

CONTENTS**TABLE DES MATIÈRES**

Applications for leave to appeal filed	1024	Demandes d'autorisation d'appels déposées
Applications for leave submitted to Court since last issue	1025 - 1031	Demandes soumises à la Cour depuis la dernière parution
Oral hearing ordered	-	Audience ordonnée
Oral hearing on applications for leave	-	Audience sur les demandes d'autorisation
Judgments on applications for leave	1032 - 1035	Jugements rendus sur les demandes d'autorisation
Motions	1036 - 1041	Requêtes
Notices of appeal filed since last issue	1042	Avis d'appel déposés depuis la dernière parution
Notices of intervention filed since last issue	-	Avis d'intervention déposés depuis la dernière parution
Notices of discontinuance filed since last issue	-	Avis de désistement déposés depuis la dernière parution
Appeals heard since last issue and disposition	1043 - 1047	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	-	Jugements rendus sur les appels en délibéré
Headnotes of recent judgments	-	Sommaires des arrêts récents
Weekly agenda	1048	Ordre du jour de la semaine
Summaries of the cases	-	Résumés des affaires
Cumulative Index - Leave	-	Index cumulatif - Autorisations
Cumulative Index - Appeals	-	Index cumulatif - Appels
Appeals inscribed - Session beginning	-	Appels inscrits - Session commençant le
Notices to the Profession and Press Release	-	Avis aux avocats et communiqué de presse
Deadlines: Motions before the Court	1049	Délais: Requêtes devant la Cour
Deadlines: Appeals	1050	Délais: Appels
Judgments reported in S.C.R.	1051	Jugements publiés au R.C.S.

**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

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

ERRATA

Jonathan Pulker et al.

Marilyn E. Sandford
Ritchie & Co.

v. (24171)

MacMillan Bloedel Ltd. (B.C.)

B.W. Rendell & P.U.W. Ewert
Min. of the Attorney General

FILING DATE 26.5.1994

Sa Majesté La Reine

Alain Gaumont
Subs. procureur général

c. (24173)

Raynald Mathieu (Crim.)(Qué.)

Pierre Gaudreau
Gaudreau & Assoc.

DATE DE PRODUCTION 10.6.1994

Chief Roy Whitney, Jr. et al.

James Gladstone
Singleton, Urquhart, Macdonald

v. (24179)

Nathanson, Schachter & Thomson et al. (B.C.)

Stephen Schachter
Nathanson Schachter & Thompson

FILING DATE 25.5.1994

J.M. Gregory MacIsaac

v. (24180)

Charlene Anne (MacIsaac) MacNeil (N.S.)

FILING DATE 6.6.1994

Her Majesty The Queen

Wayne Gorman
Dept. of Justice

v. (24182)

Alexander Bruce (Nfld.)

Jerome Kennedy

FILING DATE 27.5.1994

JUNE 14, 1994 / LE 14

JUIN 1994

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

Edwin Pearson

v. (24107)

Her Majesty the Queen (Crim.)(Qué.)

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Statutes - Interpretation - Evidence - Offenses - Narcotics - Whether the Court of Appeal erred in applying s. 686 of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in holding that the trial judge did not err in admitting evidence sought to be excluded under s. 24 of the *Charter* - Whether the Court of Appeal erred in holding that the trial judge did not err in his charge to the jury pursuant to *R. v. Thatcher*, [1987] 1 S.C.R. 652 - Whether the Court of Appeal erred in finding that the acts of the Applicant came within the meaning of s. 2 of the *Narcotic Control Act*, R.S.C. 1985, c. N-1 - Whether the Court of Appeal erred in failing to adhere to the judgment of the trial judge on Count 4 - Whether the Court of Appeal erred in allowing the Respondent's motion to produce material and in finding that some of the material would not have been material to the defence at trial - Whether the Court of Appeal erred in holding as proper the trial judge's curtailment of the cross-examination of the Respondent's main witnesses - Whether the Court of Appeal's decision will cause prejudice to the Applicant at his new trial - Whether the Court of Appeal erred in failing to consider the "issue of fairness" - Whether the Court of Appeal erred in ordering a new trial only on the ground of entrapment - Whether the Court of Appeal erred in not granting a stay of proceedings.

PROCEDURAL HISTORY

February 1, 1991
Superior Court of Quebec (Hannan J.)

Conviction: Four counts of trafficking in narcotics

February 24, 1994
Court of Appeal for Quebec (Vallerand, Baudouin and
Fish JJ.A.)

Appeal against conviction allowed in part

April 22, 1994
Supreme Court of Canada

Application for leave to appeal filed

William Wade

v. (24153)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Procedural law - Defence - Statutes - Interpretation - Whether the Court of Appeal erred in law in its determination that, pursuant to section 686(8) of the *Criminal Code*, a Court of Appeal is vested with the authority to limit a new trial, ordered pursuant to Section 686(2), to the issue of guilt as between the offence charged and a lesser and included offence and to thereby preclude a verdict of acquittal at the new trial - Whether the Court of Appeal erred in law prohibiting a trial court from considering a verdict of acquittal in making its determination at a new trial in that such an order violates the presumption of innocence and the Applicant's right to make full answer and defence as guaranteed by Sections 7 and 11(d) of the *Charter*.

