner and master of a vessel founded upon allegations of tortious conduct by the master of the vessel and others on board while at sea during the course of a charter party voyage are within traditional admiralty jurisdiction and are therefore part of Canadian maritime law - Is there inherent jurisdiction in a Court to extend the statutory limitation period in s. 649 of the *Canada Shipping Act* in the absence of specific curative provisions?

PROCEDURAL HISTORY

April 10, 1996 Ontario Court (General Division) (Lissaman J.)	Motions under Rule 21 dismissed; extension of time to file *Family Law Act* action granted
March 6, 1998 Court of Appeal for Ontario (McMurtry C.J.O., Laskin and Goudge JJ.A.)	Appeal dismissed
May 5, 1998 Supreme Court of Canada	Application for leave to appeal filed

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CORAM: L'Heureux-Dubé, Gonthier and Bastarache JJ. /
Les juges L'Heureux-Dubé, Gonthier et Bastarache

Terrance Dermott Pyne

v. (26648)

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

NATURE OF THE CASE

Criminal law - Defences - Provocation - Whether the Court of Appeal erred in holding that there was no air of reality to the defence of provocation - Whether the Court of Appeal erred in holding that the defences of self defence and provocation were inconsistent and could not stand together - Whether the Court of Appeal erred in failing to hold that the trial judge had an obligation to consider the defence of provocation that was raised on the facts.

PROCEDURAL HISTORY

July 6, 1993 Ontario Court (General Division) (Smith J.)	Conviction: Second degree murder
July 21, 1993 Ontario Court (General Division) (Smith J.)	Sentence: life imprisonment without eligibility for parole for twelve years
October 23, 1997 Court of Appeal for Ontario (Finlayson, Rosenberg and Moldaver JJ.A.)	Appeal against conviction dismissed; Appeal against sentence allowed; parole ineligibility reduced to ten years
May 15, 1998 Supreme Court of Canada	Application for leave to appeal filed
May 28, 1998 Supreme Court of Canada (McLachlin J.)	Motion for the extension of time granted

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Stephen Byer, Robert Byer, ès qualités and 2786885 Canada inc.

c. (26539)

Bernardo Reyes (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Jugements et ordonnances - Aux termes de l'art. 519 du *Code de procédure civile*, L.R.Q., ch. C-25, la Cour d'appel a-t-elle l'obligation de motiver sa décision d'accueillir la requête en cautionnement de l'intimé? - L'absence de motifs cause-t-elle un préjudice aux demandeurs-appelants?

HISTORIQUE PROCÉDURAL

Le 19 décembre 1997 Cour supérieure du Québec (Laberge j.c.s.)	Action en dommages-intérêts de l'intimé accueillie, bail résilié et demandeurs expulsés; demande reconventionnelle accueillie en partie
Le 2 mars 1998 Cour d'appel du Québec (Mailhot, Forget et Pidgeon jj.c.a.)	Requête en cautionnement de l'intimé accordée: la Cour ordonne aux demandeurs de fournir la somme de 50 000$ au plus tard le 2 avril 1998
Le 30 avril 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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La Brasserie Labatt Limitée

c. (26605)

Me André Ladouceur, ès qualité d'arbitre de griefs

et

Union des routiers, brasseries, liqueurs douces et ouvriers de diverses industries, Local 1999 (Teamsters), et Jean Poirier (Qué.)

NATURE DE LA CAUSE

Droit du travail - Droit administratif - Arbitrage - Convention collective - Compétence - Contrôle judiciaire - Décision interlocutoire - Critère de l'erreur manifestement déraisonnable - Arbitre jugeant qu'une mise à pied a la particularité de maintenir en vigueur des droits d'ancienneté, que la violation de ce droit est permanente et que ce droit ne pouvait donc être prescrit - Prématurité du recours en révision judiciaire de la demanderesse - *Code du travail*, L.R.Q., ch. C-27, art. 71.

HISTORIQUE PROCÉDURAL

Le 31 août 1994 Tribunal d'arbitrage (Ladouceur, arbitre)	Moyen préliminaire de non-recevabilité par la demanderesse, l'employeur, fondé sur la prescription à l'encontre d'un grief déposé par Jean Poirier, mis en cause, rejeté
Le 9 janvier 1995 Cour supérieure du Québec (Bishop j.c.s.)	Requête en révision judiciaire de la demanderesse accueillie; décision de l'arbitre annulée
Le 19 février 1998 Cour d'appel du Québec (LeBel, Fish et Rousseau-Houle jj.c.a.)	Pourvoi accueilli; jugement de la Cour supérieure infirmé; sentence arbitrale intérimaire rétablie; dossier retourné à l'arbitre

Le 17 avril 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

K.L.W

v. (26779)

Winnipeg Child and Family Services (Man.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Family - Custody - Whether the warrantless apprehension of a child in need of protection by Winnipeg Child and Family Services violates a parent's liberty rights under s. 7 of the *Charter* - Whether a six month delay before a warrantless apprehension of a child in need of protection can be judicially reviewed violates a parent's liberty rights under s. 7 of the *Charter* - Whether the Court of Appeal erred in failing to admit fresh evidence on an appeal in a child protection proceeding.

PROCEDURAL HISTORY

May 6, 1997 Manitoba Court of Queen's Bench (Stefanson J.)	Applicant's action dismissed
June 24, 1997 Manitoba Court of Queen's Bench (Family Division) (Stefanson J.)	Respondent's application granted: Respondent appointed Permanent Guardian of Applicant's three children
May 13, 1998 Court of Appeal of Manitoba (Huband, Helper and Kroft JJ.A.)	Applicant's appeal from judgment of Stefanson J. on June 24, 1997 dismissed
August 10, 1998 Supreme Court of Canada	Application for leave to appeal filed

Casimir Gadzella

v. (26618)

Walter Gadzella (Sask.)

NATURE OF THE CASE

Property Law -Wills - Proof in solemn form - Testamentary capacity - Execution of will - Caveat against probate vacated and will ordered to be proven in solemn form - Will declared valid after trial in open court - Whether will was proven in solemn form - Whether testator had capacity - Whether will executed in accordance with *Wills Act*, S.S. 1996, c. W-14.1.

PROCEDURAL HISTORY

May 23, 1996 Court of Queen's Bench of Saskatchewan (Klebuc J.)	Caveat removed, will ordered to be proven in solemn form

February 20, 1997 Court of Queen's Bench of Saskatchewan (Sirois J.)	Will declared valid
February 23, 1998 Court of Appeal for Saskatchewan (Tallis, Gerwing and Lane JJ.A.)	Appeal dismissed
April 23, 1998 Supreme Court of Canada	Application for leave to appeal filed

CORAM: Cory, Major and Binnie JJ. /
Les juges Cory, Major et Binnie

Allan Granovsky

v. (26615)

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

NATURE OF THE CASE

Canadian Charter - Civil - *Canada Pension Plan Act*, R.S.C. 1985, c.C-8 - Whether the contributory requirements for disability benefits contained in the *Canada Pension Plan Act* discriminate against temporarily disabled individuals contrary to s. 15(1) of the *Charter* - If so, whether the discrimination can be reasonably and demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*.

PROCEDURAL HISTORY

February 27, 1997 Pension Appeals Board (Cameron, McQuaid and Rice JJ.A.)	Appeal of decision of Minister of Employment and Immigration denying the Applicant a disability pension dismissed
March 10, 1998 Federal Court of Appeal (Isaac C.J., Stone and McDonald JJ.A.)	Application for judicial review dismissed
May 11, 1998 Supreme Court of Canada	Application for leave to appeal filed

Leonard Krieser

v. (26624)

Bank of Montreal (Ont.)

NATURE OF THE CASE

Procedural law - Civil procedure - Summary judgment - Whether the Court has the power to grant summary judgment - Whether granting summary judgment in this case denied the Applicant's rights under the *Canadian Charter of Rights and Freedoms*.

PROCEDURAL HISTORY

March 25, 1997 Ontario Court (General Division) (O'Brien J.)	Respondent's motion for summary judgment granted in the amount of $280,351.06; Applicant's cross-motion and counterclaim dismissed
February 24, 1998 Court of Appeal for Ontario (Finlayson, Carthy and Goudge JJ.A.)	Appeal dismissed
April 27, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Robert Weidenfeld

v. (26629)

Hanson, Hashey (Ont.)

NATURE OF THE CASE

Canadian Charter - Civil - Whether the *Law Society Act*, S.N.B. 1986, c. 96 violates ss. 7 and 15 of the *Charter* - Whether an order by a Court of Ontario, registering a judgment rendered in New Brunswick under the *Law Society Act*, violates ss. 7 and 15 of the *Charter* - Whether public policy prevents an Ontario court from registering a foreign judgment that was entered under the *Law Society Act* - Whether a profession is an analogous ground of discrimination under the *Charter* - Constitutional validity of taxations - Whether the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c.R.5, prohibits registration of a judgment from New Brunswick that registered a taxation officer's award.

PROCEDURAL HISTORY

December 16, 1996 Ontario Court (General Division) (Grossi J.)	Application to register judgment granted
June 23, 1997 Ontario Court (General Division) (Chapnik J.)	Motion to set aside order dismissed
March 12, 1998 Ontario Court of Appeal (Finlayson, Catzman, LaBrosseJJ.A.)	Appeal dismissed
May 7, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Donald B. Mosher

v. (26663)

Her Majesty The Queen in Right of Ontario (Ont.)

NATURE OF THE CASE

Commercial Law - Contracts - Breach of contract - Torts - Breach of privacy -*Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F-31 - Survey submitted to Ministry of Natural Resources pursuant to a contract to purchase Crown land - Survey returned to Ontario Land Surveyor - Whether survey is property of land surveyor - Whether return of survey constituted breach of contract or of right to privacy - Whether survey was deficient. (CMS - 28, 24, 134)

PROCEDURAL HISTORY

July 7, 1997 Ontario Court (General Division) (Kinsmen J.)	Summary judgment granted; claim dismissed
March 18, 1998 Court of Appeal for Ontario (Morden A.C.J., Robins and Charon JJ.A.)	Appeal dismissed
May 14, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Donald B. Mosher

v. (26662)

Romano Padovan (Ont.)

NATURE OF THE CASE

Commercial Law - Contracts - Breach of contract - Frustration of contract - Fees for services - Surveyor engaged to prepare survey submitted to Ministry of Natural Resources in purchase and sale of Crown land - Fees partially due upon final approval of survey by Ministry - Agreement to purchase not completed and survey returned to surveyor without final approval - Whether surveyor frustrated purchase of land by requesting the return of the plan of survey, by keeping the plan of survey or by submitting a subsequent plan - Whether purchaser frustrated agreement to pay surveyor's fees upon final approval by action or inaction that frustrated the contract with the Ministry.

PROCEDURAL HISTORY

July 2, 1997 Ontario Court (General Division) (Wright J.)	Claim dismissed; damages awarded on counter-claim
March 18, 1998 Court of Appeal for Ontario (Morden A.C.J., Robins, Charron JJ.A.)	Appeal dismissed
May 14, 1998 Supreme Court of Canada	Application for leave to appeal filed

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SEPTEMBER 14, 1998 / LE 14 SEPTEMBRE 1998

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

John Carten Personal Law Corporation and
John Frederick Carten

v. (26625)

The Attorney General for British Columbia and
Her Majesty The Queen in Right of
the Province of British Columbia (B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil Rights - Taxation - Constitutional law - Access to justice - Constitutional validity of the *Social Services Tax Amendment Act (No. 2)*, 1993, S.B.C., c. 24 challenged by Applicants which imposes a tax on fees for legal services - Whether the *Charter* encompasses and protects the access to justice system - Whether a tax on legal services is unconstitutional for unjustifiably impeding access to justice - Whether the tax on legal services violates the rights as guaranteed by the *Charter* - Whether this decision conflicts with other legal authorities.

PROCEDURAL HISTORY

June 21, 1995 Supreme Court of British Columbia (Lowry J.)	Applicants' application challenging the constitutional validity of the *Social Services Tax Amendment Act* imposing a tax on fees for legal services dismissed
November 5, 1997 Court of Appeal for British Columbia (McEachern C.J. [dissenting in part], Lambert and Hollinrake JJ.A.)	Appeal dismissed
May 1, 1998 Supreme Court of Canada	Application for leave to appeal and for extension of time filed

Gencorp Canada Inc.

v. (26626)

Superintendent of Pensions for Ontario, Local 536 of the United Rubber, Cork Linoleum & Plastic Workers of America, acting on behalf of Members and Former Members of the Consolidated GenCorp Canada Inc. Hourly Pension Plan (the "Hourly Plan"), and Members and former members of the Consolidated GenCorp Canada Inc, Salaried Pension Plan (the "Salaried Plan") listed in Schedule "A" (Ont.)

NATURE OF THE CASE

Labour Law - Pensions - Procedural Law - Appeals - Standard of review - Winding-up - Corporation sold - Employees retained by purchaser - Assets and liabilities of vendor's pension plan not transferred - Employees entitled to benefits under vendor's pension plan which had accrued to date of sale - Purchaser closes plant - Superintendent of Pensions issues notices of proposal ordering partial wind-up of vendor's pension plan - Whether closing of plant by purchaser discontinues vendor's business and whether vendor is an "employer" for purposes of s. 69 of *Pension Benefits Act*, R.S.O. 1990, c. P.8 - Standard of review of decision of Pension Commission of Ontario.

PROCEDURAL HISTORY

December 7, 1995 Ontario Court, Divisional Court (Southey, O'Brien, Corbett JJ.)	Appeal and cross-appeal dismissed
March 11, 1998 Ontario Court of Appeal (McMurtry C.J., Robins, McKinlay JJ.A.)	Appeal dismissed
May 8, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Silvestro Ruscetta

v. (26637)

Dennis Graham and Canadian Broadcasting Corporation (Ont.)

NATURE OF THE CASE

Labour law - Arbitration - Labour relations - Collective agreement - Civil procedure - Courts - Torts - Libel and slander - Whether an action in defamation may be brought by a unionized employee against his employer - Whether the dispute fell within the ambit of the collective agreement and was thus not justiciable in a court of law - *Weber v. Ontario Hydro,* [1995] 2 S.C.R. 929.

PROCEDURAL HISTORY

July 10, 1997 Ontario Court (General Division) (Wilkins J.)	Defendants' motion granted and action dismissed
March 13, 1998 Court of Appeal for Ontario (Finlayson, Catzman and Labrosse JJ.A.)	Appeal dismissed
May 12, 1998 Supreme Court of Canada	Application for leave to appeal filed

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166404 Canada Inc. and Ron Miller

v. (26652)

Glen Leslie Coulter (Ont.)

NATURE OF THE CASE

Commercial law - Bankruptcy - Creditor and debtor - Fiduciary duty - Whether the *Bankruptcy and Insolvency Act* releases a bankrupt who has committed fraud on his creditors only if it can be shown that he was acting in a fiduciary capacity - Whether a person who, while holding another's money, converts that money must in law be acting in a fiduciary capacity - Whether the indicia of vulnerability and dependancy to create a fiduciary relationship was over-emphasized in the charge to the jury such that in law it was an improper charge.

PROCEDURAL HISTORY

January 13, 1995 Ontario Court of Justice (General Division) (Rutherford J.)	Applicants' action dismissed
March 16, 1998 Court of Appeal for Ontario (Brooke, McKinlay and Abella JJ.A.)	Appeal dismissed
May 15, 1998 Supreme Court of Canada	Application for leave to appeal filed

CORAM: L'Heureux-Dubé, Gonthier and Bastarache JJ. /
Les juges L'Heureux-Dubé, Gonthier et Bastarache

Communauté urbaine de Montréal, Alain St-Germain, Pierre Vézina, Guy Lavoie

c. (26611)

Chubb du Canada compagnie d'assurance (Qué.)

ET ENTRE:

Communauté urbaine de Montréal, Alain St-Germain, Pierre Vézina, Guy Lavoie

c. (26611)

St. Paul Fire and Marine Insurance Company (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Preuve - Police - Action en responsabilité civile intentée par les compagnies d'assurance intimées pour les dommages subis par leurs clients à l'occasion de la conquête de la Coupe Stanley en 1993 - Intimées requérant la communication de certains rapports policiers de rétroaction lors de l'interrogatoire après défense en vertu de l'art. 398 du *Code de procédure civile*, L.R.Q., ch. C-25 - Objections des demandeurs formulées à l'encontre de cette demande rejetées par la Cour supérieure et la Cour d'appel - La Cour d'appel a-t-elle erré en refusant de reconnaître l'existence d'une immunité d'intérêt public protégeant de façon intégrale la confidentialité des documents internes que constituent les rapports policiers de rétroaction? - La Cour d'appel a-t-elle erré en décidant que par application de l'art. 308 *C.p.c.*, une affirmation statutaire du ministre ou du sous-ministre est absolument nécessaire pour pouvoir invoquer une immunité d'intérêt public, sauf si l'objection à la preuve relève d'une règle unanimement reconnue par la common law? - La Cour d'appel a-t-elle erré en interprétant ce qui constitue un "écrit se rapportant au litige" au sens de l'art. 398 *C.p.c.*?

HISTORIQUE PROCÉDURAL

Le 11 juin 1997 Cour supérieure du Québec (Halperin j.c.s.)	Objections des demandeurs à la communication de documents exigés par les intimées dans le cadre de l'examen après défense rejetées

Le 26 février 1998
Cour d'appel du Québec
(Brossard, Proulx et Robert jj.c.a.)

Pourvoi rejeté et ordonnance de non-publication et de non-divulgation émise

Le 24 avril 1998
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Human Life International in Canada Inc.

v. (26661)

The Minister of National Revenue (F.C.A.)(Ont.)

NATURE OF THE CASE

Taxation - Charitable organization - Statutes - Interpretation - What is acceptable "political activity" for registered charities in Canada - What is proper educational activity for registered charities in Canada - Does the definition of educational activity permit registered charities in Canada to engage in advocacy - Upon whom does the onus of proof rest in an appeal from a decision of the Minister of National Revenue to revoke the registered charitable status of a charity pursuant to section 180 of the *Income Tax Act*, R.S.C. 1985.

PROCEDURAL HISTORY

May 26, 1994
Minister of National Revenue

Applicant's registrations as charitable organization revoked

March 18, 1998
Federal Court of Appeal
(Chief Justice, Strayer and Robertson J.A.)

Appeal dismissed

May 15, 1998
Supreme Court of Canada

Application for leave to appeal filed

Pushpa Thawani COB as Aeshu Grocery Etc. Stores Ages

v. (26711)

M. Leal Sarmiento (Man.)

NATURE OF THE CASE

Commercial law - Bailment - Agency - Whether law of bailment or general rule governing agent and the principals covers the case.

PROCEDURAL HISTORY

May 13, 1997
Court of Queen's Bench (Duval J.)

Respondent's action granted

April 1, 1998 Court of Appeal of Manitoba (Huband J.A., Philp J.A. [dissenting] and Helper J.A.)	Appeal dismissed
May 19, 1998 Supreme Court of Canada	Motion for extension of time filed
June 12, 1998 Supreme Court of Canada	Application for leave to appeal filed

CORAM: Cory, Major and Binnie JJ. /
Les juges Cory, Major et Binnie

Dale Kroppmanns and
Allison Muriel Currie

v. (26686)

Pamela Jean Townsend (B.C.)

NATURE OF THE CASE

Torts - Motor Vehicles - Negligence - Damages - Whether the Court of Appeal erred in holding that a driver who collided with a pedestrian was negligent in taking his eyes from the road when the exigencies of driving did not require him to do so - Whether the Court of Appeal erred by apportioning liability between the parties without hearing submissions from both parties on the issue of apportionment.

PROCEDURAL HISTORY

July 13, 1995 Supreme Court of British Columbia (Cowan J.)	Action for liability for the motor vehicle accident dismissed
April 3, 1998 Court of Appeal for British Columbia (Lambert, Donald, and Huddart JJ.A.)	Appeal allowed, liability apportioned
May 29, 1998 Supreme Court of Canada	Application for leave to appeal filed

Mirhali Celik

v. (26563)

U.S.F. & G. Insurance Company of Canada, formerly
known as Fidelity Insurance Company of Canada (Ont.)

NATURE OF THE CASE

Procedural law- Civil procedure - *Canadian Charter of Rights and Freedoms* - Appeal- Courts - Proceeding in wrong forum - Interlocutory proceeding - Whether Court of Appeal erred in quashing proceeding.