PROCEDURAL HISTORY

September 18, 1990
Ontario Court (General Division) (Paisley J.)

Conviction: second degree murder

March 21, 1994
Court of Appeal for Ontario
(Dubin C.J.O., Doherty and Abella JJ.A.)

Appeal allowed: conviction quashed and new trial ordered; trial limited to the question of whether the Applicant was guilty of murder or manslaughter

May 19, 1994
Supreme Court of Canada

Application for leave to appeal filed

Ontario Chrysler (1977) Ltd.

v. (24122)

Her Majesty the Queen (Ont.)

NATURE OF THE CASE

Criminal law - Offences - Fraud - Whether the Court of Appeal erred in convicting Applicant by attributing to it the criminal culpability of named and unnamed persons who were not before the Court - Whether it is a condition precedent to the conviction of a corporation on a "true criminal offence" such as fraud, that a natural person must also stand charged before the Court and be convicted of the offence - Whether the Court of Appeal erred when it found as a fact that the Applicant's business manager was a directing mind of the Applicant - Whether the Court of Appeal erred in its findings with respect to the nature of the allegations in several of the charges - Whether the Court of Appeal erred in its finding that, while affirming the Applicant's conviction one count, its quashing of the Applicant's conviction on another precluded the application of any *res judicata* based defence with respect to the Applicant's convictions on the remaining counts.

PROCEDURAL HISTORY

September 28, 1990
District Court of Ontario (Morrissey J.)

Convictions: 34 counts of fraud

March 7, 1994
Court of Appeal for Ontario (Morden A.C.J.O.,
Griffiths and Doherty JJ.A.)

Appeal allowed in part

May 5, 1994
Supreme Court of Canada

Application for leave to appeal filed

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

James Clayton Collier

v. (23706)

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

NATURE OF THE CASE

Criminal law - Evidence - Dangerous offender - Whether the trial judge erred in failing to explain why contradictions between the evidence submitted at trial and at the dangerous offender hearing did not cause him any concerns - Whether the trial judge erred in failing to rule at the dangerous offender hearing, in the face of perjury at trial, whether such admission ought to be treated as fresh evidence or whether such admission should be found to relate only to the issue of sentencing - Whether the trial judge erred in basing his finding of dangerousness upon evidence gathered by the police for misconduct for which the Applicant was neither charged nor tried upon - Whether the trial judge erred in relying extensively upon psychological and psychiatric professionals in reaching the conclusion of dangerousness and whether the indeterminate sentence was disproportionately harsh - Whether the Court of Appeal erred in law in holding that the Applicant had not met the onus of demonstrating that surveillance reports which had been gathered by the police were not disclosed to the defense in a timely fashion - Whether the Court of Appeal erred in law in holding that the Crown could fulfil its obligations to disclose all material by summarizing their content to defense counsel either in writing or verbally.

PROCEDURAL HISTORY

November 18, 1985
Supreme Court of Ontario (Bowby J.)

Dangerous offender finding

November 17, 1992
Court of Appeal for Ontario (Grange, Galligan and
Doherty JJ.A.)

Appeal dismissed

April 28, 1994
Supreme Court of Canada

Application for leave to appeal filed

Her Majesty the Queen

v. (24149)

I.T.G. (Crim.)(N.S.)

NATURE OF THE CASE

Criminal law - Young offenders - Procedural law - Evidence - Offenses - Interpretation - Whether the Court of Appeal erred in applying an unduly onerous standard to the examination of the credibility of a sexual assault complainant - Whether the Court of Appeal erred in that they misconstrued the legal meaning of consent - Whether the Court of Appeal erred in setting aside the trial judge's conclusion that the complainant was credible - Whether the Court of Appeal erred in that they misconstrued the meaning of s. 686(1)(a)(i) of the *Criminal Code*, R.S.C. 1985, c. C-46, and that they exceeded their jurisdiction under s. 686(1)(a)(i) by setting aside the conviction of the trial judge.

PROCEDURAL HISTORY

June 30, 1993
Family Court (Youth Court) of Nova Scotia
(Legere J.)

Conviction: Sexual assault

March 16, 1994
Court of Appeal for Nova Scotia
(Jones, Hallett and Matthews JJ.A.)

Appeal allowed

May 13, 1994
Supreme Court of Canada

Application for leave to appeal filed

Pte. Robert Anthony Ryan

v. (24162)

Her Majesty the Queen (C.M.A.C.)(Crim.)(Ont.)

NATURE OF THE CASE

Criminal law - Procedural law - Appeal - Extension of time - Whether the Court Martial Appeal Court erred in refusing to extend the time for filing an application to appeal conviction and in refusing the application for leave to appeal severity of sentence because the Applicant did not submit, as ordered, representations in support of both applications.

PROCEDURAL HISTORY

November 18, 1992
Standing Court Martial, Hull
(Plouffe Lt. Col.)

Conviction: sexual assault and sexual assault with
a weapon
Sentence: sixteen months imprisonment

March 15, 1994
Court Martial Appeal Court
(Mahoney C.J.)

Application to extend time to appeal conviction
refused; Application for leave to appeal severity of
sentence refused

May 16, 1994
Supreme Court of Canada

Application for leave to appeal filed

Dr. Martin L. Cohnstaedt

v. (24146)

University of Regina (Sask.)

NATURE OF THE CASE

Torts - Damages - Assessment - Whether the majority of the Court of Appeal erred in applying the "loss of a chance" doctrine in the assessment of damages that flows from the breach of the employment contract of a tenured professor appointed pursuant to a statute - Whether the Court of Appeal erred in reducing the damage award of the Applicant by incorrectly setting forth and applying the law of mitigation - Whether the Court of Appeal erred in not awarding pre-judgment interest - Whether the Court of Appeal erred by denying the Applicant the right to call evidence to prove that an agreement was made at trial as to damages in respect of salary and pension.

PROCEDURAL HISTORY

November 26, 1990
Court of Queen's Bench of Saskatchewan
(Matheson J.)

Assessment of damages

March 15, 1994
Court of Appeal for Saskatchewan
(Vancise, Sherstobitoff [dissenting] and Lane JJ.A.)

Appeal allowed in part

May 12, 1994
Supreme Court of Canada

Application for leave to appeal filed

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

Eugène Flibotte

c. (24165)

Ville de St-Basile-Le-Grand

et

**Chambre de l'expropriation et le registraire de la division
d'enregistrement de Chambly (Qué.)**

NATURE DE LA CAUSE

Droit municipal - Expropriation - Législation - Interprétation - Légalité du droit à l'expropriation pour effectuer des travaux requérant l'autorisation du ministère de l'Environnement - Le droit à l'expropriation d'un terrain pour permettre d'installer une conduite temporaire et de l'utiliser pour déverser un trop-plein provenant d'un collecteur sanitaire dans un ruisseau peut-il être déterminé uniquement en fonction des pouvoirs inhérents d'une municipalité en vertu de la *Loi sur les cités et villes*, L.R.Q., ch. C-19, sans tenir compte des dispositions particulières de la *Loi sur la qualité de l'environnement*, L.R.Q., ch. Q-2, quant au rejet de contaminants dans l'environnement? - Légalité de l'expropriation d'une partie de lot non visée par la résolution de la municipalité décrétant les travaux.

HISTORIQUE PROCÉDURAL

Le 25 juin 1993
Cour supérieure du Québec (Gratton J.C.S.)

Requête du demandeur en contestation du droit à
l'expropriation accueillie

Le 24 mars 1994
Cour d'appel du Québec (McCarthy, Gendreau et
Steinberg, J.J.A.)

Appel de l'intimée accueilli

Le 20 mai 1994
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Service spécial de vidanges Inc. et Gestion des rebuts D.M.P. Inc.,

c. (24081)

**Régie intermunicipale de gestion des déchets de la Mauricie, et
Municipalité régionale de comté de Francheville,
Municipalité régionale de comté de Maskinongé,
Municipalité régionale de comté de Mékinac,
Municipalité régionale de comté Le Centre de la Mauricie,
Ville de Trois-Rivières
et Procureur général de la province de Québec**

et

**Chambre d'expropriation de la Cour du Québec et
Le registraire du bureau d'enregistrement de Trois-Rivières (Qué.)**

NATURE DE LA CAUSE

Droit municipal - Droit administratif - Législation - Interprétation - Compétence - Municipalités - Expropriation - Contrôle judiciaire - Compétence d'une municipalité d'exploiter un système de gestion de rebuts - Délégation du pouvoir d'exploitation d'un service de gestion des rebuts - La Cour d'appel du Québec a-t-elle erré dans l'interprétation des dispositions pertinentes du *Code municipal*, L.R.Q., ch. C-27, sur la gestion des déchets?

HISTORIQUE PROCÉDURAL

Le 12 août 1993
Cour supérieure du Québec (Lévesque J.C.S.)

Requête des demandeurs en contestation du droit à
l'expropriation rejetée

Le 22 mars 1994
Cour d'appel du Québec (Bisson J.C.Q., Rousseau-
Houle et Delisle, J.J.C.A.)

Appel rejeté

Le 21 avril 1994
Cour suprême du Canada (Iacobucci J.)

Requête des demandeurs en sursis accueillie avec
conditions

Le 18 mai 1994
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Amoco Canada Resources Ltd.

v. (24123)

Mesa Operating Partnership Limited (Alta.)

NATURE OF THE CASE

Commercial law - Contracts - Doctrine of good faith in contract law - Whether the Court of Appeal erred in upholding the decision of the trial judge by employing a test assessing the "reasonable expectations" of the parties.

PROCEDURAL HISTORY

APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST ISSUE

REQUÊTES SOUMISES À LA COUR DEPUIS
LA DERNIÈRE PARUTION

March 30, 1992
Court of Queen's Bench of Alberta
(Shannon J.)