PROCEDURAL HISTORY

July 25, 1990 Supreme Court of Ontario (Winter J.)	Respondent's Motion for default judgment against Applicants granted
March 11, 1997 Ontario Court (General Division) (Haines J.)	Motion for an Order to set aside default judgment against Applicants dismissed
August 5, 1997 Supreme Court of Ontario (Leitch J.)	Motion for an Order setting aside Respondent's action dismissed
February 16, 1998 Court of Appeal for Ontario (Brooke, McKinlay and Carthy JJ.A.)	Motion by Respondent for an Order to quash the appeal granted; appeal quashed
April 15, 1998 Supreme Court of Canada	Application for leave to appeal filed

**British Columbia Human Rights Commission
and Commissioner of Investigation and Mediation**

- and -

Andrea Willis

- and -

The British Columbia Human Rights Tribunal

v. (26789)

Robin Blencoe (B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Administrative law - Whether the delay in processing human rights complaints violates the Respondent's s. 7 *Charter* right to liberty and security of the person.

PROCEDURAL HISTORY

February 11, 1998 Supreme Court of British Columbia (Lowry J.)	Petition for judicial review dismissed
May 11, 1998 Court of Appeal for British Columbia (McEachern C.J., Lambert and Prowse JJ.)	Appeal allowed, stay of proceedings ordered.
July 30, 1998 Supreme Court of Canada	First application for leave to appeal filed
August 7, 1998 Supreme Court of Canada	Second application for leave to appeal filed

August 10, 1998
Supreme Court of Canada

Third application for leave to appeal filed

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

CORAM: L'Heureux-Dubé, Gonthier and Bastarache JJ. /
Les juges L'Heureux-Dubé, Gonthier et Bastarache

Ronald Fortin c. Jean Gosselin, et al. (C.A.F.)(Qué.) 26552

SEPTEMBER 21, 1998 / LE 21 SEPTEMBRE 1998

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

James Warren Wells

v. (26642)

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

NATURE OF THE CASE

Criminal law - Sentencing - Conditional sentencing - Aboriginal people - Whether the Court of Appeal erred in its interpretation, definition and application of s. 718.2(e) of the *Criminal Code* by concluding that those provisions do not affect aboriginal offenders convicted of serious crimes - Whether the Court of Appeal erred in concluding that non-traditional sanctions within the framework of the conditional sentencing provisions of the *Criminal Code* might result in the victims of aboriginal offenders being entitled to less protection under the law - Whether the Court of Appeal erred in concluding that a conditional sentence would not ordinarily be available for those offences where the paramount consideration is denunciation and deterrence - Whether the Court of Appeal erred in concluding that a sentencing court need not make inquiries regarding offenders before the court.

PROCEDURAL HISTORY

November 8, 1996
Court of Queen's Bench of Alberta (McMahon J.)

Conviction: sexual assault

December 19, 1996
Court of Queen's Bench of Alberta (McMahon J.)

Sentence: 20 months imprisonment

January 16, 1998
Court of Appeal of Alberta
(Irving, Picard and Sulatycky JJ.A.)

Appeal from conviction dismissed

April 15, 1998
Court of Appeal of Alberta
(Sulatycky, Cairns and Belzil JJ.A.)

Appeal from sentence dismissed

June 4, 1998
Supreme Court of Canada

Application for leave to appeal sentence filed

Her Majesty the Queen

v. (26712)

Ronald Charles Dalton (Crim.)(Nfld.)

NATURE OF THE CASE

Criminal law - Fresh Evidence - Whether the Court of Appeal erred in accepting the Respondent's fresh evidence and ordering a new trial - Whether the Court of Appeal adopted a test that ignored relevance and due diligence.

PROCEDURAL HISTORY

December 15, 1989
Supreme Court of Newfoundland (Trial Division)
(Barry J.)

Conviction: Second degree murder

May 29, 1998
Supreme Court of Newfoundland (Court of Appeal)
(Gushue C.J.N., Marshall and Green JJ.A.)

Fresh evidence application allowed; appeal allowed; conviction quashed and new trial ordered

June 15, 1998
Supreme Court of Canada

Application for leave to appeal filed

BC School Sports

v. (26656)

Christopher Sean Peerless, an infant by his Guardian Ad Litem, Robert T. Peerless (B.C.)

NATURE OF THE CASE

Procedural law - Judgments and orders - Interlocutory injunction - Administrative law - Remedies - Review of nonprofit organization's decision - Whether the Court of Appeal erred in reviewing and granting the injunctive relief - Whether the decision of the Applicant was subject to review by the court - Whether the lower courts disposed of this case properly.

PROCEDURAL HISTORY

December 12, 1997
Supreme Court of British Columbia
(Holmes J.)

Respondent's application for an interlocutory injunction or an interlocutory declaration dismissed; proceedings pursuant to the *Judicial Review Procedure Act* dismissed

January 12, 1998
Court of Appeal for British Columbia (Goldie J.A.)

Application for leave to appeal granted

March 25, 1998 Court of Appeal for British Columbia (Newbury J.A. [dissenting], McEachern C.J., and Prowse J.A.)	Appeal allowed
May 22, 1998 Supreme Court of Canada	Application for leave to appeal filed

Steven Takacs and Melina Boucher

v. (26657)

John R. Gallo (B.C.)

NATURE OF THE CASE

Family law - Torts - Damages - Compensation due to father and alleged common law spouse of twenty-five year old man killed in motor vehicle accident through the negligence of the Respondent - Whether the Court of Appeal erred in principle in failing to compensate the father for his entire loss once he had established a reasonable expectation of pecuniary benefit from his son - Whether the Court of Appeal erred in principle in disentitling Melina Boucher, as a permanent committed spouse in light of the new social reality of young people who must each prepare for a viable, meaningful career in life - *Family Compensation Act*, R.S.B.C. 1979, c 120.

PROCEDURAL HISTORY

June 12, 1996 Supreme Court of British Columbia (Hutchison J.)	Order made under *Family Compensation Act*, R.S.B.C. 1979, c. 120; Respondent ordered to pay $150,000.00 to Applicant Takacs and $75,000.00 to Applicant Boucher
March 18, 1998 Court of Appeal for British Columbia (McEachern C.J.A., Newbury and Huddart JJ.A.)	Appeal from award made to Applicant Takacs allowed and damages reduced to $20,000.00; Appeal from award made to Applicant Boucher allowed and that Applicant's claim dismissed
May 15, 1998 Supreme Court of Canada	Application for leave to appeal filed

CORAM: L'Heureux-Dubé, Gonthier and Bastarache JJ. /
Les juges L'Heureux-Dubé, Gonthier et Bastarache

Santo Mazzeo

v. (26387)

Her Majesty the Queen in Right of Ontario, as advised and represented by the Hon. Claude F. Bennett, the Hon. Robert G. Elgie, M.D., the Hon. Alan W. Pope, Q.C., and as represented by M. Brigan, L.J. Fincham, J. Gardiner, C. Halen, I. Little, G. North, Mr. Rice, W.D. Robertson, T. Seawright, B.G. Syme, D. Wheeler, W. Winegard, J. Usher, and others unknown, and the Attorney General of Ontario (Ont.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil rights - *Discriminatory Business Practices Act - Land Titles Act* - Application of s.15 of the *Charter* to the operation of the *Land Titles Act - Public Authorities Protection Act* and *Limitation Act* - Did Court of Appeal err in disposition of appeal.

PROCEDURAL HISTORY

March 18, 1996 Ontario Court (General Division) (Lally J.)	Respondents' motion to dismiss the Applicant's action allowed
October 15, 1997 Court of Appeal for Ontario (Robin, Abella and Rosenberg JJ.A.)	Appeal dismissed
January 13, 1998 Supreme Court of Canada (L'Heureux-Dubé J.)	Motion to extend time granted
February 25, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Le Sous-ministre du Revenu du Québec

c. (26520)

Béton St-Pierre Inc. (Qué.)

NATURE DE LA CAUSE

Droit fiscal - Législation - Interprétation - Perception de la taxe de vente du Québec - La Cour d'appel du Québec a-t-elle commis une erreur en concluant que l'intimée n'avait pas éludé ou tenté d'éluder l'observation d'une loi fiscale, au sens de l'alinéa 62*d*) de la *Loi sur le ministère du Revenu*, L.R.Q., chap. M-31?

HISTORIQUE PROCÉDURAL

Le 19 septembre 1996 Cour du Québec (Beauchemin j.c.q.)	Déclaration de culpabilité: 17 chefs d'accusation de violation de l'al. 62*d*) de la *Loi sur le ministère du Revenu*, L.R.Q., c. M-31
Le 19 janvier 1998 Cour d'appel du Québec (Beauregard, Proulx et Chamberland j.j.c.a.)	Appel de l'intimée accueilli; déclaration de non culpabilité prononcée
Le 13 mars 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Le sous-ministre du Revenu du Québec

c. (26524)

Daniel St-Pierre (Qué.)

NATURE DE LA CAUSE

Droit fiscal - Législation - Interprétation - Perception de la taxe de vente du Québec - La Cour d'appel du Québec a-t-elle commis une erreur en concluant que l'intimé n'avait pas éludé ou tenté d'éluder l'observation d'une loi fiscale, au sens de l'alinéa 62*d*) de la *Loi sur le ministère du Revenu*, L.R.Q., chap. M-31?

HISTORIQUE PROCÉDURAL

Le 19 septembre 1996 Cour du Québec (Beauchemin j.c.q.)	Déclaration de culpabilité: 17 chefs d'accusation de violation de l'al. 62*d*) de la *Loi sur le ministère du Revenu*, L.R.Q., c. M-31
Le 19 janvier 1998 Cour d'appel du Québec (Beauregard, Proulx et Chamberland j.j.c.a.)	Appel de l'intimé accueilli; déclaration de non culpabilité prononcée
Le 13 mars 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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H.K.

c. (26760)

La Direction de la protection de la jeunesse (Centre jeunesse de Montréal) (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Appel - La Cour d'appel a-t-elle erré en rejetant la requête pour permission d'appel du demandeur compte tenu des circonstances du présent dossier? - Art. 117 de la *Loi sur la protection de la jeunesse*, L.R.Q., ch. P-34.1.

HISTORIQUE PROCÉDURAL

Le 29 octobre 1996 Cour du Québec (Chambre de la jeunesse) (Beaudry j.c.q.)	Requête du Directeur de la protection de la jeunesse accueillie et ordonnance à l'effet que Z.P. soit hébergé dans une famille d'accueil pendant deux ans
Le 17 juillet 1997 Cour supérieure du Québec (Filiatreault j.c.s.)	Requête pour extension des délais d'appel rejetée
Le 22 septembre 1997 Cour d'appel du Québec (Chamberland j.c.a.)	Requête pour permission d'appel rejetée
Le 10 juin 1998 Cour suprême du Canada	Demande d'autorisation d'appel et requête en prorogation de délai déposées

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CORAM: Cory, Major and Binnie JJ. /
Les juges Cory, Major et Binnie

Dr. Michael Barry, Dr. Anne O'Brien, Dr. O.L. Koller and Dr. M.A. Bramstrup

v. (26655)

Andrea Marie Oakley and Saint John Hospital (N.S.)

NATURE OF THE CASE

Procedural Law - Civil Procedure - Courts - Jurisdiction - Pre-trial procedure - Whether a Nova Scotia had jurisdiction to try an action - Whether the Nova Scotia Court of Appeal erred in finding that there was a "real and substantial connection" between Nova Scotia and the subject matter of the litigation - *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077.

PROCEDURAL HISTORY

February, 1996 Supreme Court of Nova Scotia (Davison J.)	Motion to set aside originating notice dismissed
March 27, 1998 Nova Scotia Court of Appeal (Pugsley, Bateman and Cromwell JJ.A.)	Appeal dismissed
May 25, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Jaspal Samra

v. (26665)

Sheila McGraw (Ont.)

NATURE OF THE CASE

Family - Maintenance - Procedural Law - Appeal - Civil procedure - Whether the trial judge misapprehended the available evidence as to when the child was conceived - Whether the Ontario Court (General Division) was justified in dismissing the Applicant's appeal for delay.

PROCEDURAL HISTORY

August 5, 1993 Ontario Court (Provincial Division) (Walmsley J.)	Declaration of paternity and order for support granted
August 21, 1995 Ontario Court (General Division) (Sharpe J.)	Motion to set aside dismissal of appeal is dismissed
March 24, 1998 Court of Appeal for Ontario (Krever, Doherty and Laskin JJ.A.)	Appeal dismissed

May 25, 1998 Supreme Court of Canada	Application for leave to appeal filed
July 28, 1998 Supreme Court of Canada	Amended application for leave to appeal filed

Vicky Karpeta

v. (26671)

The Canadian Radio-Television and Telecommunications Commission (Ont.)

NATURE OF THE CASE

Procedural law - Whether lower courts erred in disposition of case.

PROCEDURAL HISTORY

March 11, 1994 Federal Court of Canada, Trial Division (Wetston J.)	Order *inter alia* requiring Applicant to file further particulars
January 24, 1996 Federal Court of Canada, Trial Division (Denault J.)	Action dismissed
March 21, 1998 Federal Court of Appeal (Strayer and Desjardins JJ.A. and Henry D.J.)	Appeal dismissed
May 26, 1998 Supreme Court of Canada	Application for leave to appeal filed

Kiro Krlinski

v. (26681)

Crestvalley Homes Ltd., also known as
Crest Valley Homes Ltd. (Ont.)

NATURE OF THE CASE

Commercial law - Contracts - Repudiation - Whether an innocent party who elects not to accept the repudiation of a contract and insists on the performance of the defaulting party, is itself relieved from its obligations because the defaulting party had acted in bad faith - Does vendor's failing to give purchaser full 15 days in which to arrange for bank mortgage, as required under the agreement, disentitle vendor to sue for damages in relation to purchaser's repudiation?

PROCEDURAL HISTORY

February 16, 1996 Ontario Court (General Division) (Lane J.)	Respondent's action allowed; Applicant ordered to pay $135,000 plus interest

April 27, 1998
Court of Appeal for Ontario
(Finlayson, Rosenberg and Moldaver JJ.A.)

Appeal dismissed

May 29, 1998
Supreme Court of Canada

Application for leave to appeal filed

**MOTIONS FOR RECONSIDERATION -- REHEARING /
DEMANDES DE RÉEXAMEN -- NOUVELLE AUDITION**

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

1. Claude Deslauriers c. Roch Labelle, et al. (Qué.) 26115

2. Claude Deslauriers c. Ordre des arpenteurs-géomètre du Québec, et al. (Qué.) 26301

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

Keyvan Nourhaghighi v. Her Majesty The Queen (Crim.)(Ont.) 26267

SEPTEMBER 28, 1998 / LE 28 SEPTEMBRE 1998

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

Kevin Charles MacKinnon

v. (26641)

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

NATURE OF THE CASE

Criminal law - Juries - Unanimity of verdict - Whether the verdict was unanimous - Unreasonable verdict - Whether the verdict was unreasonable - Charge to the jury - Whether the trial judge's charge to the jury was improper or prejudicial - Doctrine of recent possession - Whether the doctrine of recent possession violates the presumption of innocence - Whether giving copies of the *Criminal Code* to the jury was prejudicial - Disclosure - Whether disclosure was withheld.

PROCEDURAL HISTORY

October 6, 1995
Court of Queen's Bench of Alberta (Chrumka J.)

Conviction: second degree murder

March 3, 1997
Court of Appeal of Alberta
(McClung, O'Leary and Hunt JJ.A.)

Appeal dismissed

June 3, 1998 Supreme Court of Canada (Iacobucci J.)	Motion by Applicant for an extension of time to file application for leave to appeal granted
June 30, 1998 Supreme Court of Canada	Application for leave to appeal filed

Alexander Yaari

v. (26690)

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

NATURE OF THE CASE

Criminal law - Charge to the jury - Whether the trial judge erred in instructing the jury that the defence theory amounted to speculation and conjecture - Whether the Applicant was denied a fair trial as a result of the Crown explaining to the jury why he had not called a certain witness.

PROCEDURAL HISTORY

January 26, 1994 Ontario Court of Justice (General Division) (Ewaschuk J.)	Convictions: manslaughter and robbery
March 7, 1994 Ontario Court of Justice (General Division) (Ewaschuk J.)	Sentence: 16 years imprisonment
October 2, 1995 Court of Appeal for Ontario (Lacourcière, Arbour and Labrosse JJ.A.)	Appeal from convictions dismissed; appeal from sentence dismissed
June 4, 1998 Supreme Court of Canada	Application for leave to appeal conviction and motion for the extension of time filed

The Public School Boards' Association of Alberta, The Board of Trustees of the Edmonton School District No. 7 and Cathryn Staring Parrish -AND- The Board of Trustees of Calgary Board of Education No.19 and Margaret Ward Lounds

v. (26701)

Her Majesty the Queen in Right of Alberta, The Attorney General of Alberta and the Minister of Education (Alta.)

NATURE OF THE CASE

Constitutional Law - Schools - Whether the Constitution of Canada impliedly or by convention guarantees the reasonable autonomy of school boards - Whether the *School Act*, 1988, S.A. c. S-3.1, as amended, violates the Constitution of Canada - Whether public schools have been denied a right enjoyed by separate schools to opt out of a provincial system of school funding in violation of a constitutional guarantee of "mirror" equality between public and separate schools - Whether public school boards in Alberta have been denied fairness, equal government and legislative treatment in respect to funding

or equal ability to make expenditures without discrimination - Whether Court of Appeal erred in concluding that s.17(1) of the *Alberta Act* does not provide for "mirror equality" between public and separate school boards - Whether Court of Appeal erred in concluding that the *School Act*, 1988, S.A. c. S-3.1, as amended, is not discriminatory within the meaning of s. 17(2) of the *Alberta Act*.

PROCEDURAL HISTORY

November 28, 1995 Court of Queen's Bench of Alberta (Smith J.)	Action to declare legislation invalid allowed in part; Declaration suspended; Resolutions declared effective for the 1997 taxation year
March 31, 1998 Court of Appeal for Alberta (Russell, Picard and Berger JJ.A.)	Cross-appeal allowed; Appeal and cross-appeal dismissed
May 29, 1998 Supreme Court of Canada	Applications for leave to appeal filed

Ronald John Baas and Laura Louise Baas

v. (26706)

Gail Lorraine Jellema (B.C.)

NATURE OF THE CASE

Torts - Assessment - Damages - Motor Vehicles - Negligence - Assessment of damages - Whether the Court of Appeal erred as a matter of law by substituting the jury's verdict with a verdict that the appellate court would have awarded - Whether the Court of Appeal erred as a matter of law in applying *Cory v. Marsh* (1993), 77 B.C.L.R. (2d) 248 - Whether the Court of Appeal ignored evidence.

PROCEDURAL HISTORY

April 26, 1996 Supreme Court of British Columbia (Dillon J.)	Applicant's action for damages allowed
April 21, 1998 Court of Appeal for British Columbia (McEachern C.J., Rowles and Huddart JJ.A.)	Appeal allowed in part; award for non-pecuniary damages reduced to $40,000
June 10, 1998 Supreme Court of Canada	Application for leave to appeal filed

CORAM: L'Heureux-Dubé, Gonthier and Bastarache JJ. /
Les juges L'Heureux-Dubé, Gonthier et Bastarache

Roger Aubin

c. (26674)

Sa Majesté la Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Preuve - Recevabilité de la preuve - Admissibilité en preuve de l'arme saisie au moment de l'arrestation du demandeur en l'absence de preuve établissant de façon précise l'identité de l'arme causant la mort de la victime - Directives au jury sur l'intention et la conscience coupable - Contre-interrogatoire d'un témoin sur ses déclarations antérieures - Écoute électronique - La Cour d'appel du Québec a-t-elle commis une erreur en rejetant le second appel du demandeur?

HISTORIQUE PROCÉDURAL

Le 12 février 1991 Cour supérieure du Québec (Desjardins J.C.S.)	Déclaration de culpabilité: Meurtre au deuxième degré
Le 2 août 1994 Cour d'appel du Québec (LeBel, Tourigny et Chamberland, JJ.C.A.)	Appel accueilli; cassation du verdict de culpabilité; ordonnance de nouveau procès
Le 19 janvier 1995 Cour suprême du Canada (L'Heureux-Dubé, Sopinka et McLachlin, JJ.)	Demande d'autorisation d'appel rejetée
Le 5 novembre 1995 Cour supérieure (Beaulieu, J.C.S.)	Déclaration de culpabilité: Meurtre au deuxième degré
Le 24 juillet 1997 Cour d'appel du Québec (Baudouin, Brossard et Nuss, JJ.C.A.)	Appel rejeté
Le 28 mai 1998 Cour suprême du Canada	Demande d'autorisation d'appel et de prorogation de délai déposée
Le 14 août 1998 Cour suprême du Canada (Bastarache J.)	Requête du demandeur en prorogation de délai accordée.

Cercle d'Or Taxi Limitée et André Valin

c. (26607)

Ville de Montréal (Qué.)