Action for unpaid royalties allowed in part

March 15, 1994
Court of Appeal for Nova Scotia
(Kerans, Irving and Moore JJ.A.)

Appeal dismissed

May 10, 1994
Supreme Court of Canada

Application for leave to appeal filed

JUNE 16, 1994 / LE 16 JUIN 1994

23559 **146919 CANADA LTD. v. JOHN T. McCREIGHT and B. MYLES HAMILTON, on their own behalf and on behalf of all other members and beneficiaries of the Retirement Pension Plan for Executive Employees of General Bakeries Ltd. AND 146919 CANADA LTD. v. FRANK SHERWIN and SUSAN SARASSY on their own behalf and on behalf of all other members and beneficiaries of the General Bakeries Ltd. Employees Retirement Pension Plan and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union Number 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Gary LaPlante on his own behalf and on behalf of those members and beneficiaries of the General Bakeries Limited Employees Retirement Pension Plan who are also members of Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America** (Ont.)

CORAM: La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is dismissed with costs payable to the respondents on the same terms as ordered by the Court of Appeal.

La demande d'autorisation d'appel est rejetée avec dépens payables aux intimés selon les conditions prescrites par la Cour d'appel.

NATURE OF THE CASE

Commercial law - Pensions - Contracts - Is the treatment of a defined benefits pension plan as an irrevocable trust of all pension fund monies, so that the surplus assets in the plan cannot revert to an employer on termination of the plan, an issue of public importance in the development of the law of pensions? - Is the interpretation of the phrase "actuarial error" in a pension plan an issue of public importance in the development of the law of pensions?

24016/24017 **NICOLE VIGEANT c. PIERRE-ANDRÉ LANGLOIS** (Qué.)

CORAM: La Forest, Sopinka and Major JJ.

Les demandes de prorogation de délai sont accordées et les demandes d'autorisation d'appel sont rejetées.

The applications for extension of time are granted and the applications for leave to appeal are dismissed.

NATURE DE LA CAUSE

Procédure - Droit de la famille - Appel - Pensions - Preuve - Pension alimentaire - Demande de pension alimentaire rejetée - Absence de preuve justifiant de faire revivre ou de prolonger la pension alimentaire - Appel rejeté - Absence d'erreur dans le jugement prononcé en première instance justifiant l'intervention de la Cour d'appel.

23899 **MACMILLAN BLOEDEL LIMITED AND CANADIAN TRANSPORT COMPANY LIMITED v. JOHN RICHARD LUDBROOE YUELL (REPRESENTATIVE UNDER-WRITER), ORION INSURANCE CO. LTD., THE YASUDA FIRE & MARINE INSURANCE CO. (U.K.) LTD., COMMERCIAL UNION ASSURANCE CO. LTD., SPHERE INSURANCE CO. LTD., DRAKE INSURANCE CO. LTD., THE THREADNEEDLE INSURANCE CO. LTD., INSURANCE COMPANY OF NORTH AMERICA (U.K.) LTD., BISHOPGATE INSURANCE CO. LTD., INDEMNITY MARINE ASSURANCE CO. LTD., BRITISH LAW INSURANCE CO. LTD., LA RÉUNION FRANÇAISE SOC. ANON. D'ASSURANCES ET DE RÉASSURANCES, ALBION INSURANCE CO. LTD., OCEAN MARINE INSURANCE CO. LTD., SCOTTISH LION INSURANCE CO. LTD., PROVINCIAL INSURANCE CO. LTD., MINISTER INSURANCE CO. LTD., ANDREW WEIR INSURANCE CO. LTD., INSURANCE CORPORATION OF IRELAND LTD., AND HANSA MARINE INSURANCE CO. (U.K.) LTD.** (B.C.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Maritime law - Insurance marine - Damages - Whether the Court of Appeal erred in concluding that the Applicants' claim against the Respondents for recovery of mitigation costs be denied.

23939 **OMINECA ENTERPRISES LTD. v. MINISTER OF FORESTS AND THE APPEAL BOARD
APPOINTED PURSUANT TO THE FOREST ACT BY ORDER IN COUNCIL NUMBER 349
DATED MARCH 6, 1992 (B.C.)**

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Administrative law - Procedural law - Appeal - Jurisdiction - Barristers and solicitors - Bias - *Audi alteram partem* - Whether an appeal tribunal is entitled to have a lawyer advise it on matters raised on the appeal - Whether a denial of natural justice arises where the lawyer for the appeal tribunal and the lawyer for the respondent are both appointed and paid by the Attorney General.

23961 **INSURANCE CORPORATION OF BRITISH COLUMBIA v. ERIC MICHAEL PETERSEN
(B.C.)**

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

The application for leave to appeal is dismissed with costs to the respondent.

La demande d'autorisation d'appel est rejetée avec dépens en faveur de l'intimé.

NATURE OF THE CASE

Torts - Insurance - Damages - Mitigation - Procedural law - Civil procedure - Pleadings - Whether it was necessary to plead mitigation.

23759 **FREDERICK RONALD DILLING v. REGINA (Crim.)(B.C.)**

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

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

La requête pour prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Evidence - Whether the Court of Appeal erred in finding that the Applicant's right to silence and right to be free from self-incrimination under s. 7 of the *Charter*

was not violated by the taking of the Applicant's photograph - Whether the Court of Appeal erred in finding that the right to be free from unreasonable seizure as guaranteed by s. 8 of the *Charter* was not violated by the taking of the Applicant's photograph without authorization by either statute or warrant - Whether the Court of Appeal erred in finding that "establishing identity" as contemplated by s. 495 of the *Criminal Code*, R.S.C. 1985, c. C-46, justified the taking of the Applicant's photograph - Whether the Court of Appeal erred in finding that the Applicant's right on detention to be informed promptly of the reason therefore as guaranteed by s. 10(a) of the *Charter*, and the accompanying right under s. 10(b), was not violated - Whether the Court of Appeal erred in finding that the Applicant's rights as guaranteed by ss. 7, 8, 10(a) and (b) of the *Charter* were not breached and that the admissibility of photographic evidence did not bring the administration of justice into disrepute pursuant to s. 24 of the *Charter*.

23990 MOHAMED OU HAMMOU c. MINISTÈRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION (Qué)(C.A.F.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Immigration - Procédure - Recours - Brefs de prérogative - Contrôle judiciaire - Compétence - Jugements et ordonnances - *Mandamus* - Revendication du statut de réfugié - La section de première instance de la Cour fédérale a-t-elle erré en rejetant la demande du demandeur visant à obtenir l'autorisation de présenter une demande de contrôle judiciaire et ce, au motif de chose jugée? - Le demandeur peut-il présenter une demande d'autorisation d'appel devant cette Cour à l'encontre de cette décision? - Article 82.2 de la *Loi sur l'immigration*, L.R.C. (1985), ch. 1-2.

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

Requête pour arrêt des procédures

Sa Majesté La Reine

c. (24154)

Suzanne Thibaudeau (Qué.)

LE JUGE EN CHEF (oralement) -- Il est ordonné que la déclaration d'inconstitutionnalité de l'article 56(1)*b*) de la *Loi d'impôt sur le revenu* décrétée par le jugement rendu par la Cour d'appel fédérale le 3 mai 1994 dans le dossier portant le numéro A-1248-92 soit suspendue jusqu'au jour du jugement rejetant la demande d'autorisation d'en appeler ou, dans l'hypothèse où permission d'en appeler serait accordée, jusqu'au jour du jugement rendu par cette Cour.

Motion for a stay of proceedings

Patricia Jackson and Steve Tenai, for the intervener Scope.

Don Holubitsky, for the intervener Brenda Schaff.

Claude Joyal, Guy Laperrière et Carole Johnson, pour la requête.

Michel C. Bernier, Richard Bougault, Pierre Rioux et Bryan O'Gallagher, pour l'intimée.

THE CHIEF JUSTICE (orally) -- It is ordered that the declaration that s. 56(1)*(b)* of the *Income Tax Act* is unconstitutional contained in the judgment rendered by the Federal Court of Appeal on May 3, 1994 in file number A-1248-92 be stayed until the day of the judgment dismissing the application for leave to appeal or, should leave to appeal be granted, until the day on which judgment is rendered by this Court.

9.6.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion for an order that this appeal is to be
deemed not abandoned**

**Requête en déclaration que le présent appel est
censé ne pas avoir été abandonné**

Camille Huot

v. (23849)

Sa Majesté La Reine (Ont.)

GRANTED / ACCORDÉE

9.6.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion for an order that this appeal is to be
deemed not abandoned**

**Requête en déclaration que le présent appel est
censé ne pas avoir été abandonné**

Daniel Boersma et al.

With the consent of the parties.

v. (23889)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE

10.6.1994

Before / Devant: THE REGISTRAR

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

David Blackwell

v. (24073)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to June 7, 1994.

10.6.1994

Before / Devant: THE REGISTRAR

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

With the consent of the parties.

**Motion for an order reducing the number of copies
to be filed**

Her Majesty The Queen

v. (23988)

John Michael Ferris (Alta.)

**Requête visant le dépôt d'un nombre réduit
d'exemplaires**

With the consent of the parties.

GRANTED / ACCORDÉE

10.6.1994

Before / Devant: THE REGISTRAR

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

Winnipeg Condominium Corp. No. 36

v. (23624)

Bird Construction Co. Ltd. (Man.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to June 30, 1994.

14.6.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion for an order that this appeal is to be
deemed not abandoned**

**Requête en déclaration que le présent appel est
censé ne pas avoir été abandonné**

Her Majesty The Queen

v. (23978)

William John Dubazs (Alta.)

GRANTED / ACCORDÉE on condition that the appeal be prosecuted in the Fall of 1994.

14.6.1994

Before / Devant: CHIEF JUSTICE LAMER

Motion for an order that this appeal is to be deemed not abandoned

Her Majesty The Queen

v. (23988)

John Michael Ferris (Alta.)

GRANTED / ACCORDÉE on condition that Crown counsel files factum by August 1, 1994, and that both parties be ready to prosecute the appeal in the Fall term.