NATURE DE LA CAUSE

Droit municipal - Législation - Textes réglementaires - Infractions - Interprétation - Demandeurs accusés d'avoir enfreint l'art. 49a) du *Règlement relatif à la circulation et à la sécurité publique* de la Ville de Montréal en immobilisant leur taxi à un endroit où une enseigne indique que l'arrêt est interdit - Les juges majoritaires de la Cour d'appel ont-ils erré en droit en interprétant le règlement de façon à interdire aux taxis de s'immobiliser sur une voie dite réservée exclusivement aux autobus et aux taxis afin de faire monter ou laisser descendre des clients? - Les juges majoritaires de la Cour d'appel ont-ils erré en droit en appliquant l'art. 49a) aux taxis circulant sur une voie dite réservée alors qu'il ne doit pas s'y appliquer?

HISTORIQUE PROCÉDURAL

Le 8 août 1994 Cour municipale de Montréal (Léger j.c.m.)	Demandeurs acquittés
Le 9 décembre 1994 Cour supérieure, chambre criminelle (Béliveau j.c.s.)	Appels accueillis, acquittements annulés et demandeurs déclarés coupables; amende de 40$
Le 23 février 1998 Cour d'appel du Québec (LeBel, Fish [dissident] et Rousseau-Houle jj.c.a.)	Pourvois rejetés
Le 24 avril 1998 Cour suprême du Canada	Demande d'autorisation d'appel et requête pour nouvelle preuve déposées

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Noëlla Arsenault-Cameron, Madeleine Costa-Petitpas and la Fédération des Parents de l'Île-du-Prince-Édouard Inc.

v. (26682)

Government of Prince Edward Island (P.E.I.)

NATURE OF THE CASE

Canadian Charter - Civil - Minority language rights - Whether the Applicants' section 23 rights entitle them to minority language education - If so, what level of minority language education are appropriate on the facts of this case.

PROCEDURAL HISTORY

January 8, 1997 Prince Edward Island Supreme Court – Trial Division (DesRoches J.)	Infringement or denial of Applicants' s.23 rights found
April 24, 1998 Prince Edward Island Supreme Court – Appeal Division (Carruthers C.J., Mitchell and McQuaid JJ.A.)	Respondent's appeal allowed; Applicants' cross-appeal dismissed
June 2, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Peter Kornelsen and Oil Sands Hotel (1975) Ltd.

v. (26707)

Regional Municipality of Wood Buffalo (Alta.)

NATURE OF THE CASE

Administrative law - Judicial review - Jurisdiction - Municipal law - Municipal corporations - Statutes - Interpretation - *Municipal Government Act,* S.A. 1994, c.M-26.1 - Whether an Alberta municipality had authority under s. 236 of the *Municipal Government Act* to submit a non-binding question to its electors on the subject of video lottery terminals.

PROCEDURAL HISTORY

July 18, 1997 Court of Queen's Bench of Alberta (Mason J.)	Application dismissed
April 2, 1998 Court of Appeal of Alberta (McClung, Picard and Berger JJ.A.)	Appeal dismissed
June 1, 1998 Supreme Court of Canada	Application for leave to appeal filed

CORAM: Cory, Major and Binnie JJ. /
Les juges Cory, Major et Binnie

Gordon Edward Ledinski

v. (26698)

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

NATURE OF THE CASE

Criminal law - Charter - Whether the trial judge erred by failing to instruct himself to draw an adverse inference as to the credibility of the complainant from the absence of a timely complaint in allegations of indecent assault dating back 25 years - Whether the Court of Appeal for Saskatchewan erred in failing to order disclosure of police and school board files alleged to be material to the Crown's case against the Applicant - Whether the Court of Appeal erred in holding that the Crown's failure to disclose certain documents did not constitute a violation of the Applicant's sections 7 and 11(d) *Charter* rights.

PROCEDURAL HISTORY

April 17, 1991 Court of Queen's Bench for Saskatchewan (Grotsky J.)	Convictions: one count of indecent assault and one count of common assault as included offence in second count of indecent asssault
June 9, 1997 Court of Appeal for Saskatchewan (Tallis, Cameron and Sherstobitoff JJ.A.)	Application for an order to compel production of police investigative files and records of the Kelowna School Board District No. 23 in the Respondent's possession, custody or control that are relevant to the said offences dismissed
February 13, 1998 Court of Appeal for Saskatchewan (Bayda C.J.A., Cameron and Sherstobitoff JJ.A.)	Appeal from count two of the Indictment allowed, conviction quashed and verdict of acquittal entered; appeal from count one of the Indictment dismissed
June 5, 1998 Supreme Court of Canada	Application for leave to appeal and extension of time filed

Anita Endean

v. (26679)

**Her Majesty The Queen in Right
of the Province of British Columbia,
The Attorney General of Canada,
and The Canadian Red Cross Society (B.C.)**

NATURE OF THE CASE

Procedural law - Actions - Civil procedure - Torts - Whether the Court of Appeal for British Columbia erred in striking out as disclosing no reasonable cause of action, pleadings alleging the tort of "spoliation".

PROCEDURAL HISTORY

May 22, 1997 British Columbia Supreme Court (Smith J.)	Application for certification of class proceeding allowed
April 1, 1998 Court of Appeal for British Columbia (Cumming, Goldie and Braidwood JJ.A.)	Appeal allowed, portion of statement of claim struck out
May 29, 1998 Supreme Court of Canada	Application for leave to appeal filed

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United Artists Corporation

v. (26689)

Pink Panther Beauty Corporation (F.C.A.)(Ont.)

NATURE OF THE CASE

Property law - Trade-marks - Well-known or famous marks - Likelihood of confusion - Whether the Court of Appeal erred by not giving deference to the findings of fact of the trial judge on the question of confusion - Whether the Court of Appeal erred in holding that the use of the mark Pink Panther in respect of hair care and beauty supplies could not result in a likelihood of confusion with the well- known United Artist's mark in the mind of the average consumer - Whether the Court of Appeal erred in holding that where there was no connection between the wares or services of an applicant for registration and the wares or services of an opposing trade-mark holder, it is "only in exceptional circumstances, if ever" that likelihood of confusion can be established under the *Trade-marks Act* notwithstanding that the opposing mark is recognized as a famous and well-known mark - Whether the Court of Appeal erred in giving undue emphasis to the public's right to competition as opposed to the rights of the established trade-mark owner in its consideration of the tests for confusion under the *Trade-marks Act* - *Trade-marks Act*, R.S.C. 1985, c. T-10.

PROCEDURAL HISTORY

April 19, 1996 Federal Court, Trial Division (MacKay J.)	Appeal allowed: decision of the Registrar of Trade-marks set aside and Respondent's application for registration of its trade-mark to be refused

March 30, 1998
Federal Court of Appeal
(Isaac C.J., Linden and McDonald JJ.A.)

Appeal allowed

May 29, 1998
Supreme Court of Canada

Application for leave to appeal filed

Brent Paul Rockwood

v. (26777)

Minister of National Revenue (Nfld.)

NATURE OF THE CASE

Civil rights - Whether Respondent erred in law under the *Canadian Human Rights Act* by making unlawful distinction under s. 3(1)(a) and s. 3(2)(c)(ii) of the *Unemployment Insurance Act* and s. 251(1)(a) and s. 251(1)(b) of the *Income Tax Act* with respect to the Applicant - Does question in the Application for Unemployment Insurance Benefits which asks "Were you related to your employer or to one or more of its majority shareholders, by blood, marriage (including common-law) or adoption?" violate the law under the *Canadian Human Rights Act*?

PROCEDURAL HISTORY

March 30, 1998
Tax Court of Canada

Appeal dismissed

May 28, 1998
Supreme Court of Canada

Application for leave to appeal filed

**Michael Gauthier and
The Manitoba Public Insurance Corporation**

v. (26715)

Gerald Robert Mousseau (Man.)

NATURE OF THE CASE

Torts - Damages - Motor Vehicles - Negligence - Liability - Vicarious Liability - Crime Compensation Scheme - *Criminal Injuries Compensation Act of Manitoba*, R.S.M. 1987, c. C305. - Collateral benefits or double recovery - Deductibility of payments by third party - Burden of payment - Whether the Court of Appeal erred in law in failing to overturn the trial judge's decision.

PROCEDURAL HISTORY

October 17, 1997
Court of Queen's Bench of Manitoba (Nurgitz J.)

Respondent's action to recover damages against the Applicant Gauthier allowed

April 20, 1998
Court of Appeal of Manitoba
(Scott C.J.M., Twaddle and Helper JJ.A.)

Appeal dismissed

June 19, 1998
Supreme Court of Canada

Application for leave to appeal filed

OCTOBER 1, 1998 / LE 1er OCTOBRE 1998

26582 **CECILIA AUGUSTINE - v. - DR. ANTHONY LOPES AND ETOBICOKE GENERAL HOSPITAL** (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Torts - Battery - Negligence - Physicians & surgeons - Does a physician have a duty to ensure that the patient has understood the medical information provided by the physician - Does a physician's fiduciary duty to his patient require some effort to persuade the patient to select a more conservative and less invasive option than the drastic and irreversible surgical procedure ostensibly chosen - Does a physician have a duty to explore what resources may be available to the patient to assist in paying for a procedure that may be less invasive but more costly than the one the patient has chosen - Does a hospital have a duty of care to review information received from a patient and in its file to confirm that the patient understands that he or she is in the hospital for a particular surgical procedure - Does a hospital have a duty of care to convey the information it receives from the patient to the doctor, particularly if that information is inconsistent with the doctor's understanding of why the patient is in the hospital?

PROCEDURAL HISTORY

November 18, 1994 Ontario Court (General Division) (Rosenberg J.)	Applicant's action in negligence and battery dismissed
February 13, 1998 Court of Appeal for Ontario (McMurtry, Finlayson and Moldaver JJ.A.)	Appeal dismissed
April 14, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26653 **J.-J.L. - c. - SA MAJESTÉ LA REINE** (Crim.)(Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit criminel - Détermination de la peine - Demandeur reconnu coupable de grossière indécence et d'attentat à la pudeur sur trois jeunes enfants - La Cour d'appel a-t-elle erré en condamnant le demandeur à trois peines d'emprisonnement consécutives pour des événements contemporains et reliés? - Les circonstances justifiaient-elles la Cour d'appel d'attribuer au demandeur une peine d'emprisonnement totale de quatre ans pour des infractions dont l'emprisonnement maximal prévu était de cinq ans? - La Cour d'appel a-t-elle erré en affirmant que le premier juge n'avait pas considéré les objectifs et principes visés aux art. 718 à 718.2 du *Code criminel*, L.R.C. 1985, ch. C-46, lorsqu'il a ordonné au demandeur de

purger sa peine dans la collectivité? - La Cour d'appel a-t-elle appliqué incorrectement l'art. 742.1 *C.cr*. aux fondements circonstanciels des crimes pour lesquels le demandeur a été condamné? - La Cour d'appel a-t-elle mal évalué le danger que le demandeur représentait pour la collectivité?

HISTORIQUE PROCÉDURAL

Le 26 février 1997 Cour du Québec, chambre criminelle et pénale (Provost j.c.q.)	Peine d'emprisonnement de 2 ans moins un jour à être purgée dans la collectivité infligée au demandeur
Le 24 mars 1998 Cour d'appel du Québec (Proulx, Otis et Zerbisias [*ad hoc*] jj.c.a.)	Requête pour permission d'appel et appel accueillis; peine globale d'emprisonnement de 4 ans infligée
Le 25 mai 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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26488 **ELLEN LABELLE - v. - THE LAW SOCIETY OF UPPER CANADA; ROBERT HOWE, JENNIFER MACKINNON, HUGH BRENNAN; THE ATTORNEY GENERAL FOR ONTARIO**
(Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Procedural law - Civil Procedure - Service - Date and manner of service - Applicant alleging that a false affidavit of service was filed with the Respondent's notice intent to defend - Whether the Court of Appeal erred in not striking out the notice of intent and statement of defence filed by the Respondent on the basis that a false affidavit of service was filed with the notice of intent to defend.

PROCEDURAL HISTORY

June 25, 1997 Ontario Court (General Division) (Manton J.)	Applicant's motion to strike out notice of intent to defend and statement of defence, and noting Respondent Brennan in default dismissed
June 25, 1997 Ontario Court (General Division) (Manton J.)	Applicant's action dismissed on Respondent Brennan's cross-motion to strike out statement of claim against him
December 19, 1997 Court of Appeal for Ontario (Carthy, Labrosse and Charron JJ.A.)	Appeal dismissed
February 13, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26496 **DELL R. SPENCER - v. - LORRAINE KING (FORMERLY LORRAINE OLMSTEAD) AND MOCKLER, ALLEN & DIXON (FORMERLY HOYT, MOCKLER, ALLEN & DIXON)** (N.B.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for extension of time is dismissed with costs.

La demande de prorogation de délai est rejetée avec dépens.

NATURE OF THE CASE

Property law - Real property - Damages - Whether the Appeal Court of New Brunswick erred in law by failing to consider key factors when determining the damages due to the Applicant for the Respondents' negligence.

PROCEDURAL HISTORY

December 13, 1990 Court of Queen's Bench of New Brunswick (Trial Division) (Stevenson J.)	Respondents found negligent
April 16, 1992 Court of Queen's Bench of New Brunswick (Trial Division) (Creaghan J.)	Applicant's damages assessed at $4,452.50
November 27, 1992 Court of Appeal of New Brunswick (Rice and Ayles JJ.A., Richard C.J.Q.B. [*ad hoc*])	Appeal dismissed
February 16, 1998 Supreme Court of Canada	Application for leave to appeal filed

26627 **LAWRENCE S. ETIENNE AND MARY ELIZABETH KELSO - v. - DR. JOHN L. REMUS AND DR. GONZALO PERALES** (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

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

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

NATURE OF THE CASE

Procedural law - Appeal - Civil trial by jury - Jury findings reversed on appeal - Did the Court of Appeal err in setting aside the verdict of the jury? - Did the Court of Appeal err by entertaining and accepting the submissions of counsel for the Respondents on the sufficiency of the answers to the questions put to the jury, when no objection was made at trial or in the factum delivered to the Court of Appeal?

PROCEDURAL HISTORY

September 29, 1995 Ontario Court (General Division) (Platana J.)	Applicant's action in damages against Respondent Remus allowed; action against Respondent Perales dismissed
February 13, 1998 Court of Appeal for Ontario (Morden A.C.J.O., Austin and Charron JJ.A.)	Appeal allowed, matter remitted to trial on question of damages; cross-appeal dismissed
April 29, 1998 Supreme Court of Canada	Application for leave to appeal and for an extension of time to file application, filed

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26547 **CARGILL LIMITED - v. - HER MAJESTY THE QUEEN** (F.C.A.) (Man.)

CORAM: Cory, Major and Binnie 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 - *Income Tax Act*, s. 20(1)(gg) - Deductions - Whether a taxpayer was entitled to claim a deduction for an inventory allowance pursuant to s. 20(1)(gg) of the *Income Tax Act* - Whether the taxpayer had a sufficient proprietary interest in grain which it held in storage, commingled with grain which it had purchased, to qualify for the deduction -- Whether the Tax Court and the Federal Court of Appeal had erred in determining that the taxpayer did not qualify for the full deduction claimed.

PROCEDURAL HISTORY

January 19, 1996 Tax Court of Canada (Sarchuk J.T.C.C.)	Dismissed appeal from reassessment disallowing portion of Applicant's claim for inventory allowance.
January 28, 1998 Federal Court of Appeal (Isaac C.J., Stone and McDonald JJ.A.)	Appeal dismissed.
April 23, 1998 Supreme Court of Canada	Application for leave to appeal filed.

26575 **HARRY JOSEPH FIND AND BARRIE SOUND CONCEPTS LTD. - v -. BOMBARDIER CREDIT LIMITED** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Commercial law - Bankruptcy - Statutes - Interpretation - Did the Court of Appeal err in depriving the Applicant of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations under the terms of the agreements entered into with the Respondent - Did the Ontario Court of Appeal err in failing to recognize that the creditor had not followed the strict timeliness constraints in the filing of the Petitions, as required in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 43?

PROCEDURAL HISTORY

January 9, 1995 Ontario Court (General Division) (Haines J.)	Receiving orders made against both Applicants; receiver appointed
February 11, 1998 Ontario Court of Appeal (Labrosse and Charron JJ.A., Sharpe J. *ad hoc*)	Appeal dismissed
April 7, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26566 **604598 SASKATCHEWAN LTD., CARRYING ON BUSINESS UNDER THE NAME OF "THE GREAT CANADIAN SUPERBAR" - v. - THE SASKATCHEWAN LIQUOR AND GAMING AUTHORITY, THE ATTORNEY GENERAL FOR SASKATCHEWAN AND THE SASKATCHEWAN LIQUOR AND GAMING LICENSING COMMISSION** (Sask.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs to the Saskatchewan Liquor and Gaming Authority.

La demande d'autorisation d'appel est rejetée avec dépens à Saskatchewan Liquor and Gaming Authority.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil - Standing as of right - Public interest standing - "Exceptional prejudice" - Freedom of expression - Section 2(b) and section 1 of the *Charter* - Constitutional law - Division of powers - Constitutionality of laws - Administrative law - Liquor control licences - Prohibited entertainment pursuant to s. 54(1)(b) of *The Alcohol Control Regulations, 1994* - Striptease performance - Whether the Court of Appeal erred in deciding the issue of standing - Whether the Court of Appeal erred in its consideration of the issue of challenging the constitutionality of laws - Whether the Court of Appeal erred in its *Charter* analysis.

PROCEDURAL HISTORY

February 14, 1997 Court of Queen's Bench of Saskatchewan (Hrabinsky J.)	Applicant's application allowed
February 5, 1998 Court of Appeal for Saskatchewan (Cameron, Lane, Jackson JJ.A.)	Appeal allowed
April 3, 1998	Supreme Court of Canada

Application for leave to appeal filed

26487 **ADITYA VARMA - v. - CANADA POST CORPORATION, CANADIAN UNION OF POSTAL WORKERS AND MARTIN TEPLITSKY** (F.C.A.) (Ont.)

CORAM: Cory, Major and Binnie JJ.

The motion for extension of time is granted and the application for leave to appeal as well as all ancillary motions are dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel et toutes requêtes accessoires sont rejetées

NATURE OF THE CASE

Administrative Law - Judicial review - Arbitration - Discrimination - Whether the Applicant was given a proper review of his complaint by the Canadian Human Rights Commission? - Whether the Applicant was discriminated against by the Commission, his employer and the Courts?

PROCEDURAL HISTORY

July 5, 1995 Federal Court of Canada, Trial Division (Reed J.)	Application for judicial review of a decision of the Canadian Human Rights Commission dated December 10, 1993: Application dismissed
October 21, 1996 Federal Court of Appeal (Stone, Linden and Henry JJ.A.)	Appeal dismissed
July 18, 1997 Federal Court of Appeal (Linden J.A.)	Application for extension of time to reconsider dismissed
February 9, 1998 Supreme Court of Canada	Application for leave to appeal filed
February 12, 1998 Supreme Court of Canada	Motion for extension of time filed

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26503 **THE MINISTER OF FINANCE (FORMERLY THE MINISTER OF REVENUE) - v. - UPPER LAKES SHIPPING LTD.** (Ont.)

CORAM: Cory, Major and Binnie 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 - Assessments - Business tax - Calculation of "paid-up capital" - Statutes - Interpretation - Corporations - Provincial corporations tax - *Corporations Tax Act*, R.S.O. 1980, c. 97, as amended - Whether this decision is inconsistent with the interpretations afforded to other federal and provincial legislative provisions which are virtually identical - Was the correct approach applied by the Court of Appeal in interpreting the statute - Whether the Court of Appeal's decision was based on a misapprehension regarding the issue of double taxation.

PROCEDURAL HISTORY

April 7, 1995 Ontario Court of Justice (General Division) (Potts J.)	Respondent's appeals dismissed: reassessments confirmed
January 14, 1998 Ontario Court of Appeal (Carthy, Labrosse, Charron JJ.A.)	Appeal allowed: reassessments referred back to the Applicant for reconsideration
March 18, 1998 Supreme Court of Canada (Major J.)	Motion for an extension of time to file application for leave to appeal granted
April 15, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26608 **ROYA SHEIKHOLESLAMI - v. - ATOMIC ENERGY OF CANADA LIMITED** (F.C.A.) (B.C.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Labour Law - Labour Relations - Administrative Law - Remedies - *Canada Labour Code* (unjust dismissal provisions) - Reasons - Whether adjudicator erred in failing to order reinstatement after finding complainant had been unjustly dismissed - Whether adjudicator erred in law in failing to give reasons to support conclusion that reinstatement was not an appropriate remedy.

PROCEDURAL HISTORY

November 29, 1996 Federal Court, Trial Division (Rouleau J.)	Application for judicial review allowed; matter returned to adjudicator for reconsideration of remedy.
February 24, 1998 Federal Court of Appeal (Marceau, Strayer and Létourneau JJ.A.)	Appeal allowed; decision of Trial Division quashed and decision of adjudicator confirmed
April 27, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26613 **FRANZ DOBNIK - v. - DARCY'S IMPORT CO. LTD, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF THE INTERFACE FINANCIAL GROUP** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Commercial Law - Contracts - Creditor and debtor - Guaranty/suretyship - Loan - Extent to which the creditor must pursue and exhaust default remedies against the principal debtor before demanding payment from the guarantor.

PROCEDURAL HISTORY

June 27, 1997 Ontario Court (General Division) (MacFarland J.)	Summary judgment granted
February 26, 1998 Court of Appeal for Ontario (Carty, Lacrosse and Larkin JJ.A.)	Appeal dismissed
April 27, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26616 **PETER WING LO - v. - SCOTIA McLEOD INC.** (B.C.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Procedural law - Appeal - Whether the Court of Appeal correctly denied an extension of time to appeal summary judgment.

PROCEDURAL HISTORY

November 14, 1997 Supreme Court of British Columbia (Morrison J.)	Respondent's application for summary judgment granted; Applicant's cross-application dismissed
February 6, 1998 Court of Appeal for British Columbia (Hall J.A.)	Application for indigent status with respect to order of Morrison J. dismissed
March 6, 1998 Court of Appeal for British Columbia (Rowles J.A.)	Application for an extension of time to file an appeal from the order of Morrison J. dismissed

April 21, 1998
Supreme Court of Canada
Application for leave to appeal filed

July 13, 1998
Supreme Court of Canada
Response and alternative application for order under Rule 51.1 filed

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26620 **RANJIT S. AHLUWALIA - v. - RICHMOND CABS LTD.** (B.C.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Procedural Law - Denial of extension of time to file appeal books and factum - Whether issue to be raised on appeal was subject to issue estoppel.

PROCEDURAL HISTORY

June 10, 1994
Supreme Court of British Columbia (Newbury J.)
Action for specific performance or damages dismissed

December 3, 1996
Supreme Court of British Columbia (Bauman J.)
Motion to add defendants granted; Motion to dismiss claim and injunction dismissed

February 13, 1998
Court of Appeal for British Columbia
(Donald J.A., in chambers)
Extension of time to file appeal books and factum to appeal from motion to add defendants dismissed

April 7, 1998
Court of Appeal for British Columbia
(Hinds, Hollinrake, Finch JJ.A.)
Application to vary order denying time extension dismissed

April 30, 1998
Supreme Court of Canada
Application for leave to appeal filed

26621 **RANJIT S. AHLUWALIA & OTHERS - v. - RICHMOND CABS LTD., CORAL CABS LTD.** (B.C.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs to Richmond Cabs Ltd.

La demande d'autorisation d'appel est rejetée avec dépens à Richmond Cabs Ltd.

NATURE OF THE CASE

Commercial Law - Securities - Nature of shares - Procedural Law - Refusal to adjourn an appeal - Whether issues were subject to the doctrine of issue estoppel - Whether an agreement was an obligation to pay dispatch and administrative fees.

PROCEDURAL HISTORY

February 8, 1996 Supreme Court of British Columbia (MacDonald J., in chambers)	Motion for judgment granted; Damages awarded
March 26, 1998 British Columbia Court of Appeal (Southin, Rowles and Ryan JJ.A.)	Application to adjourn appeal dismissed; Appeal dismissed
April 30, 1998 Supreme Court of Canada	Application for leave to appeal filed

26610 **ROGER LAWRENCE - v. - HER MAJESTY THE QUEEN** (Crim.) (B.C.)

CORAM: Cory, Major and Binnie JJ.

The applications to file further material including that referred to in the Notice of Motion dated the 29th of September 1998, are, to date, not opposed by the Crown and leave to file the material as additional evidence on the leave application is granted.

The application to extend the time for bringing this application is granted.

The application for leave to appeal is dismissed.

Les demandes d'autorisation de dépôt de documents supplémentaires, y compris celle qui est mentionnée dans l'avis de requête daté du 29 septembre 1998 ne font, jusqu'ici, l'objet d'aucune opposition de la part de la Couronne et l'autorisation de déposer les documents à titre d'éléments de preuve supplémentaires dans la demande d'autorisation est accueillie.

La demande de prorogation du délai prévu pour le dépôt de la présente demande est accueillie.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Evidence - Fresh Evidence - Charge to the jury - Whether the trial judge misstated the evidence - Jurisdiction - Apprehension of Bias - Whether the Court of Appeal erred in declining to exercise jurisdiction to reopen the appeal - Whether the trial judge erred in the charge to the jury on conspiracy.

PROCEDURAL HISTORY

October 5, 1993 Supreme Court of British Columbia (Wong J.)	Convictions: five counts of fraud and two counts of possession of proceeds obtained by the commission of an indictable offence

January 29, 1996 British Columbia Court of Appeal (McEachern C.J., Wood and Ryan JJ.A.)	Applicant's appeal dismissed
January 29, 1996 British Columbia Court of Appeal (McEachern C.J., Wood and Ryan JJ.A.)	Addendum to reasons for judgment
February 26, 1998 British Columbia Court of Appeal (Southin J.A.)	Applicant's application dismissed
April 24, 1998 Supreme Court of Canada	Application for leave to appeal and other ancillary motions filed

21.7.1998

Her Majesty The Queen

v. (26757)

R.W.S. (Man.)

AS OF RIGHT

25.8.1998

Thomas Bruce Baker

v. (26562)

Monica Frieda Francis (Ont.)

8.9.1998

Sa Majesté la Reine

c. (26830)

J.-L. J. (Crim.)(Qué.)

DE PLEIN DROIT

8.9.1998

Philip Brown Matthews et al.

v. (26372)

Iris Nowell (Ont.)

(appeal)

OCTOBER 1, 1998 / LE 1er OCTOBRE 1998

25852 **DELTONIA R. COOK - v. - HER MAJESTY THE QUEEN -and- THE ATTORNEY GENERAL OF CANADA** (Crim.) (B.C.)

CORAM: The Chief Justice and L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major, Bastarache and Binnie JJ.

The appeal is allowed, the judgments of the British Columbia Court of Appeal and of the British Columbia Supreme Court are set aside, and a new trial is ordered, L'Heureux-Dubé and McLachlin JJ. dissenting.

Le pourvoi est accueilli, les jugements de la Cour d'appel de la Colombie-Britannique et de la Cour suprême de la Colombie-Britannique sont annulés et un nouveau procès est ordonné. Les juges L'Heureux-Dubé et McLachlin sont dissidentes.

26321 **MINISTER OF HEALTH AND COMMUNITY SERVICES - v. - . M.L., et al (N.B.)**

Hearing and judgment: June 23, 1998; Reasons delivered: October 1

Audition et jugement: 23 juin 1998; Motifs déposés: 1er octobre.

Deltonia R. Cook v. Her Majesty the Queen (Crim.)(B.C.)(25852)
Indexed as: R. *v.* Cook / Répertorié: R. *c.* Cook
Judgment rendered October 1, 1998 / Jugement rendu le 1 octobre 1998

Present: Lamer C.J. and L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major, Bastarache and Binnie JJ.

Constitutional law -- Charter of Rights -- Extraterritorial application -- Canadian police officers interviewing suspect in the United States on suspicion of a murder committed in Canada -- Charter right to counsel (s. 10(b)) allegedly infringed -- Whether the Charter applies to the taking of the accused's statement in the United States by Canadian police for a criminal prosecution to take place in Canada -- If so, whether the Charter was breached -- If a breach occurred, whether the statement should be excluded under s. 24(2) -- Canadian Charter of Rights and Freedoms, ss. 7, 10(b), 24(2), 32(1).

Evidence -- Admissibility -- Canadian police officers interviewing suspect in the United States on suspicion of a murder committed in Canada -- Charter right to counsel (s. 10(b)) allegedly infringed -- Statement's admission sought to impeach credibility -- Whether or not statement made at interview should be admitted.

The accused was arrested in the United States by U.S. authorities pursuant to a warrant issued in connection with a Canadian extradition request following a murder committed in Canada. The accused was read his Miranda rights upon arrest and said he understood those rights. When taken before a United States Magistrate, the accused indicated that he wanted a lawyer appointed for him, but he did not see or contact a lawyer prior to his interrogation by the Canadian detectives.

The Canadian detectives who interviewed the accused did not ask the U.S. authorities if the accused had requested a lawyer and, indeed, informed the accused of his right to a lawyer in a confusing and defective manner subsequent to asking the accused a series of background questions. The accused gave a statement in which he denied having committed the murder. At trial, the Crown sought a ruling which would have permitted it to use this statement to impeach the accused's credibility. On a *voir dire*, the defence alleged that the statement was obtained in breach of s. 10(*b*) of the *Canadian Charter of Rights and Freedoms* and sought its exclusion under s. 24(2). The trial judge found that the statement was admissible, notwithstanding the *Charter* breach, for the limited purpose of impeaching the accused's credibility in cross-examination. The accused was convicted and his appeal to the Court of Appeal was dismissed. At issue is: (1) whether the *Charter* applies to the taking of the accused's statement by Canadian police in the United States in connection with their investigation of an offence committed in Canada for a criminal prosecution to take place in Canada; (2) if so, whether the *Charter* was breached in the circumstances; and, (3) if the *Charter* was breached, whether the statement should be excluded under s. 24(2) of the *Charter*.

Held (L'Heureux-Dubé and McLachlin JJ. dissenting): The appeal should be allowed.

Per Lamer C.J. and **Cory**, **Iacobucci**, Major and Binnie JJ.: The *Charter* applies to the actions of the Canadian detectives in interviewing the accused in the United States and its application here does not interfere with the sovereign authority of the U.S.

Application of the *Charter* abroad cannot be determined merely by reference to s. 32(1). Notwithstanding the general prohibition in international law against the extraterritorial application of domestic laws, the *Charter* can in certain limited and rare circumstances apply beyond Canada's territorial boundaries. Although territory is clearly a critical element in determining the scope of a state's jurisdiction under international law, some circumstances exist where the reach of domestic law may not be determined solely by reference to territory. In these circumstances, the application of the *Charter* to Canadian law enforcement authorities can be founded on other jurisdictional principles that will not result in an objectionable interference with the exercise of a foreign state's jurisdiction.

International law permits states to evoke the nationality of the person subject to the domestic law as a valid basis of jurisdictional authority. Jurisdictional competence on the basis of territoriality and nationality is an incident of sovereign equality and independence. The terms "nationality" and "citizenship" are not synonymous. Nationality is much broader and refers to a person who may not possess full political and civil rights of citizenship but nevertheless has a right of protection of the state and in return owes allegiance to it. To require that Canadian law enforcement authorities comply

with *Charter* standards abroad may not, depending on the circumstances, interfere with the foreign state's sovereign authority and integrity. However, an objectionable extraterritorial effect would result if the *Charter* were applied to foreign officers, even where the foreign officers can be described as the agents of Canadian authorities.

The *Charter* is not absolutely restricted in its application to Canadian territory. It applies on foreign territory in circumstances where the impugned act falls within the scope of s. 32(1) of the *Charter* on the jurisdictional basis of the nationality of the state law enforcement authorities engaged in governmental action and where the application of *Charter* standards will not conflict with the concurrent territorial jurisdiction of the foreign state.

The *Charter* applies to the actions of the Canadian detectives in the United States. First, since the interrogation was conducted by Canadian detectives in accordance with their powers of investigation which are derived from Canadian law, the impugned action falls within the purview of s. 32(1). Second, applying the *Charter* to the Canadian detectives' actions in these circumstances does not result in an interference with the territorial jurisdiction of the foreign state. It is reasonable both to expect the Canadian officers to comply with *Charter* standards and to permit the accused, who is being made to adhere to Canadian criminal law and procedure, to claim Canadian constitutional rights relating to the interrogation conducted by the Canadian officers abroad.

The application of the *Charter* here will not ultimately confer *Charter* rights on every person in the world who is in some respect implicated in the exercise of Canadian governmental authority abroad. The holding here marks an exception to the general rule in public international law of territorial limits upon a state's exercise of jurisdiction, and arises on the basis of the very particular facts. The situation is far different from the myriad of circumstances in which persons outside Canada are trying to claim the benefits of the *Charter simpliciter*.

The breach was very serious if not flagrant. The advice as to the right to counsel omitted pertinent information and in this way was defective. More importantly, it was confusing and misleading to the extent that it deprived the accused of the opportunity to make a decision whether to obtain legal advice. For police to lie or mislead individuals with regard to their *Charter* rights is fundamentally unfair and demeaning of those *Charter* rights. To countenance it would bring the administration of justice into disrepute. As well, the breach occurred when the accused was in custody and therefore particularly vulnerable.

Three groups of factors are to be considered in determining whether the admission of evidence would bring the administration of justice into disrepute: the effect of admission of the evidence on the fairness of the trial, the seriousness of the breach and the effect of exclusion of the evidence on the repute of the administration of justice. The question in all cases is whether the admission of the evidence could bring the administration of justice into disrepute, in the eyes of a reasonable person, dispassionate and fully apprised of the circumstances.

The nature of the evidence and of the violation are relevant to the determination of whether the admission of the evidence would render the trial unfair. The initial step is to classify the type of evidence in question, first as conscriptive or non-conscriptive. Subject to rare exceptions, conscriptive evidence must be excluded. While the impugned statement contained denials of guilt, and therefore could be said not to be "self-incriminating", the content of the statement does not change its characterization for purposes of this analysis. Here, the accused's statement made to the Canadian officers should be classified as conscriptive. There were no special circumstances here to justify the statement's admission.

The distinction between incriminating and exculpatory statements is not a factor that should influence the s. 24(2) analysis. Similarly the fact that the Crown seeks to use the evidence only in cross-examination of the accused should not have persuaded the trial judge to decide in favour of admitting the evidence. The evidence should be excluded under s. 24(2).

Per Gonthier and **Bastarache** JJ.: There is no conflict between an interpretation of s. 32(1) which favours the application of the *Charter* to the activities of Canadian officials conducting an investigation abroad and international law principles of territorial jurisdiction.

Section 32(1) defines the application of the *Charter* according to who acts, not where they act. It applies the *Charter* to those persons exercising legislative authority or to those who are part of the executive government -- to governmental action, which may arise either because of the nature of the powers exercised, or because the actor is actually a part of the government. On its face, no mention is made of a territorial limitation. Section 32(1) therefore applies to officers of the Canadian state who are abroad, independent of whether they exercise governmental powers of coercion or not. That person's movement into another jurisdiction does not alter his or her status or the application of the *Charter* to him or her. The fact that the officer may not be authorized to exercise any legislative power because of his or her presence in a foreign jurisdiction is immaterial.

Section 32(1) dictates that the *Charter* may not be applied to any matter within the authority of a foreign government, or to foreign personnel (unless they are somehow concurrently part of the Canadian government or subject to Canadian legislative authority). The key issue in cases of cooperation between Canadian officials and foreign officials exercising their statutory powers is determining who was in control of the specific feature of the investigation which is alleged to constitute the *Charter* breach. This inquiry involves weighing the relative roles of the Canadian officials and of the foreign officials. When a Canadian officer is invited by the foreign official to exercise some power during an investigation, whether s. 32(1) is engaged will depend on the extent to which the exercise of the power is supervised by the foreign official. If, in weighing these factors, it is found that the foreign authority was responsible for the specific circumstances leading to the *Charter* breach, then those activities are not subject to the *Charter*, notwithstanding the participation of the Canadian officials in the cooperative investigation. In cases in which a defendant seeks to invoke s. 24(2) to exclude evidence from a trial being conducted in Canada, the focus of the analysis must be on the relative roles of the Canadian and foreign officials in obtaining the specific evidence which the defendant seeks to exclude. If the Canadian officials were primarily responsible for obtaining the evidence in a manner which violated the *Charter*, then the *Charter* will apply to them and to the evidence obtained by them. In this case, the Canadian police officers exercised virtually total control over the questioning procedure.

At international law, territoriality in respect of the jurisdiction to enforce is very different from territoriality as it might constrain the prescription of juridical consequences within the domestic legal system. Modern territoriality doctrine recognizes that it is permissible to assert criminal jurisdiction over acts taking place in another state if they are connected to other acts that take place in the forum state which are in furtherance of criminal behaviour, or if the acts in the other state have some pernicious consequence within the forum. It is sufficient that there be a "real and substantial link" between an offence and this country. The courts of Canada can take cognizance of the decisions of other countries through the principles of *autrefois acquit* and *autrefois convict*.

Whether there is an extraterritorial application of law depends to a large extent on whether there is a conflict between the two legal systems engaged. The objective territorial principle will give way to an impermissible extraterritoriality on the basis of two factors: first, a conflict between the application of the two legal systems; and second, where there is a conflict, the application by a state of its laws without any, or with a lesser, real and substantial connection to the events in question. International law requires that concurrent claims to jurisdiction, especially with respect to the criminal law, be carefully circumscribed to ensure that a state purporting to assume jurisdiction over events occurring abroad has a significant connection, or in the case of conflict with another jurisdiction, the most significant connection to the events in question.

The nature of the *Charter* guarantees, in particular those contained in ss. 7-14, must be assessed to determine whether there is a possibility of conflict with a foreign legal system. The legal rights contained in the *Charter* qualify and condition the exercise of powers by government officials and ensure that if the government chooses to conduct an investigation, it must observe certain rules.

There is a real and substantial connection between the investigation taking place abroad and the *Charter* simply by virtue of the fact that Canadian officials are involved. This connection cannot be equated with nationality. Indeed, the application of the nationality principle to Canadian police officers abroad was irrelevant.

Three factors are relevant to determining whether the application of the *Charter* interferes with the jurisdictional integrity of the host state, and whether that state has a more real and substantial connection to the events, so as to displace

the presumed jurisdiction of Canadian law. First, the terms of s. 32(1) do not extend the application of the *Charter* to the actions of foreign officials, or to the exercise of powers authorized by a foreign legal authority. Second, the nature of the rights contained in the relevant sections of the *Charter* are not mandatory, but rather conditional upon the occurrence of specified investigatory activities. Third, the nature of the juridical consequences prescribed by the legal system of the forum do not raise any problems of extraterritoriality.

Evidence obtained as a result of a *Charter* breach is not automatically excluded at the trial of a defendant. Section 24(2) ensures that circumstances in the foreign country may be taken into account in determining whether the evidence should be admitted notwithstanding the breach of the *Charter*.

Per **L'Heureux-Dubé** and McLachlin JJ. (dissenting): A person invoking a *Charter* right must first show that he or she held that right. Determining whether someone is granted a right by the *Charter* involves an analysis of the language of the provision at issue and of the purposes of the rights guarantees in the Canadian constitution. Neither party put forward argument on the question of whether the accused was a rights holder at the time his rights were allegedly violated, so the appeal was not decided on that basis.

Previous jurisprudence has established two fundamental principles regarding the extraterritorial application of the *Charter*. First, the action alleged to have violated the *Charter* must have been carried out by one of the governmental actors enumerated in s. 32. Second, if there is cooperation between Canadian and foreign officials on foreign soil, that action will not trigger *Charter* application even if the action is attributable to a government listed in s. 32.

Whether an investigation is cooperative depends on whether Canadian officials have legal authority in the place where the actions alleged to have infringed the *Charter* took place. Section 32 of the *Charter* mandates that it applies to matters that fall "under the authority"of Parliament or a provincial legislature. An investigation on soil under foreign sovereignty takes place under the authority of the foreign state, so s. 32 is not triggered. The *Charter* does not apply to any investigation where Canadian officials no longer hold the legal attributes of government. This occurs whenever an investigation takes place under foreign sovereignty.

The accused did not benefit from the protections of s. 10(*b*) because the Canadian police were acting under U.S. legal sovereignty. They had to cooperate with Americans and work under American law in order to carry out their investigations. Their actions were not independent of the U.S. legal system, nor were the Canadian state's legal powers implicated. The circumstances of this case show the myriad of ways in which cooperation was necessary here, and is necessary whenever Canadian officials work under the sovereignty of another government.

The *Charter* guarantees of a fair trial (s. 11(*d*)) and of respect for the principles of fundamental justice (s. 7) may apply to exclude the admission of evidence at a trial, whether or not a *Charter* right applied to the gathering of that evidence. Evidence will be excluded when its admission would lead to an unfair trial. However, the fact that the evidence was obtained in a manner that would have violated one of the sections of the *Charter* is not determinative. All relevant circumstances must be taken into account. An important factor in this analysis is whether it was Canadian or foreign police who were responsible for the alleged unfairness. Canadian police should ensure, to the extent possible, that the letter and spirit of the *Charter*'s protections are accorded, and their actions will be examined more strictly than those of foreign officials who work within a legal system that has different procedures from our own.

Here, the conduct of the Canadian detectives was not so serious that admission of the evidence would violate the accused's right to a fair trial, taking into account all the circumstances and society's interest in finding out the truth. The accused was aware of his right to counsel from the time of his arrest, and understood this right. His statement was voluntary, since he knew he did not have to talk to the Canadian officers. The Canadians told him of his right to counsel, though not in the clearest way possible, and offered to put him in touch with a legal aid lawyer. The delay in giving the information is relatively unimportant for the purpose of determining the admissibility of these statements, since they were made after the information about the right to counsel was given, and only background information was discussed before this point.