Requête en déclaration que le présent appel est censé ne pas avoir été abandonné

With the consent of the parties.

15.6.1994

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

Motion for an order allowing the filing of an affidavit and motion to adduce new evidence

Her Majesty The Queen

v. (23217)

Henry Arthur Johnson et al. (Crim.)(Ont.)

Requête en vue d'obtenir une ordonnance autorisant la production d'un affidavit et d'une requête en production de nouveaux éléments de preuve

David Butt, for the appellant.

Elaine F. Krivel, Q.C. and Robert J. Frater, for the intervener the A.G. of Canada.

Marc Rosenberg and Allison Wheeler, for the respondents Laba, Lebrune, Tichinoff.

James Wallbridge, for the respondent J.P. Timm.

GRANTED / ACCORDÉE

14.6.1994

Before / Devant: THE REGISTRAR

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

Her Majesty The Queen

v. (23978)

William John Dubazs (Alta.)

GRANTED / ACCORDÉE

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

With the consent of the parties.

15.6.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file a response

Requête en prorogation du délai pour déposer une réponse

James Collier

With the consent of the parties.

v. (23706)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to June 9, 1994

15.6.1994

Before / Devant: THE REGISTRAR

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

Robert Gerald Wessell

v. (24119)

Her Majesty The Queen (N.S.)

GRANTED / ACCORDÉE Time extended to June 10, 1994.

15.6.1994

Before / Devant: CHIEF JUSTICE LAMER

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

With the consent of the parties.

**Motion for an order that this appeal is to be
deemed not abandoned**

David Allen Chaplin et al.

v. (23865)

Her Majesty The Queen (Alta.)

GRANTED / ACCORDÉE

**Requête en déclaration que le présent appel est
censé ne pas avoir été abandonné**

With the consent of the parties.

15.6.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion for an order that this appeal is to be
deemed not abandoned**

**Requête en déclaration que le présent appel est
censé ne pas avoir été abandonné**

Clifford Crawford

v. (23711)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE

16.6.1994

Before / Devant: CHIEF JUSTICE LAMER

Motion for an order that this appeal is to be deemed not abandoned and motion to extend the time in which to file the notice of appeal

Requête en déclaration que le présent appel est censé ne pas avoir été abandonné et requête en prorogation du délai pour déposer l'avis d'appel

Terrance Wayne Burlingham

v. (23966)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE

**NOTICES OF APPEAL FILED SINCE
LAST ISSUE**

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

14.6.1994

Jeffrey Dunn

v. (24041)

Her Majesty The Queen (Ont.)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

13.6.1994

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

Victor Francisco Clemente

Harvey J. Slobodzian, for the appellant.

v. (23931)

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

Rick Saull, for the respondent.

THE CHIEF JUSTICE (orally) -- It will not be necessary to hear from you Mr. Saull. Mr. Slobodzian, you have afforded us an opportunity to expand a little bit on *McCraw* and to avoid misinterpretation in the future and for that we are grateful. Nevertheless we are all of the view to dismiss this appeal. Reasons to follow.

LE JUGE EN CHEF (oralement) -- Il ne sera pas nécessaire de vous entendre M^e Saull. Maître Slobodzian, vous nous avez donné la possibilité de nous étendre un peu sur *McCraw* et d'éviter d'être mal interprétés à l'avenir, et nous vous en sommes très reconnaissants. Nous sommes tous néanmoins d'avis de rejeter le pourvoi, avec motifs à suivre.

13.6.1994

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

Tonino Stellato

v. (23454)

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

THE CHIEF JUSTICE (orally) -- We are all of the view for the reasons given by Mr. Justice Labrosse for the Court of Appeal that the appeal fails.

The appeal is dismissed.

Maurizio Stellato and Gaetano Matteazzi, for the appellant.

F. Richard Connolly, for the respondent.

LE JUGE EN CHEF (oralement) -- Nous sommes tous d'avis que le pourvoi échoue, pour les motifs exposés par le juge Labrosse de la Cour d'appel.

Le pourvoi est rejeté.

14.6.1994

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

Marven McIntyre

c. (23673)

Sa Majesté La Reine (Crim.)(N.-B.)

LE JUGE EN CHEF (oralement au nom de la Cour) -- Il ne sera pas nécessaire de vous entendre M^e Sleeth. La Cour est prête à rendre jugement, lequel sera prononcé par le juge Gonthier.

LE JUGE GONTHIER -- L'appellant invoque l'irrecevabilité selon les art. 7 et 24(2) de la *Charte canadienne des droits et libertés* des déclarations de l'accusé à des policiers banalisés alors qu'il avait été relâché mais faisait toujours l'objet d'une accusation de meurtre. Nous partageons l'avis de la majorité que l'accusé n'était pas détenu au sens des arrêts *Hébert* et *Broyles*. Par ailleurs, les artifices utilisés par les policiers n'étaient pas de nature à choquer la collectivité ou enlever aux déclarations de l'accusé leur caractère libre et volontaire. L'appel est rejeté.

Anne Dugas-Horsman, pour l'appellant.