The evidence was admitted for the limited purpose of impeaching the accused's credibility on cross-examination. In many cases, the use of the statements at the trial is of no significance in the analysis under either s. 7 or s. 24(2). However, in this case, where the credibility of other witnesses was also impugned with prior inconsistent statements, the jury would have been given a misleading impression about the credibility of the accused, compared to that of other witnesses, had the evidence not be admitted. This contributes to the finding that s. 7 was not violated.

The trial judge properly instructed the jury on the limited use that could be made of the accused's statements.

APPEAL from a judgment of the British Columbia Court of Appeal (1996), 85 B.C.A.C. 192, 112 C.C.C. (3d) 508, [1996] B.C.J. No. 2615 (QL), dismissing an appeal from conviction by Low J. sitting with jury. Appeal allowed, L'Heureux-Dubé and McLachlin JJ. dissenting.

Neil L. Cobb and *Kathleen Mell*, for the appellant.

Gregory J. Fitch, for the respondent.

S. David Frankel, Q.C., for the intervener.

Solicitors for the appellant: Cobb, McCabe & Co., Vancouver.

Solicitor for the respondent: The Attorney General of British Columbia, Victoria.

Solicitor for the intervener: The Attorney General of Canada, Ottawa.

Présents: Le juge en chef Lamer et les juges L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major, Bastarache et Binnie.

Droit constitutionnel -- Charte des droits -- Application extra-territoriale -- Interrogatoire par des policiers canadiens aux États-Unis d'une personne soupçonnée d'avoir commis un meurtre au Canada -- Allégation de violation du droit à l'assistance d'un avocat garanti par la Charte (al. 10b)) -- La Charte s'applique-t-elle à l'enregistrement de la déclaration de l'accusé par des policiers canadiens, aux États-Unis, en vue de poursuites pénales au Canada? -- Dans l'affirmative, y a-t-il eu violation de la Charte? -- S'il y a eu violation de la Charte, la déclaration doit-elle être écartée en vertu du par. 24(2)? -- Charte canadienne des droits et libertés, art. 7, 10b), 24(2), 32(1).

Preuve -- Admissibilité -- Policiers canadiens interrogeant aux États-Unis une personne soupçonnée d'avoir commis un meurtre au Canada -- Allégation de violation du droit à l'assistance d'un avocat garanti par la Charte (al. 10b)) -- Admission de la déclaration demandée par le ministère public pour attaquer la crédibilité de l'accusé -- La déclaration faite à l'interrogatoire devrait-elle être admise?

L'accusé a été arrêté aux États-Unis en vertu d'un mandat par les autorités américaines à la suite d'une demande d'extradition des autorités canadiennes relativement à un meurtre commis au Canada. La mise en garde de l'arrêt *Miranda* lui a été lue et il a déclaré comprendre ses droits. Devant le magistrat, l'accusé a dit qu'il voulait qu'un avocat soit désigné pour le défendre, mais aucun avocat ne l'a contacté et il n'a communiqué avec aucun avocat avant d'être interrogé par les détectives canadiens.

Les détectives canadiens qui ont interrogé l'accusé n'ont pas vérifié auprès des autorités américaines si ce dernier avait demandé un avocat; en fait, ils ont informé l'accusé de façon embrouillée et inadéquate de son droit à l'assistance d'un avocat après lui avoir posé une série de questions sur ses antécédents. L'accusé a fait une déclaration dans laquelle il a nié avoir commis le meurtre. Au procès, le ministère public a demandé à la cour de l'autoriser à utiliser cette déclaration pour attaquer la crédibilité de l'accusé. Dans le cadre d'un voir-dire, la défense a allégué que la déclaration avait été obtenue en violation de l'al. 10*b*) de la *Charte canadienne des droits et libertés* et elle a sollicité l'exclusion de la déclaration en vertu du par. 24(2). Le juge du procès a conclu que la déclaration était admissible, malgré la violation

de la *Charte*, dans le but limité d'attaquer la crédibilité de l'accusé dans le cadre du contre-interrogatoire. L'accusé a été déclaré coupable et l'appel qu'il a interjeté devant la Cour d'appel a été rejeté. La Cour est appelée à trancher les questions suivantes: (1) La *Charte* s'applique-t-elle à l'enregistrement de la déclaration de l'accusé qu'ont réalisé des policiers canadiens aux États-Unis dans le cadre de leur enquête sur une infraction perpétrée au Canada en vue de poursuites pénales au Canada? (2) Dans l'affirmative, y a-t-il eu violation de la *Charte* dans les circonstances? (3) S'il y a eu violation de la *Charte*, la déclaration doit-elle être écartée en vertu du par. 24(2) de la *Charte*?

Arrêt (les juges L'Heureux-Dubé et McLachlin sont dissidentes): Le pourvoi est accueilli.

Le juge en chef Lamer et les juges **Cory**, **Iacobucci**, Major et Binnie: La *Charte* s'applique aux actes accomplis par les détectives canadiens qui ont interrogé l'accusé aux États-Unis, et son application en l'espèce ne constitue pas une atteinte à l'autorité souveraine de ce pays.

La question de l'application de la *Charte* à l'étranger ne peut être tranchée par la simple consultation du par. 32(1). Malgré le fait qu'en droit international, l'application extra-territoriale des lois nationales soit interdite de manière générale, la *Charte* peut, dans de rares circonstances limitées, s'appliquer au-delà des frontières du Canada. Bien que le territoire soit de toute évidence un élément crucial dans l'appréciation de la portée de la compétence d'un État en droit international, il se peut, dans certains cas, que la portée du droit interne ne puisse être déterminée par le seul territoire. Dans ces cas-là, l'application de la *Charte* aux autorités policières canadiennes peut se fonder sur d'autres principes en matière de compétence et ne représentera pas une ingérence inacceptable dans l'exercice de la compétence d'un autre État.

Le droit international permet aux États d'invoquer la nationalité de la personne soumise à la loi nationale comme titre valide de compétence. La compétence fondée sur la territorialité et la nationalité est un attribut de l'égalité souveraine et de l'indépendance. Les termes «nationalité» et «citoyenneté» ne sont pas des synonymes. La nationalité a une portée beaucoup plus large, et elle renvoie à une personne qui peut ne pas posséder la plénitude des droits politiques et civiques attribués au citoyen, mais a néanmoins droit à la protection de l'État auquel, en retour, elle doit allégeance. Obliger les autorités policières canadiennes à respecter à l'étranger les normes imposées par la *Charte* peut, suivant les circonstances, ne pas porter atteinte à la compétence souveraine et à l'intégrité de l'État étranger. Toutefois, des effets extra-territoriaux inacceptables résulteraient de l'application de la *Charte* à des agents étrangers, même lorsque ceux-ci peuvent être qualifiés de mandataires des autorités canadiennes.

Le champ d'application de la *Charte* n'est pas absolument limité au territoire canadien. La *Charte* s'applique à l'étranger dans les cas où l'acte reproché est visé par le par. 32(1) en raison de la nationalité des autorités policières de l'État qui participent aux actes du gouvernement, et où l'application des normes imposées par la *Charte* n'entre pas en conflit avec la compétence territoriale concurrente de l'État étranger.

La *Charte* s'applique aux actes accomplis par les détectives canadiens aux États-Unis. Premièrement, l'interrogatoire ayant été mené par des détectives canadiens en conformité avec les pouvoirs d'enquête que leur confèrent les lois canadiennes, l'acte reproché est visé par le par. 32(1). Deuxièmement, l'application de la *Charte* aux actes des détectives canadiens, dans ces circonstances, n'entraîne pas d'ingérence dans l'exercice de la compétence territoriale de l'État étranger. Il est raisonnable tant de s'attendre à ce que les policiers canadiens respectent les normes consacrées par la *Charte*, que de permettre à l'accusé, qui est tenu de se conformer au droit pénal et à la procédure pénale canadiens, de se réclamer des droits constitutionnels canadiens relativement à l'interrogatoire conduit par les policiers canadiens à l'étranger.

L'application de la *Charte* en l'espèce ne conférera pas en définitive à quiconque est l'objet d'une façon ou d'une autre de l'exercice de l'autorité des gouvernements canadiens à l'étranger, les droits garantis à chacun par la *Charte*. Le présent jugement fait exception à la règle générale de droit international public selon laquelle la compétence d'un État ne peut pas s'exercer au-delà de ses frontières. La situation diffère considérablement de la myriade de cas où des personnes à l'étranger se réclament des garanties de la *Charte simpliciter*.

La violation était très grave, sinon flagrante. L'explication donnée au sujet du droit à l'assistance d'un avocat omettait des renseignements pertinents et était donc inadéquate. Plus important encore, elle était embrouillée et trompeuse

au point de priver l'accusé de la possibilité de décider s'il fallait recourir à l'assistance d'un avocat. Il est fondamentalement inéquitable et dérogatoire aux droits garantis par la *Charte* que des policiers mentent à des individus ou les trompent sur leurs droits constitutionnels. Approuver une telle conduite déconsidérerait l'administration de la justice. En outre, la violation s'est produite au moment où l'accusé était détenu et, par conséquent, particulièrement vulnérable.

Il convient de prendre en considération trois groupes de facteurs pour décider si l'utilisation de la preuve est susceptible de déconsidérer l'administration de la justice: l'effet de l'utilisation de la preuve sur l'équité du procès, la gravité de la violation et l'effet de l'exclusion de la preuve sur la considération dont jouit l'administration de la justice. La question à se poser dans tous les cas est la suivante: l'utilisation de la preuve est-elle susceptible de déconsidérer l'administration de la justice aux yeux de l'homme raisonnable, objectif et bien informé de toutes les circonstances de l'affaire.

La nature de la preuve et la nature de la violation sont pertinentes par rapport à la question de savoir si l'utilisation de la preuve rendrait le procès inéquitable. Il faut tout d'abord qualifier la preuve en cause: elle est soit une preuve obtenue par mobilisation de l'accusé contre lui-même, soit une preuve non obtenue de cette manière. Sauf de rares exceptions, la preuve obtenue par mobilisation de l'accusé contre lui-même doit être écartée. Bien que la déclaration attaquée renferme des dénégations de culpabilité et puisse donc être considérée comme n'étant pas «incriminante», son contenu ne change rien à sa qualification aux fins de cette analyse. En l'espèce, la déclaration que l'accusé a faite devant les policiers canadiens doit être qualifiée de preuve obtenue par mobilisation de celui-ci contre lui-même. Il n'y a pas de circonstances exceptionnelles justifiant l'admission de la déclaration en l'espèce.

La distinction entre les déclarations incriminantes et les déclarations exculpatoires n'est pas un facteur qui doit jouer dans l'analyse fondée sur le par. 24(2). De même, le fait que le ministère public cherche à utiliser la preuve seulement dans le cadre du contre-interrogatoire de l'accusé n'aurait pas dû persuader le juge du procès d'admettre la preuve. Il y a lieu d'écarter la preuve en vertu du par. 24(2).

Les juges Gonthier et **Bastarache**: Une interprétation du par. 32(1) favorable à l'application de la *Charte* aux actes des fonctionnaires canadiens menant une enquête à l'étranger ne se heurte pas aux principes du droit international en matière de compétence territoriale.

Le paragraphe 32(1) définit l'application de la *Charte* en fonction de l'identité de l'acteur, et non du lieu de l'acte. Il assujettit à la *Charte* ceux qui exercent le pouvoir législatif ou qui font partie du pouvoir exécutif. Elle s'applique aux actes gouvernementaux qui sont déterminés soit par la nature des pouvoirs exercés, soit par l'identité de l'acteur qui doit effectivement faire partie du gouvernement. Le texte ne fait aucunement mention d'une limite territoriale. Le paragraphe 32(1) s'applique donc aux agents de l'État canadien se trouvant à l'étranger, qu'ils exercent ou non les pouvoirs coercitifs du gouvernement. Le fait qu'ils se rendent dans un autre ressort ne change ni leur statut ni leur assujettissement à la *Charte*. Il importe peu qu'ils ne soient plus autorisés à exercer les pouvoirs prévus par la loi du fait qu'ils se trouvent à l'étranger.

Le paragraphe 32(1) prévoit que la *Charte* ne peut s'appliquer à un domaine relevant d'un gouvernement étranger ni aux agents d'un État étranger (à moins que d'une manière ou d'une autre, ils ne fassent aussi partie du gouvernement du Canada ou d'une province ou ne soient aussi soumis à une législature canadienne). Ce qui est essentiel dans les cas de coopération entre fonctionnaires canadiens et étrangers exerçant les pouvoirs que la loi leur a conférés, c'est de déterminer qui dirigeait l'aspect de l'enquête qui est présumé avoir porté atteinte à la *Charte*. Pareille analyse nécessite l'appréciation des rôles relatifs joués par les fonctionnaires canadiens et les fonctionnaires étrangers. Lorsque le policier canadien est invité par le fonctionnaire étranger à exercer un pouvoir durant l'enquête, l'application du par. 32(1) dépendra du degré de surveillance exercé par le fonctionnaire étranger. S'il ressort de l'appréciation de ces facteurs que les événements qui ont conduit à la violation de la *Charte* sont imputables à l'autorité étrangère, ces activités ne tombent pas sous le coup de la *Charte* malgré la participation des fonctionnaires canadiens à l'enquête menée en collaboration. Dans les cas où le défendeur cherche à invoquer le par. 24(2) pour faire écarter des éléments de preuve dans un procès tenu au Canada, l'analyse doit être centrée sur le rôle relatif joué par les fonctionnaires canadiens et les fonctionnaires étrangers dans l'obtention de ces éléments de preuve. Si l'obtention des éléments de preuve de façon contraire à la *Charte* est

principalement imputable aux fonctionnaires canadiens, ces derniers ainsi que la preuve qu'ils auront recueillie seront assujettis à la *Charte*. En l'espèce, les policiers canadiens ont pratiquement réglé les modalités de l'interrogatoire.

En droit international, un gouffre sépare le principe de la territorialité envisagé du point de vue de la compétence d'exécution et son application aux conséquences juridiques attachées à des événements par un État lesquelles pourront être limitées au cadre du système de droit national. La doctrine moderne de la territorialité admet l'exercice, par un État, de sa compétence pénale sur des actes accomplis dans un autre État, si ceux-ci se rattachent à d'autres actes commis dans le premier État subséquemment à des agissements criminels ou s'ils ont des conséquences néfastes dans le premier État. Il suffit qu'il y ait un «lien réel et important» entre l'infraction et notre pays. Les tribunaux canadiens peuvent reconnaître les décisions rendues dans les autres pays par l'application des principes relatifs aux moyens de défense autrefois acquit et autrefois convict.

L'application extra-territoriale de la loi dépend dans une large mesure de la question de savoir s'il y a conflit entre les deux systèmes de droit. Le principe de la territorialité objective fait place à une application extra-territoriale inacceptable dans deux cas: en premier lieu, lorsqu'il y a conflit entre les deux systèmes de droit et, en second lieu, en cas de conflit, lorsque l'État applique ses propres lois à des événements avec lesquels son rattachement est dénué de tout caractère réel et important ou est plus faible. Le droit international exige que les revendications concurrentes de compétence, particulièrement en matière de droit pénal, soient soigneusement délimitées afin de garantir que les faits survenus à l'étranger soient rattachés de façon significative à l'État qui prétend les régir ou, en cas de conflit avec un autre État, qu'ils soient rattachés de la façon la plus significative à l'État qui prétend les régir.

Il est nécessaire d'évaluer la nature des garanties de la *Charte*, en particulier celles que prévoient les art. 7 à 14, pour décider s'il y a possibilité de conflit avec le système de droit étranger. Les garanties juridiques prévues par la *Charte* délimitent et modulent l'exercice des pouvoirs par les fonctionnaires du gouvernement et garantissent le respect de certaines règles si le gouvernement décide de mener une enquête.

L'enquête à l'étranger et la *Charte* sont rattachées de façon réelle et importante du seul fait que des fonctionnaires canadiens y participent. Ce rattachement ne peut pas être assimilé à la nationalité. En fait, l'application du principe de la nationalité dans le cas de policiers canadiens se trouvant à l'étranger n'était pas pertinente.

Il faut tenir compte de trois facteurs pour déterminer si l'application de la *Charte* empiète sur la compétence de l'État d'accueil et si les faits en question sont rattachés à ce dernier par un lien plus réel et important, de manière à écarter la compétence présumée de la loi canadienne. En premier lieu, les termes du par. 32(1) n'étendent pas l'application de la *Charte* aux actes des fonctionnaires étrangers ni à l'exercice de pouvoirs autorisés par une loi de l'État étranger. En deuxième lieu, les droits garantis par les articles applicables de la *Charte* ne sont pas de nature impérative, leur application est plutôt subordonnée au déploiement des activités d'enquête expressément prévues. En troisième lieu, la nature des conséquences juridiques prévues par le système de droit du for ne présente aucun problème d'extraterritorialité.

Les preuves recueillies en violation de la *Charte* ne sont pas exclues automatiquement au procès du défendeur. Le paragraphe 24(2) garantit que les circonstances existant dans le pays étranger peuvent entrer en ligne de compte pour déterminer s'il y a lieu d'admettre les preuves recueillies malgré la violation de la *Charte*.

Les juges **L'Heureux-Dubé** et McLachlin (dissidentes): La personne qui invoque un droit garanti par la *Charte* doit prouver au préalable qu'elle est titulaire de ce droit. La question de savoir si la *Charte* reconnaît un droit à une personne exige une analyse du libellé de la disposition en cause et des objectifs des droits consacrés par la Constitution canadienne. Étant donné que ni l'une ni l'autre des parties n'a avancé d'arguments sur la question de savoir si l'accusé était titulaire de droits au moment de la présumée violation, le pourvoi n'a pas été tranché sur ce fondement.

La jurisprudence permet de dégager deux principes fondamentaux en ce qui concerne l'application extra-territoriale de la *Charte*. En premier lieu, l'acte qui est censé avoir violé la *Charte* doit avoir été accompli par l'un des acteurs gouvernementaux énumérés à l'art. 32. En second lieu, s'il y a coopération entre fonctionnaires canadiens et étrangers, à l'étranger, cet acte n'entraînera pas l'application de la *Charte* même s'il est imputable à l'un des gouvernements visés à l'art. 32.

Pour savoir si une enquête peut être considérée comme étant faite dans le cadre d'une coopération, il faut se demander si les fonctionnaires canadiens sont légalement habilités à agir là où les actes contestés auraient porté atteinte à la *Charte*. L'article 32 de la *Charte* édicte qu'elle s'applique aux affaires «relevant» du Parlement ou de la législature d'une province. Une enquête sur un territoire assujetti à la souveraineté d'un gouvernement étranger est effectuée sous l'autorité d'un État étranger, de sorte que l'art. 32 n'entre pas en jeu. La *Charte* ne s'applique à aucune enquête où les fonctionnaires canadiens n'ont plus les attributs juridiques du gouvernement; c'est le cas toutes les fois qu'une enquête est assujettie à la souveraineté d'un gouvernement étranger.

L'accusé ne bénéficiait pas de la protection de l'al. 10*b*) parce que la police canadienne agissait dans le cadre de la souveraineté juridique des États-Unis. Elle devait coopérer avec les Américains et se soumettre au droit américain afin de mener à bien l'enquête. Le système de droit américain régissait les actes des policiers canadiens, et il ne s'agissait pas d'une situation où intervenaient les pouvoirs juridiques de l'État canadien. Les circonstances de la présente affaire font ressortir les multiples façons dont la coopération était nécessaire ici et est nécessaire chaque fois que les fonctionnaires canadiens agissent dans le cadre de la souveraineté d'un autre gouvernement.

Les dispositions de la *Charte* qui garantissent la tenue d'un procès équitable (al. 11*d*)) et le respect des principes de justice fondamentale (art. 7) peuvent être invoquées pour exclure l'admission de la preuve au procès, que les activités destinées à recueillir des éléments de preuve soient visées ou non par un droit garanti par la *Charte*. La preuve sera écartée lorsque son admission mènerait à un procès inéquitable. Cependant, le fait que cet élément de preuve ait été recueilli d'une façon qui aurait porté atteinte à l'une des dispositions de la *Charte* n'est pas déterminant. Il faut tenir compte de toutes les circonstances pertinentes. L'un des facteurs importants est de savoir qui, de la police canadienne ou de la police du pays étranger, est responsable de l'injustice alléguée. La police canadienne doit, dans la mesure du possible, faire en sorte que la lettre et l'esprit des protections prévues par la *Charte* soient respectés et ses actes feront l'objet d'un examen plus strict que ceux des fonctionnaires du pays étranger qui agissent dans le cadre d'un système de droit dont les normes sont différentes des nôtres.

La conduite des détectives canadiens en l'espèce n'était pas sérieuse au point que l'utilisation de la preuve porterait atteinte au droit de l'accusé à un procès équitable, compte tenu de toutes les circonstances et de l'intérêt que représente pour la société la découverte de la vérité. L'accusé savait qu'il avait droit à l'assistance d'un avocat dès le moment où il a été arrêté, et il comprenait ce droit. Sa déclaration était volontaire, puisqu'il savait qu'il n'était pas obligé de parler aux policiers canadiens. Ces derniers lui ont dit, en termes qui auraient cependant pu être plus clairs, qu'il avait droit à l'assistance d'un avocat, et lui ont offert de le mettre en contact avec un avocat de l'aide juridique s'il le voulait. Le retard mis à donner l'information a relativement peu d'importance en ce qui concerne l'admissibilité de la déclaration en question, étant donné qu'elle a été faite après que les policiers canadiens eurent informé l'accusé du droit à l'assistance d'un avocat et que la discussion avait porté jusque-là sur des renseignements d'ordre général.

La preuve a été admise dans le but limité d'attaquer la crédibilité de l'accusé lors du contre-interrogatoire. Dans bien des cas, le fait que la déclaration soit utilisée au procès est sans importance dans l'analyse fondée sur l'art. 7 ou le par. 24(2). Toutefois, dans le contexte de ce procès, où la crédibilité d'autres témoins aussi était attaquée au moyen de déclarations antérieures incompatibles, si cette preuve n'avait pas été admise, les jurés auraient eu une impression erronée quant à la crédibilité de l'accusé en comparaison de celle d'autres témoins. Ceci renforce la conclusion que l'art. 7 n'a pas été violé.

Le juge du procès a donné au jury des directives appropriées quant à l'utilisation limitée qui pouvait être faite des déclarations de l'accusé.

POURVOI contre un arrêt de la Cour d'appel de la Colombie-Britannique (1996), 85 B.C.A.C. 192, 112 C.C.C. (3d) 508, [1996] B.C.J. nº 2615 (QL), qui a rejeté un appel formé contre la déclaration de culpabilité prononcée par le juge Low, siégeant avec jury. Pourvoi accueilli, les juges L'Heureux-Dubé et McLachlin sont dissidentes.

Neil L. Cobb et *Kathleen Mell*, pour l'appelant.

Gregory J. Fitch, pour l'intimée.

S. David Frankel, *c.r.*, pour l'intervenant.

Procureurs de l'appelant: Cobb, McCabe & Co., Vancouver.

Procureur de l'intimée: Le procureur général de la Colombie-Britannique, Victoria.

Procureur de l'intervenant: Le procureur général du Canada, Ottawa.

Minister of Health and Community Services v. M.L., et al (N.B.)(26321)
Indexed as: New Brunswick (Minister of Health and Community Services) *v.* L. (M.) /
Répertorié: Nouveau-Brunswick (Ministre de la Santé et des Services communautaires) *c.* L. (M.)
Hearing and judgment: June 23, 1998; Reasons delivered: October 1 /
Audition et jugement: 23 juin 1998; Motifs déposés: 1er octobre.

Present: L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major and Binnie JJ.

Family law -- Guardianship -- Right of access -- Children in need of protection -- Order awarding permanent guardianship to Minister of Health and Community Services -- Whether order granting parents access can be made in conjunction with permanent guardianship order -- Whether Court of Appeal erred in intervening in trial judge's decision to deny natural parents access to children.

In 1995, the respondents' three young daughters were placed in a foster family. A number of orders were subsequently made concerning their protection, and efforts were made to preserve the family ties. The Minister of Health and Community Services applied for a permanent guardianship order in 1997. The trial judge granted the application. The respondents' 16 years of cohabitation were characterized by numerous break-ups and reconciliations. The judge noted that the father had serious dependency problems, that he was not assuming his responsibilities towards the children and that he was continually absent. He also observed that the mother, whose intellectual capacity was limited, had anxiety and depression and suffered from behavioural disorders. The judge believed that her parenting skills could not improve significantly because care of the children was itself a source of great anxiety for her. She admitted having hit the children and she wanted the Minister to take care of them because she felt incapable of doing so. The last attempt to return the children to the respondents had been a failure. The judge said that the evidence left no doubt that the children could not obtain the appropriate motivation and care from the respondents. The respondents' parenting skills did not meet the needs of the children. The mental, emotional and physical health of the children would be jeopardized if they were returned to the respondents. The evidence also showed that the children had developed emotional ties with their foster family, in which they were making progress and were happy. Relying on the definition of the "best interests of the child" set out in s. 1 of the *Family Services Act*, the judge concluded that the permanent guardianship order was in the best interests of the children. In a second judgment rendered several weeks later, the judge prohibited the respondents from having any contact with the children. He said that the order was made in the best interests of the children because the evidence showed that the attempts by the respondents to contact the girls were greatly disturbing to their sense of security and stability. The Court of Appeal affirmed the permanent guardianship order but set aside the order prohibiting access and ordered the Minister to present to the trial judge for approval a plan in relation to the exercise of the respondents' access rights. The court was of the opinion that there was nothing on the record that would warrant the complete abrogation of access by the respondents.

Held: The appeal should be allowed.

Under the *Family Services Act*, the Court of Appeal, like the trial judge, had jurisdiction to make an access order in conjunction with an order for permanent guardianship. The Act provides for the guardianship order to be varied on the application of the Minister (s. 60(2)) or the parents (ss. 60(3) and 61(1)), and for the court to be able to make any order that it considers appropriate at that time, having regard to the best interests of the child (s. 60(6)). Since access may be considered when the guardianship order is reviewed, *a fortiori* the court must be able to consider granting access at the time the initial order is made. Section 85(2) of the Act, which deals with access at the adoption stage, confirms this interpretation of the courts' initial jurisdiction in respect of access. If the court has the power to "preserve" a right of access after adoption, a measure that is even more drastic and final than permanent guardianship, it would be illogical for it not to have the power to grant access when it makes the initial permanent guardianship order. Finally, the legislature has given the courts jurisdiction to decide access rights, since it requires that they "place above all other considerations the best interests of the child" (s. 53(2)). Denying the courts the opportunity to decide whether an access order should be made could prevent them from performing their duty of acting in the bests interests of the child.

There is no inconsistency in principle between a permanent guardianship order and an access order. While it is true that permanent guardianship is generally a prelude to adoption, that is not always the case. Even in the case of

adoption, it may be in the best interests of the child to maintain contact with his or her natural family. However, if adoption is more important than access for the welfare of the child and would be jeopardized if a right of access were exercised, access should not be granted. Access is the exception and not the rule in the context of a permanent guardianship order. While preserving emotional ties is one of the elements of the definition of the best interests of the child (s. 1(*d*)), it will only operate in favour of granting access if access is in the best interests of the child, having regard to all the other factors. The decision as to whether or not to grant access is a delicate exercise which requires that the judge weigh the various components of the best interests of the child. It is up to the judge to determine which of the child`s interests and needs take priority. Access should not be granted if its exercise would have negative effects on the physical or psychological health of the child.

In this case, the Court of Appeal erred in finding that there was "nothing" to justify the trial judge's decision to deny access. While in that decision he stated only one fundamental reason, and did not specify the precise behaviour on the part of the respondents that had disturbed the children, the trial judge referred to the evidence before him and his first judgment provides the necessary details. His refusal to authorize access is based on valid considerations. No manifest error in his assessment of the facts was raised. The evidence shows serious misconduct by the parents. The father was manipulative and unable to control his emotions. The mother, who was stressed and depressed, was unable to face up to the ordeal of the visits. For one thing, the evidence shows that most of the visits, even though brief, were disturbing and upsetting to the children. Maintaining the emotional tie with the parents was therefore not consistent with the girls' psychological stability. Moreover, the evidence indicates that an access order could have jeopardized the adoption of the children by the foster family, which was desirable.

APPEAL from a judgment of the New Brunswick Court of Appeal (1997), 197 N.B.R. (2d) 113, 504 A.P.R. 113, [1997] A.N.-B. nº 372 (QL), allowing in part the respondents' appeal from a judgment of Boisvert J. (1997), 197 N.B.R. (2d) 60, 504 A.P.R. 60, [1997] A.N.-B. nº 133 (QL), awarding the appellant guardianship of the respondents' children. Appeal allowed.

Mary Elizabeth Beaton and *Rita Godin*, for the appellant

Terrence P. Lenihan, for the respondent M.L.

Peter J. C. White, for the respondent R.L.

Sylvia Mendes-Roux, for the intervener.

Solicitors for the appellant: The Department of Justice, Fredericton, and the Crown Prosecutors Office, Bathurst.

Solicitors for the respondent M.L.: Byrne, Lenihan, Riordon, Bathurst.

Solicitor for the respondent R.L.: Peter J. C. White, Bathurst.

Solicitors for the intervener: Roux Frenette, Bathurst.

Présents: Les juges L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major et Binnie.

Droit de la famille -- Tutelle -- Droit de visite -- Enfants ayant besoin de protection -- Ordonnance de tutelle permanente en faveur du ministre de la Santé et des Services communautaires -- Peut-on greffer à une ordonnance de tutelle permanente une ordonnance d'accès en faveur des parents naturels? -- La Cour d'appel a-t-elle erré en intervenant dans la décision de juge de première instance de refuser aux parents naturels l'accès aux enfants?

En 1995, les trois fillettes des intimés sont placées dans une famille d'accueil. Elles font ensuite l'objet de plusieurs ordonnances visant leur protection ainsi que de tentatives de maintien des liens familiaux. Le ministre de la Santé et des Services communautaires demande une ordonnance tutelle permanente en 1997. Le juge de première instance accueille cette demande. Les 16 années de vie commune des intimés ont été marquées de nombreuses ruptures et réconciliations. Le juge note que le père éprouve de graves problèmes de dépendance, qu'il n'assume pas ses responsabilités vis-à-vis des enfants et qu'il s'absente continuellement. Il constate également que la mère, dont les facultés intellectuelles sont limitées, a des problèmes d'anxiété et de dépression et qu'elle souffre de troubles de comportement. Le juge estime que ses habiletés parentales ne peuvent s'améliorer de façon significative car la charge même des enfants représente pour elle une source de grande anxiété. Elle avoue avoir frappé les enfants et elle désire que le Ministre en prenne soin car elle s'en sent incapable. La dernière tentative de retour des enfants chez les intimés a été un échec. Le juge indique que la preuve ne laisse aucun doute que les enfants ne peuvent obtenir des intimés la motivation et les soins appropriés. L'habileté parentale des intimés ne répond pas aux besoins des enfants. La santé mentale, affective et physique des enfants serait menacée si elles étaient retournées auprès des intimés. La preuve démontre également que les enfants ont développé des liens affectifs avec leur famille d'accueil au sein de laquelle elles font des progrès et sont heureuses. S'appuyant sur la définition de «l'intérêt supérieur de l'enfant» édictée à l'art. 1 de la *Loi sur les services à la famille*, le juge conclut que l'ordonnance de tutelle permanente est dans le meilleur intérêt des enfants. Dans un second jugement rendu quelques semaines plus tard, le juge interdit aux intimés tout contact avec les enfants. Il indique que cette ordonnance est rendue dans l'intérêt supérieur des enfants puisque la preuve établit que les tentatives des intimés d'entrer en contact avec les fillettes perturbent grandement leur sécurité et leur stabilité. La Cour d'appel confirme l'ordonnance de tutelle permanente mais infirme l'ordonnance interdisant l'accès et ordonne au Ministre de soumettre à l'approbation du juge de première instance un plan relatif à l'exercice du droit de visite des intimés. La cour est d'avis que rien au dossier ne justifie l'abrogation totale du droit de visite des intimés.

Arrêt: Le pourvoi est accueilli.

En vertu de la *Loi sur les services à la famille*, la Cour d'appel, comme le juge de première instance, était compétente pour greffer une ordonnance d'accès à une ordonnance de tutelle permanente. La Loi prévoit la modification de l'ordonnance de tutelle à la demande du Ministre (par. 60(2)) ou des parents (par. 60(3) et 61(1)), ainsi que la possibilité de rendre toute ordonnance que la cour juge alors opportune compte tenu de l'intérêt supérieur de l'enfant (par. 60(6)). Puisque le droit de visite peut faire l'objet d'un examen au moment de la révision de l'ordonnance de tutelle, a fortiori, une cour doit pouvoir considérer l'octroi d'un droit de visite au moment où l'ordonnance initiale est rendue. L'article 85(2) de la Loi, qui traite de l'accès au stade de l'adoption, confirme l'interprétation de la compétence initiale des tribunaux en matière d'accès. Si la cour détient le pouvoir de «maintenir» un droit de visite après l'adoption, mesure encore plus drastique et définitive que la tutelle permanente, il serait illogique qu'elle n'ait pas le pouvoir d'accorder un droit de visite lors de l'ordonnance initiale de tutelle permanente. Enfin, le législateur a conféré aux tribunaux la compétence pour se prononcer sur les droits de visite car il leur impose de «placer l'intérêt supérieur de l'enfant au-dessus de toute autre considération» (par. 53(2)). Refuser aux tribunaux la possibilité de se prononcer sur le bien-fondé d'une ordonnance d'accès pourrait les empêcher d'exécuter leur devoir d'agir dans le meilleur intérêt de l'enfant.

Il n'existe pas d'incompatibilité de principe entre la délivrance d'une ordonnance de tutelle permanente et d'une ordonnance d'accès. S'il est exact que la tutelle permanente est généralement un prélude à l'adoption, cela n'est pas toujours le cas. Même en cas d'adoption, il peut être dans le meilleur intérêt de l'enfant qu'il garde contact avec sa famille naturelle. Cependant, si l'adoption est plus importante que l'accès pour le bien-être de l'enfant et qu'elle serait mise en péril par l'exercice d'un droit de visite, celui-ci ne devrait pas être accordé. L'accès constitue l'exception et non la règle dans le contexte d'une ordonnance de tutelle permanente. Bien que le maintien des liens affectifs constitue l'un des éléments de la définition de l'intérêt supérieur de l'enfant (al. 1*d*)), il ne joue en faveur de l'attribution d'un droit d'accès que si celui-ci est dans le meilleur intérêt de l'enfant compte tenu de tous les autres facteurs. La décision d'accorder ou non un droit d'accès est un exercice délicat qui exige du juge qu'il apprécie les divers éléments constitutifs de l'intérêt supérieur de l'enfant. Il lui appartient de déterminer ses intérêts et besoins prioritaires. Un droit d'accès ne devrait pas être accordé si son exercice a des effets négatifs sur la santé physique ou psychologique de l'enfant.

En l'espèce, la Cour d'appel a erré en jugeant que «rien» ne justifiait la décision du juge de première instance de refuser l'accès. Bien que dans cette décision il n'énonce qu'une raison de principe et qu'il ne fasse pas état de

comportements précis des intimés qui ont troublé les enfants, le juge de première instance renvoit à la preuve dont il a été saisi et son premier jugement contient tous les détails nécessaires. Son refus d'autoriser l'accès repose sur des motifs valables. Aucune erreur manifeste d'appréciation des faits n'a été soulevée. La preuve révèle de sérieuses défaillances de conduite chez les parents. Le père s'est montré manipulateur et incapable de contrôler ses émotions. La mère, stressée et déprimée, n'a pas eu la force d'assumer l'épreuve des visites. La preuve démontre notamment que la plupart des visites, par ailleurs très courtes, ont troublé et peiné les enfants. Le maintien du lien affectif avec les parents n'était donc pas compatible avec la stabilité psychologique des fillettes. De plus, la preuve indique qu'une ordonnance d'accès pouvait mettre en péril l'adoption, par ailleurs souhaitable, des enfants par la famille d'accueil.

POURVOI contre un arrêt de la Cour d'appel du Nouveau-Brunswick (1997), 197 R.N.-B. (2e) 113, 504 A.P.R. 113, [1997] A.N.-B. no 372 (QL), qui a accueilli en partie l'appel des intimés à l'encontre d'un jugement du juge Boisvert (1997), 197 R.N.-B. (2e) 60, 504 A.P.R. 60, [1997] A.N.-B. no 133 (QL), qui avait accordé à l'appelant la tutelle des enfants des intimés. Pourvoi accueilli.

Mary Elizabeth Beaton et *Rita Godin*, pour l'appelant.

Terrence P. Lenihan, pour l'intimée M.L.

Peter J. C. White, pour l'intimé R.L.

Sylvia Mendes-Roux, pour l'intervenante.

Procureurs de l'appelant: Le ministère de la Justice, Fredericton, et Bureau des procureurs de la Couronne, Bathurst.

Procureurs de l'intimée M.L.: Byrne, Lenihan, Riordon, Bathurst.

Procureur de l'intimé R.L.: Peter J. C. White, Bathurst.

Procureurs de l'intervenante: Roux Frenette, Bathurst.

AGENDA for the week beginning October 5, 1998.
ORDRE DU JOUR pour la semaine commençant le 5 octobre 1998.

Date of Hearing/ Date d'audition	Case Number and Name/ Numéro et nom de la cause
05/10/98	Motions - Requêtes
06/10/98	Children's Foundation, et al v. Patrick Allan Bazley (B.C.) (26013)
06/10/98	Gail Taylor-Jacobi, et al v. Boys' and Girls' Club of Vernon (B.C.) (26041)
07/10/98	Gaétan Delisle v. Attorney General of Canada (Qué.) (25926)
08/10/98	Jones v. Smith (26500)
09/10/98	Sail Labrador Limited v. Owners, Navimar Corporation Ltée and all others interested in the ship "Challenge One", et al (F.C.A.) (26083)

NOTE:

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

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

26013 ***The Children's Foundation et al v. Patrick Allan Bazley***

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 opportunity tests 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.

The Appellant, The Children's Foundation, a non-profit organization, operated two residential care facilities for the treatment of emotionally troubled children between the ages of 6 and 12. The treatment provided by the Appellant involved "a total intervention" in all aspects of the lives of the children in their care. The Appellant's employees were to act as parent figures to the children, providing supervision and physical contact associated with daily activities such as bathing and tucking the children into bed.

As a ward of the court, the Respondent Bazley was placed in one of the Appellant's facilities for treatment from 1968 to 1971. During that time, he was repeatedly sexually assaulted and abused by Donald Curry, one of the Appellant's employees. Upon verifying a complaint that Curry had sexually abused a child in one of the homes, Curry was discharged. In 1992, Curry was convicted of 19 counts of sexual abuse, two of which related to Bazley.

Bazley sued the Foundation for compensation for the damages he suffered while in the Appellant's care. The parties stated a case to determine whether the Appellant was vicariously liable for the employee's tortious conduct. The chambers judge found the Appellant vicariously liable for the sexual assaults and abuse suffered by Bazley. The Court of Appeal dismissed the appeal.

Origin of the case:	British Columbia
File No.:	26013
Judgment of the Court of Appeal:	March 25, 1997
Counsel:	William M. Holburn Q.C. for the Appellant Foundation Richard J. Meyer and J. Douglas Eastwood for the Appellant Attorney General D. Brent Adair for the Respondent

26013 ***The Children's Foundation et al c. Patrick Alan Bazley***

Responsabilité civile - Responsabilité du fait d'autrui - Délits intentionnels - Agression sexuelle sur un enfant confié aux soins d'un employé dans un établissement résidentiel - La Cour d'appel a-t-elle commis une erreur de droit en rejetant le critère de l'arrêt *Salmond* et en le remplaçant par un nouveau pour établir si les actes intentionnels d'abus sexuels d'un employé ont été commis dans l'exercice de ses fonctions? - La Cour d'appel a-t-elle commis une erreur de droit en adoptant et en appliquant des critères d'opportunité pour décider que les actes intentionnels d'abus sexuels de l'employé ont été commis dans l'exercice de ses fonctions? - La Cour d'appel a-t-elle commis une erreur de droit en concluant que des considérations d'ordre public ne justifiaient pas l'adoption d'un critère juridique différent pour décider si une société sans but lucratif était responsable du fait d'autrui pour les actes intentionnels d'abus sexuels commis par ses employés?

L'appelante, The Children's Foundation, une société sans but lucratif, exploitait deux établissements de soins internes pour le traitement d'enfants de 6 à 12 ans souffrant de troubles émotionnels. Le traitement fourni par l'appelante comportait « une intervention totale » dans tous les aspects de la vie des enfants qui lui étaient confiés. Les employés de l'appelante devaient assumer un rôle parental auprès des enfants, les surveillant et entrant en contact physique avec eux dans le cadre d'activités quotidiennes comme leur faire prendre un bain et aller les mettre au lit.