Graham J. Sleeth, c.r., pour l'intimée.

THE CHIEF JUSTICE (orally for the Court) -- It will not be necessary to hear from you Mr. Sleeth. The Court is ready to hand down judgment. The judgment will be pronounced by Mr. Justice Gonthier.

GONTHIER J. -- The appellant argues that his statements made to undercover police officers after he had been released but while he was still the subject of a murder charge are inadmissible under ss. 7 and 24(2) of the *Canadian Charter of Rights and Freedoms*. We share the view of the majority that the accused was not detained within the meaning of *Hebert* and *Broyles*. Furthermore, the tricks used by the police were not likely to shock the community or cause the accused's statements not to be free and voluntary. The appeal is dismissed.

14.6.1994

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

Earl Hugh Giesbrecht

Heather Leonoff, for the appellant.

v. (23586)

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

Richard A. Saull, for the respondent.

THE CHIEF JUSTICE (orally for the Court) -- Mr. Justice Sopinka will pronounce the judgment of the Court.

LE JUGE EN CHEF (oralement au nom de la Cour) -- Le juge Sopinka va prononcer le jugement de la Cour.

SOPINKA J. -- The only ground in this appeal is based on alleged error in the charge to the jury with respect to the weight to be given expert psychiatric evidence.

LE JUGE SOPINKA -- Le seul moyen invoqué en l'espèce est fondé sur une erreur qui aurait été commise dans l'exposé au jury quant au poids à accorder aux témoignages d'expert faits par des psychiatres.

In giving their evidence, the psychiatrists called by the defence did not particularize the statements from the accused on which they relied in order to arrive at their opinions. Such statements as were specifically referred to were properly characterized as hearsay in that they consisted of statements by the accused as to his past state of mind at the time of the offence. These were not statements from which the experts inferred the accused's state of mind. Moreover, we are not satisfied that the statements meet the criteria of *R. v. Khan*, [1990] 2 S.C.R. 531, and *R. v. Smith*, [1992] 2 S.C.R. 915.

En témoignant, les psychiatres appelés par la défense n'ont pas spécifié les déclarations de l'accusé sur lesquelles ils se sont fondés pour former leur opinion. Les déclarations mentionnées expressément ont été qualifiées à bon droit de ouï-dire du fait qu'il s'agissait de déclarations de l'accusé quant à son état d'esprit au moment de l'infraction. Ce n'étaient pas des déclarations à partir desquelles les experts ont inféré l'état d'esprit de l'accusé. De plus, nous ne sommes pas convaincus qu'elles satisfont aux critères des arrêts *R. c. Khan*, [1990] 2 R.C.S. 531, et *R. c. Smith*, [1992] 2 R.C.S. 915.

In the circumstances, the trial judge did not err in characterizing these statements as hearsay and not to be relied on for the truth of the facts, nor in stating that, in light of those circumstances, this should be considered in determining the weight to be given to the evidence of the experts.

Dans les circonstances, le juge du procès n'a pas commis d'erreur en qualifiant ces déclarations de ouï-dire et en affirmant qu'il ne fallait pas se fonder sur celles-ci pour établir la véracité des faits et que, dans ces circonstances, il y avait lieu d'en tenir compte pour déterminer le poids à accorder au témoignage des experts.

The appeal is dismissed.

Le pourvoi est rejeté.

15.6.1994

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

Her Majesty The Queen

v. (23217)

Henry Arthur Johnson et al. (Crim.)(Ont.)

David Butt, for the appellant.

Elaine F. Krivel, Q.C. and Robert J. Frater, for the intervener the A.G. of Canada.

Marc Rosenberg and Allison Wheeler, for the respondents Laba, Lebrune, Tichinoff.

James Wallbridge, for the respondent J.P. Timm.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Procedural law - Evidence - Right to be presumed innocent - Section 11(d) of the Charter - Reverse onus clause placing on the accused the burden of proving ownership or lawful possession - Court of Appeal's approach in deciding that the objective of the impugned provision was not pressing and substantial - Use of prosecution statistics.

Nature de la cause:

Charte canadienne des droits et libertés) Droit criminel) Droit procédural) Preuve) Droit à la présomption d'innocence) Article 11d) de la Charte) Clause d'inversion de la charge de la preuve par laquelle l'accusé doit prouver la propriété ou la possession légitime) Façon dont la Cour d'appel a décidé que l'objectif de la disposition contestée n'était pas urgent et réel) Utilisation de statistiques de poursuite.

15.6.1994

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

Her Majesty The Queen

v. (23675)

Jerry Andrew Godin (Crim.)(N.B.)

D. Bennett MacDonald, for the appellant.

Gordon W. Kierstead, for Amicus Curiae.

ALLOWED / ACCUEILLI

Nature of the case:

Criminal law - Procedural law - Appeals - Offenses - Provincial Court of New Brunswick convicting Respondent of aggravated assault pursuant to s. 268(2) of the *Criminal Code* - Whether the majority of the Court of Appeal erred in requiring the Appellant to prove a subjective foresight to wound, maim, disfigure or endanger life in order to substantiate a conviction for aggravated assault - Whether the majority of the Court of Appeal erred in holding that the trial judge applied the wrong standard of proof at the trial.