En tant que pupille du tribunal, l'intimé Bazley a été confié, pour traitement, à l'un des établissements de l'appelante, de 1968 à 1971. Pendant cette période, il a été agressé et abusé à maintes reprises par Donald Curry, un des employés de l'appelante. Après enquête sur une plainte faisant état que Curry avait abusé un enfant dans l'une des résidences, Curry a été congédié. En 1992, Curry a été reconnu coupable relativement à 19 chefs d'abus sexuels, dont deux étaient reliés à Bazley.

Bazley a poursuivi The Children's Foundation pour être indemnisé des dommages subis alors qu'il se trouvait sous la garde de l'appelante. Les parties ont exposé les faits au tribunal pour qu'il détermine si l'appelante était responsable du fait d'autrui pour la conduite délictueuse de l'employé. Le juge en chambre a conclu que l'appelante était responsable du fait d'autrui pour les agressions sexuelles et les abus subis par Bazley. La Cour d'appel a rejeté l'appel.

Origine :	Colombie-Britannique
N° du greffe :	26013
Jugement de la Cour d'appel :	Le 25 mars 1997
Avocats :	William M. Holburn, c.r., pour The Children's Foundation Richard J. Meyer et J. Douglas Eastwood pour le procureur général appelant D. Brent Adair pour l'intimé

26041 ***Gail Taylor-Jacobi, Randal Craig Jacobi and Jody Marlane Saur v. Boys' and Girls' Club of Vernon and Harry Charles Griffiths***

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 - Whether the Court of Appeal has ignored the principle of *stare decisis*.

The Appellant Randal Craig Jacobi was subjected to one incident of sexual abuse when he was 10 or 11 years of age, and the Appellant Jody Marlane Saur was subjected to several incidents culminating in one incident of sexual intercourse when she was 13 or 14 years of age. Both Appellants were abused by Harry Griffiths, who was employed as Program Director by the Respondent Vernon Boys' and Girls' Club. The objects of the Club, set out in its constitution, include, "… to provide behaviour guidance and to promote the health, social, educational, vocational and character development of boys and girls …". Griffiths was Program Director from 1980 until 1992, when he was removed during the course of a police investigation into these and other incidents of assault of Club members.

Jacobi and Saur were Club members, and developed relationships with Griffiths through their membership in the Club. The sexual assault of Jacobi occurred in Griffiths' home, as did all but one of the assaults of Saur. One assault of Saur occurred on a bus during a trip organized by the Club.

A few days into trial, the Appellant Gail Taylor-Jacobi abandoned her claim. The trial judge found that the Respondent Griffiths was liable to Jacobi and Saur in assault and battery for damage flowing from the assaults, and assessed damages on that basis. Applying the traditional test for vicarious liability, he found the Club vicariously liable. The Court of Appeal, applying their reasons in *B.(P.A.) v. Childrens' Foundation*, S.C.C. File No. 26013 ("*B.(P.A.)*"), allowed the Club's appeal.

Origin of the case:	British Columbia
File No.:	26041
Judgment of the Court of Appeal:	March 25, 1997
Counsel:	Christopher R. Penty for the Appellants Randal Craig Jacobi and Jody Marlane Saur Gordon G. Hilliker for the Respondent Club David M. Renwick for the Respondent Griffiths

26041 ***Gail Taylor-Jacobi, Randal Craig Jacobi et Jody Marlane Saur c. Boys' and Girls' Club of Vernon et Harry Charles Griffiths***

Responsabilité délictuelle – Responsabilité du fait d'autrui – Délits intentionnels – Agression sexuelle d'enfants par un employé d'un club de jeunes – La Cour d'appel a-t-elle commis une erreur en concluant que les actes délictueux commis par l'employé n'étaient pas suffisamment reliés aux fonctions que le club intimé lui avaient attribuées? – La Cour d'appel a-t-elle commis une erreur en rejetant le critère traditionnel en matière de responsabilité du fait d'autrui et en appliquant un nouveau critère? – La Cour d'appel a-t-elle fait abstraction du principe du *stare decisis*?

L'appelant Randal Craig Jacobi a fait l'objet d'un incident d'agression sexuelle lorsqu'il était âgé de 10 ou 11 ans et l'appelante Jody Marlane Saur a été exposée à plusieurs incidents qui se sont terminés par un incident de rapports sexuels lorsqu'elle était âgée de 13 ou 14 ans. Les deux appelants ont été agressés par Harry Griffiths, qui était au service du club intimé, le Vernon Boys' and Girls' Club, à titre de directeur de programme. Les objectifs du club, énoncés dans sa constitution, visaient notamment, « [...] à offrir une orientation sur la conduite et à promouvoir le développement de la santé, du côté social, de l'éducation, de l'orientation professionnelle et du caractère des garçons et des filles [...] ». Griffiths a été directeur de programme de 1980 à 1992, il a été renvoyé pendant une enquête policière au sujet des incidents visés par les présentes et d'autres incidents d'agression de membres du club.

Jacobi et Saur étaient membres du club et ils ont développé des relations avec Griffiths en raison de leur statut de membres du club. L'agression sexuelle de Jacobi a eu lieu dans la maison de Griffiths, de même que toutes les agressions de Saur à l'exception d'une. L'une des agressions subies par Saur a eu lieu dans un autobus pendant un voyage organisé par le club.

Après quelques jours de procès, l'appelante Gail Taylor-Jacobi a abandonné sa demande. Le juge de première instance a conclu que l'intimé Griffiths était responsable, envers Jacobi et Saur, en matière de voies de fait des dommages-intérêts découlant des agressions et il a accordé des dommages-intérêts pour ces motifs. En appliquant le critère traditionnel en matière de responsabilité du fait d'autrui, il a conclu que le club était responsable à ce titre. La Cour d'appel, en appliquant les motifs de son arrêt *B. (P.A.) c. Childrens' Foundation*, C.S.C. n° du greffe 26013 (« *B.(P.A.)* »), a accueilli l'appel du club.

Origine :	Colombie-Britannique
N° du greffe :	26041
Jugement de la Cour d'appel :	Le 25 mars 1997
Avocats :	Christopher R. Penty pour les appelants Randal Craig Jacobi et Jody Marlane Saur Gordon G. Hilliker pour le club intimé David M. Renwick pour l'intimé Griffiths

25926 ***Gaétan Delisle v. Attorney General of Canada***

Canadian Charter of Rights and Freedoms – Labour law – Statutes – Interpretation – Whether s. 109(4) of the former *Canada Labour Code*, R.S.C. 1985, c. L-2 and s. 2(e) of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 violate the constitutional guarantees in ss. 2(b), 2(d) and 15 of the *Charter.*

The Appellant has been a member of the Royal Canadian Mounted Police (R.C.M.P.) since 1969. He holds the rank of Staff Sergeant and is also the division representative for the members of R.C.M.P. "C" Division, which takes in all members of the R.C.M.P. working in Quebec. The mandate of the division representative is to represent the members in dealing with management in order to solve problems which may arise. The system was set up in May, 1974, in response to serious dissatisfaction among the members. The appellant is also the president of the Association des Membres de la Division "C", an association which was created for the purpose of obtaining trade union certification and to which 763 of the 887 employees with the rank of staff sergeant and lower belong.

The organization and administration of the R.C.M.P. are governed by the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, and by the *Royal Canadian Mounted Police Regulations, 1988*, SOR/88-361, which provide, *inter alia*, the method for resolving conflicts between the R.C.M.P. and its members. The members of the R.C.M.P. are not unionized and cannot bargain their conditions of employment collectively under s. 109(4) of the *Canada Labour Code* and s. 2(e) of the *Public Service Staff Relations Act.* They have no independent grievance settlement procedure.

The Association des Membres de la Division "C" filed an application for certification. The Canada Labour Relations Board allowed a preliminary objection by the employer that the Board did not have jurisdiction to certify the members of "C" Division. The Board decided that the members of the R.C.M.P. were excluded from the application of the *Public Service Staff Relations Act*, as the members are not entitled to bargain collectively under any federal legislation.

The Appellant presented a motion under art. 453 of the *Code of Civil Procedure* and asked the Superior Court to [TRANSLATION] "declare that s. 109(4) of the *Canada Labour Code* and s. 2(e) of the *Public Service Staff Relations Act* are inoperative as contrary to the *Canadian Charter of Rights and Freedoms*". The motion was dismissed. The appeal by the Appellant to the Quebec Court of Appeal was also dismissed, Baudoin J.A. dissenting.

Origin of the case:	Quebec
File No.:	25926
Judgment of the Court of Appeal:	January 29, 1997
Counsel:	James R.K. Duggan for the Appellant Raymond Piché, Michel Pépin and Claude Joyal for the Respondent

25926 ***Gaétan Delisle c. Le Procureur Général du Canada***

Charte canadienne des droits de la personne - Droit du travail - Législation - Interprétation - Est-ce que l'article 109(4) de l'ancien *Code canadien du travail*, L.R.C. (1985) ch. L-2 et le par. (e) de l'art. 2 de la *Loi sur les relations de travail dans la fonction publique*, L.R.C. (1985) ch. P-35 violent les garanties constitutionnelles des articles 2(b), 2(d) et 15 de la *Charte?*

L'appelant est membre de la Gendarmerie Royale du Canada ("G.R.C.") depuis 1969. Tout en occupant le rang de sergent d'état-major, il est représentant divisionnaire des membres de la Division "C" de la G.R.C., division qui regroupe la totalité des effectifs de la G.R.C. au Québec. Le représentant divisionnaire a le mandat de représenter les membres auprès de la direction afin de solutionner des problèmes qui peuvent survenir. Ce système a été précisé en mai 1974, suite à un mécontentement sérieux des membres. L'appelant est également président de l'Association des Membres de la Division "C", une association qui a été créée dans le but d'obtenir une accréditation syndicale et à laquelle 763 des 887 salariés, aux niveaux de sergents d'état-major et inférieurs, adhèrent.

L'organisation et l'administration de la G.R.C. sont régies par la *Loi sur la Gendarmerie Royale du Canada*, L.R.C. (1985), ch. R-10, et par le *Règlement de la Gendarmerie Royale du Canada*, 1988 DORS/88-631 qui prévoient, entre autres, le mode de résolution des conflits entre la G.R.C. et ses membres. Les membres de la G.R.C. ne sont pas syndiqués et ne peuvent négocier collectivement leurs conditions de travail en vertu de l'article 109(4) du *Code canadien du travail* et du paragraphe 2(e) de la *Loi sur les relations de travail dans la fonction publique*. Ils ne bénéficient pas d'un régime indépendant de règlement des griefs.

L'Association des Membres de la Division "C" a présenté une demande d'accréditation. Le Conseil canadien des relations de travail a accueilli une objection préliminaire de l'employeur à l'effet que le Conseil n'avait pas juridiction pour accréditer les membres de la division "C". Il a décidé que la *Loi sur les relations de travail dans la fonction publique* exclut les membres de la G.R.C. de son application, ces derniers étant privés de tout droit à la négociation collective établie par les lois fédérales.

L'appelant a présenté une requête en vertu de l'article 453 du *Code de procédure civile* et a demandé à la Cour supérieure de "déclarer que l'article 109(4) du *Code canadien du travail* et l'article 2(e) de la *Loi sur les relations de travail dans la fonction publique* sont inopérants comme contraires à la *Charte canadienne des droits et libertés*". La requête a été rejetée. L'appel de l'appelant à la Cour d'appel du Québec a aussi été rejeté avec dissidence de la part du juge Baudouin.

Origine:	Québec
N^{o} du greffe:	25926
Arrêt de la Cour d'appel:	Le 29 janvier 1997
Avocats:	James R.K. Duggan pour l'appelant Raymond Piché, Michel Pépin et Claude Joyal pour l'intimé

26083 ***Sail Labrador Limited v. The Owners, Navimar Corporation Ltee et al***

Commercial Law - Contracts - Option to purchase contained in a charter party agreement - Whether substantial performance of the terms of the charter party agreement is sufficient grounds for an option holder to invoke an equitable jurisdiction to compel performance of an option - Whether equitable doctrines applied to a charter party agreement.

The Appellant entered into a five year charter party with the Respondent to charter a ship, the *Challenge One*. Clause 30 of the charter party granted the Appellant an option to purchase the *Challenge One* at the end of the five-year period subject to full performance of all its obligations in the charter party. Clause 11 obliged the Appellant to make seven annual payments to the Respondent. Payments were made on time for the first four years. The first payment during the fifth year was due on June 10, 1989. The Appellant tendered a cheque in payment but the cheque was returned because of insufficient funds due to an error by a bank employee.

On June 28, 1989, the Respondent notified the Appellant that, in its opinion, the option to purchase was void and of no further effect because of the Appellant's failure to make the payment required on June 10, 1989. The Appellant subsequently made the payment. All subsequent payments were made on time. On October 31, 1989, the Appellant wrote to the Respondent and noted that the default had been due to a bank error, that the error had been rectified and that the Respondent was in receipt of the payment. The Appellant sought to exercise the option but the Respondent refused to execute a bill of sale on the basis that the Appellant had breached several clauses of the agreement. The Appellant commenced an action in Federal Court, Trial Division and obtained a declaration that it was entitled to exercise the option. The Federal Court of Appeal allowed an appeal by the Respondent.

Origin of the case:	Federal Court of Appeal
File No.:	26083
Judgment of the Court of Appeal:	April 15, 1997
Counsel:	Elizabeth M. Heneghan Q.C. for the Appellant Alain R. Pilotte for the Respondents

26083 ***Sail Labrador Limited c. Les propriétaires, Navimar Corporation Ltée et autres***

Droit commercial – Contrats – Option d'achat contenue dans une charte-partie – L'exécution substantielle des modalités de la charte-partie est-elle un motif suffisant pour que le titulaire de l'option puisse invoquer la compétence en *equity* pour forcer l'exécution de l'option? – Les doctrines d'*equity* s'appliquent-t-elles à une charte-partie?

L'appelante a conclu une charte-partie de cinq ans avec l'intimé pour affréter un navire, le *Challenge One*. L'article 30 de la charte-partie accordait à l'appelante l'option d'acheter le *Challenge One* à l'expiration de la période de cinq ans à la condition qu'elle exécute toutes les obligations prévues à la charte-partie. L'article 11 obligeait l'appelante à faire sept versements par année à l'intimé. Les versements ont été faits à temps pendant les quatre premières années. Le premier versement de la cinquième année devait être fait le 10 juin 1989. L'appelante a remis un chèque pour son paiement, mais le chèque a été retourné pour insuffisance de provisions en raison d'une erreur commise par un employé de la banque.

Le 28 juin 1989, l'intimé a avisé l'appelante que, à son avis, l'option d'achat était nulle et sans autre effet à cause du défaut de l'appelante de faire le paiement exigé le 10 juin 1989. L'appelante a par la suite effectué le paiement. Tous les versements suivants ont été faits à temps. Le 31 octobre 1989, l'appelante a écrit à l'intimé et lui a signalé que le défaut avait été provoqué par une erreur de la banque, que l'erreur avait été corrigée et que l'intimé avait reçu le paiement. L'appelante a essayé de lever son option, mais l'intimé a refusé d'exécuter le contrat de vente au motif qu'elle avait enfreint plusieurs dispositions de l'accord. L'appelante a intenté une action en Cour fédérale, Section de première instance, et a obtenu une déclaration lui confirmant son droit de lever l'option. La Cour d'appel fédérale a accueilli l'appel de l'intimé.

Origine :	Cour d'appel fédérale
N° du greffe :	26083
Jugement de la Cour d'appel :	Le 15 avril 1997
Avocats :	Elizabeth M. Heneghan, c.r., pour l'appelante Alain R. Pilotte pour les intimés

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Ayre v. Nova Scotia Barristers' Society (N.S.), 26783, *A	1342(98)	
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Leave to cross-appeal is dismissed 23.4.98 / Demande d'appel-incident est rejetée 23.4.98	661(98)	661(98)
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BC School Sports v. Peerless (B.C.), 26656, *B	1378(98)	
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Baker v. Francis (Ont.), 26562, the application for leave to appeal is granted on the limited issue of interpretation of s. 4(*b*) of the *Federal Child Support Guidelines* 20.8.98 / La demande d'autorisation d'appel est accueillie à l'égard de la seule question de l'interprétation de l'al. 4*b*) des *Lignes directrices fédérales sur les pensions alimentaires pour enfants* 20.8.98	1149(98)	1193(98)
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Blackburn-Moreault c. Moreault (Qué.), 25776, *A 281(97)
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Bonanca v. Jones (Ont.), 26521, *02 3.9.98 1227(98) 1277(98)
Bond v. Novak (B.C.), 26811, *A 1346(98)
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Brertton v. The Queen (Crim.)(Alta.), 26669, *01 17.9.98 1225(98) 1299(98)
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The applications for an extension of time are granted. The applications for oral hearings are dismissed. An order will go staying the following orders pending the determination of the appeals in *Royal Bank of Canada v. Director of Investigation and Research* (Ont.) (26316); *Canadian Pacific Limited, et al v. Director of Investigation and Research* (Ont.) (26317).

a) The order granted on February 20, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95F, B55/95G and B55/95H;

b) The order granted on May 21, 1996 by Farley J. in Ontario Court (General Division) Commercial List File No. B55/95F; and

c) The order granted on March 19, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95B, B55/95F and B55/95M.

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Canadian Mobile Sign Association v. Corporation of the City of Burlington (Ont.), 26277, *01 19.3.98 271(98) 460(98)
Canadian Pacific Ltd. v. Addy (Ont.), 26318 5(98) 232(98)

The applications for an extension of time are granted. The applications for oral hearings are dismissed. An order will go staying the following orders pending the determination of the appeals in *Royal Bank of Canada v. Director of Investigation and Research* (Ont.) (26316); *Canadian Pacific Limited, et al v. Director of Investigation and Research* (Ont.) (26317).

a) The order granted on February 20, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95F, B55/95G and B55/95H;

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The applications for an extension of time are granted. The applications for oral hearings are dismissed. An order will go staying the following orders pending the determination of the appeals in *Royal Bank of Canada v. Director of Investigation and Research* (Ont.) (26316); *Canadian Pacific Limited, et al v. Director of Investigation and Research* (Ont.) (26317).

a) The order granted on February 20, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95F, B55/95G and B55/95H;

b) The order granted on May 21, 1996 by Farley J. in Ontario Court (General Division) Commercial List File No. B55/95F; and

c) The order granted on March 19, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95B, B55/95F and B55/95M.

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Chatwell v. The Queen (Crim.)(Ont.), 26492, hearing and judgment 4.5.98; reasons delivered 18.6.98 / audition et jugement 4.5.98; motifs déposés 18.6.98	1030(98)	1030(98)
Chippewas of Kettle v. Attorney General of Canada (Ont.), 25795, *02 19.5.98	839(98)	839(98)
Commission d'appel en matière de lésions professionnelles c. J.M. Asbestos Inc. 25617, *04 23.2.98	354(98)	354(98)

Consolidated Maybrun Mines Ltd. v. The Queen (Ont.), 25326, *01 30.4.98	174(98)	718(98)
Consortium Developments (Clearwater) Ltd. v. Corporation of the City of Sarnia (Ont.), 25604, *02 16.3.98	488(98)	488(98)
Continental Bank Leasing Corporation v. The Queen (F.C.A.)(Ont.), 25532, *4 L'Heureux-Dubé and Bastarache JJ. dissenting 3.9.98 / les juges L'Heureux-Dubé et Bastarache sont dissidents 3.9.98	171(98)	1309(98)
Cook v. The Queen (Crim.)(B.C.), 25852, *04 3.9.98, the appeal is allowed, the judgments of the British Columbia Court of Appeal and of the British Columbia Supreme Court is set aside, and a new trial is ordered, L'Heureux-Dubé and McLachlin JJ. dissenting 1.10.98 / le pourvoi est accueilli, les jugements de la Cour d'appel de la Colombie-Britannique et de la Cour suprême de la Colombie-Britannique sont annulés et un nouveau procès est ordonné, les juges L'Heureux-Dubé et McLachlin sont dissidentes 1.10.98	1027(98)	1406(98)
Côté v. The Queen (Crim.)(Ont.), 25854, *01 9.7.98	544(98)	1093(98)
Daigle c. La Reine (Crim.)(Qué.), 26168, *01 26.6.98	1058(98)	1058(98)
Dancorp Developments Ltd. v. Metropolitan Trust Co. of Canada (B.C.), 25355	540(98)	
Dixon v. The Queen (Crim.)(N.S.), 25834, *01 19.2.98	2194(97)	297(98)
Dowling v. City of Halifax (N.S.), 25493, *04 20.1.98	93(98)	169(98)
Duha Printers (Western) Ltd. v. The Queen (F.C.A.)(Man.), 25513, *04 28.5.98	488(98)	882(98)
Éditions Vice-Versa Inc. c. Aubry (Qué.), 25579, *02 le juge en chef Lamer et le juge Major sont dissidents 9.4.98 / Lamer C.J. and Major J. dissenting 9.4.98	2195(97)	610(98)
Eurig v. Registrar of the Ontario Court (General Division) (Ont.), 25866	715(98)	
FBI Foods Ltd. v. Cadbury Schweppes Inc. (B.C.), 25778	716(98)	
Fontaine v. Insurance Corporation of British Columbia (B.C.), 25381, hearing and judgment 14.11.97; reasons delivered 19.3.98 / audition et jugement 14.11.97; motifs déposés 19.3.98	493(98)	493(98)
Garland v. Consumers' Gas Co. (Ont.), 25644	541(98)	
Gauthier c. Corporation municipale de la ville de Lac Brôme (Qué.), 25022, *04 le Juge en chef et le juge McLachlin sont dissidents 9.7.98 / the Chief Justice and McLachlin J. are dissenting 9.7.98	2162(97)	1093(98)
Gellvear v. The Queen (Crim.)(Alta.), 25973, *01 23.6.98	1057(98)	1057(98)
Grail v. Ordon (Ont.), 25702	1055(98)	
Hall c. Sous-ministre du revenu du Québec (Qué.), 25369, hearing and judgment 3.12.97; reasons delivered 12.2.98 / audition et jugement 3.12.97; motifs déposés 12.2.98	234(98)	234(98)
Hodgson v. The Queen (Crim.)(Ont.), 25561, *01 24.9.98	541(98)	1310(98)
Hogarth v. Hall (Ont.), 25702	1055(98)	
Horne v. The Queen (Crim.)(Alta.), 25240, *01 23.1.98	169(98)	169(98)
Ikea Ltd. v. The Queen (B.C.), 25674, *02 12.2.98	2161(97)	234(98)
Judges of the Provincial Court of Manitoba v. The Queen in right of the Province of Manitoba (Man.), 24846	92(98)	
Jussila v. The Queen (Crim.)(Alta.), 25888, *01 29.4.98	768(98)	768(98)
Law v. Minister of Human Resources Development (F.C.A.)(B.C.), 25374	93(98)	
Lepage v. The Queen (Crim.)(Ont.), 26320	1026(98)	
Lucas v. The Queen (Crim.)(Sask.), 25177, *01 McLachlin and Major JJ. dissenting 2.4.98 / les juges McLachlin et Major sont dissidents 2.4.98	1859(97)	609(98)
M.R.M. v. The Queen (Crim.)(N.S.), 26042	1057(98)	
Malott v. The Queen (Crim.)(Ont.), 25613, *01 12.2.98	1857(97)	233(98)
Maracle v. The Queen (Crim.)(Ont.), 26034, *01 23.1.98	170(98)	170(98)
McQuaid v. The Queen (Crim.)(N.S.), 25833, *01 19.2.98	2194(97)	297(98)

Ménard v. The Queen (Crim.)(Ont.), 25707, *01 9.7.98	543(98)	1093(98)
Minister of finance for the Province of New Brunswick v. Union of New Brunswick Indians (N.B.), 25427, *03 Gonthier and Binnie JJ. dissenting 18.6.98 / les juges Gonthier et Binnie sont dissidents 18.6.98	543(98)	1029(98)
Minister of Health and Community Services v. M.L. (N.B.), 26321, *03 23.6.98	1056(98)	1056(98)
Mullins-Johnson v. The Queen (Crim.)(Ont.), 25860, *01 26.5.98	962(98)	962(98)
Neuman v. The Queen (F.C.A.)(Man.), 25565, *04 21.5.98	173(98)	841(98)
Nijjar v. The Queen (Crim.)(B.C.), 25987, *01 27.2.98	406(98)	406(98)
Novopharm Ltd. v. Eli Lilly and Co. (F.C.A.)(Ont.), 25402, *04 9.7.98	94(98)	1094(98)
Orlowski v. Director, Forensic Psychiatric Institute (Crim.)(B.C.), 25751	1026(98)	
Perry v. Hall (Ont.), 25702	1055(98)	
Pushpanathan v. Minister of Citizenship and Immigration (F.C.A.)(Ont.), 25173, *03 Cory and Major JJ. are dissenting 4.6.98 / les juges Cory and Major sont dissidents 4.6.98	1855(97)	964(98)
Puskas v. The Queen (Crim.)(Ont.), 26373, hearing and judgment 4.5.98; reasons delivered 18.6.98 / audition et jugement 4.5.98; motifs déposés 18.6.98	1030(98)	1030(98)
R. v. Al Klippert Ltd. (Alta.), 25670, the appeal is allowed and the judgment of the Court of Appeal is set aside. The conviction entered by Chrumka J. of the Court of Queen's Bench and the sentence imposed by the Provincial Court (Criminal Division) are affirmed, the whole with cost / le pourvoi est accueilli et le jugement de la Cour d'appel est infirmé. La déclaration de culpabilité prononcée par le juge Chrumka de la Cour du Banc de la Reine de même que la sentence prononcée par la Cour provinciale (Division criminelle) sont confirmés, le tout avec dépens	174(98)	718(98)
R. v. Campbell (Alta.), 24831	92(98)	
R. v. Continental Bank of Canada (F.C.A.)(Ont.), 25521, *02 3.9.98	171(98)	1309(98)
R. v. Cuerrier (Crim.)(B.C.), 25738, *03 3.9.98	544(98)	1309(98)
R. v. Druken (Crim.)(Nfld.), 26254, *03 27.5.98	962(98)	962(98)
R. v. Gallant (Crim.)(P.E.I.), 25922	840(98)	
R. v. MacDougall (Crim.)(P.E.I.), 25931	840(98)	
R. v. N.G.H. (Crim.)(B.C.), 25705, *03 27.2.98	405(98)	405(98)
R. v. Poirier (Crim.)(P.E.I.), 25886, *01 22.1.98	95(98)	95(98)
R. v. Stone (Crim.)(B.C.), 26032	1091(98)	
R. v. Wells (Crim.)(B.C.), 25435, *01 L'Heureux-Dubé and Bastarache JJ. dissenting 24.9.98 / les juges L'Heureux-Dubé et Bastarache sond dissidents 24.9.98	542(98)	1310(98)
R. v. Warsing (Crim.)(B.C.), 26303	1054(98)	
R. West and Associates v. Telecom Leasing Canada (TLC) Ltd. (B.C.), 25193, *04 12.2.98	1759(97)	233(98)
Reed v. The Queen (Crim.)(B.C.), 25820, *01 29.4.98	715(98)	715(98)
Reference concerning certain questions relating to the secession of Quebec from Canada (Ont.), 25506	295(98)	1195(98)
Reference re the remuneration of Judges of the Provincial Court of Prince Edward Island (P.E.I.), 24508	92(98)	237(98)
Reitsma v. The Queen (Crim.)(B.C.), 26305, *03 20.5.98	839(98)	839(98)
Retail, Wholesale and Department Store Union, Local 454 v. Battlefords and District Co-Operative Ltd. (Sask.), 25366, *04 4.6.98	172(98)	964(98)
Retail, Wholesale and Department Store Union, Local 454 v. Canada Safeway Ltd. (Sask.), 25356, *02 L'Heureux-Dubé J. dissenting 4.6.98 / le juge L'Heureux-Dubé est dissidente 4.6.98	172(98)	964(98)
Robart v. The Queen (Crim.)(N.S.), 25832, *01 19.2.98	2194(97)	297(98)
Rose v. The Queen (Crim.)(Ont.), 25448	356(98)	

Ryan v. Corporation of the City of Victoria (B.C.), 25704	1027(98)	
Shalaan v. The Queen (Crim.)(N.S.), 26029, *01 28.1.98	173(98)	173(98)
Skinner v. The Queen (Crim.)(N.S.), 25831, the appeal from the conviction for the assault of Darren Watts is allowed 19.2.98 / le pourvoi contre la déclaration de culpabilité relative aux voies de fait contre Darren Watts est accueilli 19.2.98	2194(97)	297(98)
Smith v. The Queen (Crim.)(N.S.), 25822, the appeal from conviction for the assault of Darren Watts is dismissed; the appeal from conviction for the assault on Rob Gillis is allowed 19.2.98 / le pourvoi contre la déclaration de culpabilité relative aux voies de fait contre Darren Watts est rejeté; le pourvoi contre la déclaration de culpabilité relative aux voies de fait contre Bob Gillis est accueilli 19.2.98	2194(97)	297(98)
Stone v. The Queen (Crim.)(B.C.), 25969	1091(98)	
Succession Clément Guillemette c. J.M. Asbestos Inc. (Qué.), 25617, *04 23.2.98	354(98)	354(98)
Thomas v. The Queen (Crim.)(B.C.), 25943	1054(98)	
Thomson Newspapers Co. v. Attoryney General of Canada (Ont.), 25593, *04 Lamer C.J. and L'Heureux-Dubé and Gonthier JJ. are dissenting 29.5.98 / le juge en chef Lamer et les juges L'Heureux-Dubé et Gonthier sont dissidents 29.5.98	1855(97)	882(98)
Toronto College Park Ltd. v. The Queen (Ont.), 25559, *04 12.2.98	2161(97)	234(98)
Vancouver Society of Immigrant & Visible Minority Women v. Minister of Revenue (F.C.A.)(B.C.), 25359	354(98)	
Vriend v. The Queen in right of Alberta (Alta.), 25285, the appeal is allowed, the cross-appeal is dismissed, and the judgment of the Alberta Court of Appeal is set aside with party-and-party cost throughout, Major J. dissenting in part on the appeal 2.4.98 / le pourvoi principal est accueilli, le pourvoi incident est rejeté et le jugement de la Cour d'appel de l'Alberta est annulé avec dépens sur la base de frais entre parties devant toutes les cours, le juge Major est dissident en partie quant au pourvoi principal 2.4.98	1992(97)	609(98)
White v. The Queen (Crim.)(Ont.), 25775, *01 9.7.98	544(98)	1093(98)
Williams v. The Queen (Crim.)(B.C.), 25375, *03 4.6.98	355(98)	965(98)
Winko v. Director, Forensic Psychiatric Institute (Crim.)(B.C.), 25856	1026(98)	

APPEALS INSCRIBED FOR HEARING AT THE SESSION OF THE SUPREME COURT OF CANADA, BEGINNING MONDAY, OCTOBER 5, 1998

APPELS INSCRITS POUR AUDITION À LA SESSION DE LA COUR SUPRÊME DU CANADA COMMENÇANT LE LUNDI 5 OCTOBRE 1998

SUPREME COURT OF CANADA - COUR SUPRÊME DU CANADA

Session commencing Monday, October 5, 1998 ✦✦✦ Session commençant le lundi 5 octobre 1998

	Style of cause / Intitulé de la cause	File / Dossier	Counsel / Procureurs	Agent / Correspondant	Prov.
1	The Children's Foundation, et al v. Patrick Allan Bazley	26013	Alexander, Holburn, Beaudin & Lang D. Brent Adair Law Corporation	O'Grady & Young McCarthy, Tétrault	BC
2	Minister of Justice v. Glen Sebastian Burns and Atif Ahmad Rafay	26129	Attorney General of Canada Bolton & Muldoon	Attorney General of Canada Gowling, Strathy & Henderson	BC
3	M.J.B. Enterprises Ltd. v. Defence Construction (1951) Limited, et al	25975	W. Donald Goodfellow, Q.C. Attorney General of Canada	Lang, Michener Attorney General of Canada	AB
4	Gail Taylor-Jacobi, et al v. Boys' and Girls' Club of Vernon	26041	Kendall, Penty & Company Watson Goepel Maledy	Lang, Michener Nelligan, Power	BC
5	Vincent Godoy v. (Crim.) Her Majesty the Queen	26078	Hicks Block Adams Derstine Attorney General for Ontario	Gowling, Strathy & Henderson Burke-Robertson	ON
6	Alfred Abouchar c. Conseil scolaire de langue française d'Ottawa-Carleton - Section publique, et al	25899	Nelligan, Power Genest Murray DesBrisay Lamek	 McCarthy, Tétrault	ON
7	Florent Des Champs v. Conseil des écoles séparées catholiques de langue française de Prescott-Russell, et al	25898	Nelligan, Power Genest Murray DesBrisay Lamek	 McCarthy, Tétrault	ON
8	Royal Bank of Canada v. W. Got & Asssociates Electric Ltd., et al	26081	Howard, Mackie Weir, Bowen	Fraser & Beatty Burke-Robertson	AB

	Style of cause / Intitulé de la cause	File / Dossier	Counsel / Procureurs	Agent / Correspondant	Prov.
9	Donald John Marshall, Jr. v. (Crim.) Her Majesty the Queen	26014	Bruce H. Wildsmith, Q.C. Attorney General of Canada	Nelligan, Power Attorney General of Canada	NS
10	Gaétan Delisle v. Attorney General of Canada	25926	James R.K. Duggan Côté & Ouellet	Raven, Jewitt, Allen	QC
11	Sail Labrador Limited v. The owners, Navimar Corporation Ltée and all others interested in the ship “Challenge One”, her equipment, bunkers and freights, et al	26083	Elizabeth M. Heneghan Law Office Étude légale Alain R. Pilotte	Gowling, Strathy & Henderson Lang, Michener	ON
12	D.D.W. v. (Crim.) Her Majesty the Queen	25970	Lugosi & Cornett Attorney General of British Columbia	Gowling, Strathy & Henderson Burke-Robertson	BC
13	Mavis Baker v. (F.C.A.) Minister of Citizenship and Immigration	25823	Roger Rowe and Rocco Galati Attorney General of Canada	Lang, Michener	ON
14	Cynthia Dobson v. Ryan Leigh MacLean Dobson, by his litigation guardian, Gerald M. Price	26152	Burchell Hayman Barnes Bingham Rideout Brison & Blair	Nelligan, Power Gowling, Strathy & Henderson	NB
15	Batchewana Indian Band, et al v. John Corbière, et al	25708	William B. Henderson Gary E. Corbière	Gowling, Strathy & Henderson Noël & Associés	ON
16	J.G. v. Minister of Health and Community Services, et al	26005	Christie and Associates Attorney General of New Brunswick	Gowling, Strathy & Henderson Gowling, Strathy & Henderson	NB
17	Sharon Marie Bracklow v. Frank Patrick Bracklow	26178	Kendall, Penty & Company McKitrick Gemmill McLeod	Gowling, Strathy & Henderson Osler, Hoskin & Harcourt	BC
18	Arthur Robert Winters v. (Crim.) Legal Services Society, et al	26180	Conroy & Company MacAdams Law Firm	Gowling, Strathy & Henderson Lang, Michener	BC

	Style of cause / Intitulé de la cause	File / Dossier	Counsel / Procureurs	Agent / Correspondant	Prov.
19	Attorney General of Canada v. (Crim.) Canadianoxy Chemicals Ltd., et al	25944	Attorney General of Canada Edwards, Kenny & Bray	Attorney General of Canada Gowling, Strathy & Henderson	BC
20	Greif Containers Ltd. v. (F.C.A.) Her Majesty the Queen in Right of Canada	26065	Beard, Winter Attorney General of Canada	Burke-Robertson	ON
21	John Lauda v. (Crim.) Her Majesty the Queen	26444	Ruby & Edwardh Attorney General of Canada	Shore, Davis, Kehler, MacFarlane Attorney General of Canada	ON
22	Her Majesty the Queen v. (Crim.) Steve Brian Ewanchuk	26493	Attorney General of Alberta Royal, McCrum, Duckette & Glancy	Gowling, Strathy & Henderson Burke-Robertson	AB
23	Mary Lawlor v. M.J. Oppenheim, C.A., Attorney in fact in Canada for Lloyd's Non-Marine Underwriters	26212	Davies, Ward & Beck McInnes Cooper & Robertson	Gowling, Strathy & Henderson Lang, Michener	NF
24	Her Majesty the Queen in Right of Canada, et al v. (Crim.) Andelo Del Zotto, et al	26174	Attorney General of Canada Greenspan and Associates	Attorney General of Canada Osler, Hoskin & Harcourt	ON
25	Sa Majesté la Reine c. (Crim.) Edmon Kabbabe	25858	Procureur général du Québec Me Franck Laveaux	Noël & Associés	QC
26	Her Majesty the Queen v. (Crim.) John Sundown	26161	Attorney General for Saskatchan Woloshyn Mattison	Gowling, Strathy & Henderson Nelligan, Power	SK
27	Sharon Leslie Chartier v. Gerald Leo Joseph Chartier	26456	Paul & Boonov Levene, Levine, Tadman	Gowling, Strathy & Henderson	MN
28	Her Majesty the Queen v. (Crim.) Joann Kimberley White	26473	Attorney General of British Columbia Peter Burns	Burke-Robertson Gowling, Strathy & Henderson	BC

	Style of cause / Intitulé de la cause	File / Dossier	Counsel / Procureurs	Agent / Correspondant	Prov.
29	Robert Dennis Starr v. (Crim.) Her Majesty the Queen	26514	Walsh, Micay and Company Attorney General of Manitoba	Burke-Robertson Gowling, Strathy & Henderson	MN
30	Her Majesty the Queen v. (Crim.) Isaac Monney	26404	Attorney General of Canada Pinkofsky, Lockyer & Kwinter	Attorney General of Canada Gowling, Strathy & Henderson	ON
31	Edwin Pearson v. (Crim.) Her Majesty the Queen	24107	Bourgeois & Danis Attorney General of Canada	Lalonde & Gagnon	QC
32	Jamie Tanis Gladue v. (Crim.) Her Majesty the Queen	26300	Gil D. McKinnon, Q.C. Attorney General of British Columbia	Gowling, Strathy & Henderson Burke-Robertson	BC
33	Her Majesty the Queen v. (Crim.) Kevin White	26510	Attorney General of Newfoundland O'Dea, Earle	Burke-Robertson Gowling, Strathy & Henderson	NF
34	Lee Edward Campbell v. (Crim.) Her Majesty the Queen	26454	Sheldon Goldberg Attorney General of British Columbia	Gowling, Strathy & Henderson Burke-Robertson	BC
35	Jones v. Smith	26500			

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

Pursuant to Rule 23.1 of the *Rules of the Supreme Court of Canada*, the following deadlines must be met before a motion before the Court can be heard:

Motion day	**:**	**October 5, 1998**
Service	:	September 14, 1998
Filing	:	September 21, 1998
Respondent	:	September 28, 1998
Motion day	**:**	**November 2, 1998**
Service	:	October 12, 1998
Filing	:	October 19, 1998
Respondent	:	October 26, 1998
Motion day	**:**	**December 7, 1998**
Service	:	November 16, 1998
Filing	:	November 23, 1998
Respondent	:	November 30, 1998

DEVANT LA COUR:

Conformément à l'article 23.1 des *Règles de la Cour suprême du Canada*, les délais suivants doivent être respectés pour qu'une requête soit entendue par la Cour :

Audience du	**:**	**5 octobre 1998**
Signification	:	14 septembre 1998
Dépôt	:	21 septembre 1998
Intimé	:	28 septembre 1998
Audience du	**:**	**2 novembre 1998**
Signification	:	12 octobre 1998
Dépôt	:	19 octobre 1998
Intimé	:	26 octobre 1998
Audience du	**:**	**7 décembre 1998**
Signification	:	16 novembre 1998
Dépôt	:	23 novembre 1998
Intimé	:	30 novembre 1998

DEADLINES: APPEALS

The Spring Session of the Supreme Court of Canada will commence October 5, 1998.

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

Appellant's record; appellant's factum; and appellant's book(s) of authorities must be filed within four months of the filing of the notice of appeal.

Respondent's record (if any); respondent's factum; and respondent's book(s) of authorities must be filed within eight weeks of the date of service of the appellant's factum.

Intervener's factum and intervener's book(s) of authorities, if any, must be filed within four weeks of the date of service of the respondent's factum, unless otherwise ordered.

Parties' condensed book, if required, must be filed on or before the day of hearing of the appeal.

Please consult the Notice to the Profession of October 1997 for further information.

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.

DÉLAIS: APPELS

La session de printemps de la Cour suprême du Canada commencera le 5 octobre 1998.

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

Le dossier de l'appelant, son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les quatre mois de l'avis d'appel.

Le dossier de l'intimé (le cas échéant), son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les huit semaines suivant la signification de ceux de l'appelant.

Le mémoire de l'intervenant et son recueil de jurisprudence et de doctrine, le cas échéant, doivent être déposés dans les quatre semaines suivant la signification de ceux de l'intimé.

Le recueil condensé des parties, le cas échéant, doivent être déposés au plus tard le jour de l'audition de l'appel.

Veuillez consulter l'avis aux avocats du mois d'octobre 1997 pour plus de renseignements.

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

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 1998 -

OCTOBER - OCTOBRE

S D	M L	T M	W M	T J	F V	S S
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4	**M 5**	**6**	**7**	**8**	**9**	10
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NOVEMBER - NOVEMBRE

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DECEMBER - DECEMBRE

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- 1999 -

JANUARY - JANVIER

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FEBRUARY - FÉVRIER

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APRIL - AVRIL

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JUNE - JUIN

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Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

M

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