Nature de la cause:

Droit criminel - Droit procédural - Appels - Infractions - Appelant reconnu coupable par la Cour provinciale du Nouveau Brunswick de voies de fait graves contrairement au par. 278(2) du *Code criminel* - La Cour d'appel, à la majorité, a-t-elle commis une erreur en exigeant que l'appelante prouve une prévisibilité subjective de blessure, mutilation, défiguration ou de mise de la vie en danger pour justifier une déclaration de culpabilité de voies de fait graves? - La Cour d'appel, à la majorité, a-t-elle commis une erreur en concluant que le juge du procès a appliqué la mauvaise norme de preuve?

16.6.1994

CORAM: Chief Justice Lamer and La Forest, Sopinka, Gonthier, McLachlin, Iacobucci and Major JJ.

Her Majesty The Queen

v. (23747)

Josh Randall Borden (Crim.)(N.S.)

William D. Delaney and Robert Hagell, for the
appellant.

S.R. Fainstein, Q.C. and John J. Walsh, for the
intervener the A.G. of Canada.

Frank E. DeMont and Katherine A. Briand, for the
respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Seizure - Evidence - Blood sample - Sexual assault - Whether the majority of the Court of Appeal erred in law in holding that there had been a breach of the Respondent's rights under ss. 8, 10(a) and 10(b) of the *Charter* - Whether the majority of the Court of Appeal erred in law in holding that the decision of the trial judge not to exclude evidence of a comparison between the DNA analysis of the Respondent's blood and a DNA analysis of semen found at the scene of the crime was unreasonable.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Saisie - Preuve - Échantillon de sang - Agression sexuelle - La Cour d'appel à la majorité a-t-elle commis une erreur de droit en concluant à la violation des droits que les art. 8, 10a) et 10b) de la *Charte* reconnaissent à l'intimé? - La Cour d'appel à la majorité a-t-elle commis une erreur de droit en statuant que la décision du juge de première instance de ne pas écarter la preuve d'une comparaison entre l'analyse ADN du sang de l'intimé et de l'analyse ADN du sperme découvert sur la scène du crime était déraisonnable?

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning June 20, 1994.
ORDRE DU JOUR pour la semaine commençant le 20 juin 1994.

<u>Date of Hearing/ Date d'audition</u>	<u>NO.</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
---	------------	--

The Court is not sitting this week

La Cour ne siège pas cette semaine

NOTE:

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

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

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 3, 1994
Service : September 12, 1994
Filing : September 19, 1994
Respondent : September 26, 1994

Motion day : November 7, 1994
Service : October 17, 1994
Filing : October 24, 1994
Respondent : October 31, 1994

Motion day : December 5, 1994
Service : November 14, 1994
Filing : November 21, 1994
Respondent : November 28, 1994

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 : 3 octobre 1994
Signification : 12 septembre 1994
Dépôt : 19 septembre 1994
Intimé : 26 septembre 1994

Audience du : 7 novembre 1994
Signification : 17 octobre 1994
Dépôt : 24 octobre 1994
Intimé : 31 octobre 1994

Audience du : 5 décembre 1994
Signification : 14 novembre 1994
Dépôt : 21 novembre 1994
Intimé : 28 novembre 1994

DEADLINES: APPEALS

The next session of the Supreme Court of Canada commences on October 3, 1994.

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

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

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

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

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

The Registrar shall inscribe the appeal for hearing upon the filing of the respondent's factum or after the expiry of the time for filing the respondent's factum

The Registrar shall enter on a list all appeals inscribed for hearing at the October 1994 Session on August 9, 1994.

DÉLAIS: APPELS

La prochaine session de la Cour suprême du Canada débute le 3 octobre 1994.

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

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

Le mémoire de l'appellant doit être déposé dans les cinq mois du dépôt de l'avis d'appel.

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

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

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

Le 9 août 1994, le registraire met au rôle de la session d'octobre 1994 tous les appels inscrits pour audition.

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

Judgments reported in [1994] 1 S.C.R., Part 4

Bank of Nova Scotia v. Dunphy Leasing Enterprises
Ltd., [1994] 1 S.C.R. 552

Galaske v. O'Donnell, [1994] 1 S.C.R. 670

R. v. Burns, [1994] 1 S.C.R. 656

R. v. Durette, [1994] 1 S.C.R. 469

R. v. P. (M.B.), [1994] 1 S.C.R. 555

R. v. Power, [1994] 1 S.C.R. 601

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

Jugements publiés dans [1994] 1 R.C.S., partie 4

Banque de Nouvelle-Écosse c. Dunphy Leasing
Enterprises Ltd., [1994] 1 R.C.S. 552

Galaske c. O'Donnell, [1994] 1 R.C.S. 670

R. c. Burns, [1994] 1 R.C.S. 656

R. c. Durette, [1994] 1 R.C.S. 469

R. c. P. (M.B.), [1994] 1 R.C.S. 555

R. c. Power, [1994] 1 R.C.S. 601
