

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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**Gerald Michael Vaughan**  
Dana L. Venner  
Min. of the A.G.

v. (26342)

**Her Majesty The Queen as represented by the  
Ontario Criminal Code Review Board (Ont.)**  
Richard D. Schneider  
Ontario Review Board

FILING DATE 19.12.1997

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**Warren J.M. Yake**  
Timothy S.B. Danson  
Danson Recht & Freedman

v. (26360)

**The Law Society of Alberta (Alta.)**  
Lindsay MacDonald

FILING DATE 7.1.1998

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**Madison Developments Ltd. et al.**  
David T. Stockwood, Q.C.  
Stockwood, Spies & Campbell

v. (26397)

**Plan Electric Co. et al. (Ont.)**  
Harvey Poss, Q.C.  
Poss & Halfnight

FILING DATE 22.12.1997

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**Donald Eddé**  
Ronald Picard  
Trudel, Nadeau, Lesage, Larivière & Assoc.

c. (26399)

**Sa Majesté La Reine (Qué.)**  
Marc Édouard Grimard  
Subs. procureur général

DATE DE PRODUCTION 23.12.1997

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

**Union des employés de commerce, local 501,  
T.U.A.C.**

Robert Laurin  
Laurin, Laplante

c. (26401)

**Arkwright Boston Manufacturers Mutual  
Insurance Co. (Qué.)**  
Michael H. Kay  
Kugler Kandestin

DATE DE PRODUCTION 30.12.1997

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**John Thomas Malmberg et al.**  
P.E. James Prentice, Q.C.  
Rooney Prentice

v. (26402)

**Municipal District of Cardston No. 6 (Alta.)**  
T.D. Marriott  
Brownlee Fryett

FILING DATE 19.12.1997

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**Marcel Couture**  
Lawrence J. Zatlyn, Q.C.  
Zatlyn & Holash Law Office

v. (26419)

**Daniel Lamontagne (Sask.)**  
R.A. Gibbons  
Wilhelm Migneault Gibbons Greenwood

FILING DATE 15.1.1998

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**Vlado Maljkovich**  
Vlado Maljkovich

v. (26420)

**John Maljkovich (Ont.)**  
Ronald P. Bohm  
Stong Blackburn Machon Bohm

FILING DATE 29.12.1997

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**John Brigis**

John Brigis

v. (26427)

**The St. Lawrence Seaway Authority (Ont.)**

Gina M. Scarcella  
A.G. of Canada

FILING DATE 29.12.1997

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**Malcolm Keith MacNeil**

Bill Graham

v. (26435)

**Deborah Elizabeth MacNeil (B.C.)**

Robert Ross

FILING DATE 6.1.1998

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**Kornelis Klevering**

Kornelis Klevering

v. (26436)

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

Anne-Marie Waters  
Dept. of Justice

FILING DATE 7.1.1998

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**Beata Michalski**

Wayne M. Oncbulenko  
Levene, Levine, Tadman

v. (26432)

**Graydon Olson et al. (Man.)**

Dana Nelko  
Fillmore & Riley

FILING DATE 5.1.1998

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**Canadian Standards Association**

William M. Holburn, Q.C.  
Alexander, Holburn, Beaudin & Lang

v. (26433)

**Jim Campbell et al. (B.C.)**

Patrick G. Guy  
Acheson & Co.

FILING DATE 6.1.1998

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**JANUARY 23, 1998 / LE 23 JANVIER 1998**

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

**Steven Olah**

**v. (26280)**

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

**NATURE OF THE CASE**

Criminal law - Insanity - Not criminally responsible on account of mental disorder - Whether the trial judge erred in his charge to the jury on insanity - Whether the trial judge erred in limiting the notion of wrong in the context of s. 16(1) to wrong according to the moral standards of society - Whether the Court of Appeal erred in failing to hold that insanity includes being deprived of the capacity for rational perception and rational choice about the rightness or wrongness of an act - Whether the Court of Appeal erred in failing to hold that impulse was part of the insanity issue - Whether the trial judge erred in instructing the jury that they could return a verdict of first degree murder based on the murder occurring in the course of a kidnapping or forcible confinement - Whether the Applicant's s. 15 *Charter* rights were violated because his co-accused who was a young offender received a lighter sentence than he did.

**PROCEDURAL HISTORY**

December 20, 1991 Ontario Court (General Division) (Lesage J.)	Conviction: first degree murder
October 3, 1996 Court of Appeal for Ontario (McMurtry, Finlayson, Osborne JJ.A.)	Appeal dismissed
November 3, 1997 Supreme Court of Canada	Application for leave to appeal filed
November 7, 1997 Supreme Court of Canada (L'Heureux-Dubé J.)	Motion for the extension of time granted
November 20, 1997 Supreme Court of Canada (Registrar)	Motion to file a lengthy memorandum of argument granted

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**Jonathan Trelawny Silbernagel**

**v. (26291)**

**Canadian Stevedoring Co Ltd, Alexander James Ritchie  
and Attorney General for British Columbia (B.C.)**

**NATURE OF THE CASE**

Procedural law - Judgments and orders - Appeal - *Canadian Charter of Rights and Freedoms* - Right to a trial by jury - Whether the Court of Appeal could be seen to be disinterested in the striking out of Rule 18A of the *British Columbia Rules of Court* - Whether Rule 18A is contrary to sections 7 and 15 of the *Charter*.

**PROCEDURAL HISTORY**

December 29, 1994 Supreme Court of British Columbia (Hutchinson J.)	Application to strike out paragraphs of the Respondents' Statement of Defence adjourned; Application to quash summary trial application of the Respondents dismissed; Respondents' application to dismiss claims of Applicant due to court's lack of jurisdiction, dismissed; cross-examination on affidavits ordered
May 26, 1995 Court of Appeal for British Columbia (Prowse J.A.)	Application for leave to appeal and a stay of proceedings, dismissed
June 9, 1995 Supreme Court of British Columbia (Hutchinson J.)	Judgment granted in favour of Respondents dismissing Applicant's action, on the condition that the Applicant's second motion to quash the Respondents' application for summary judgment fails
June 22, 1995 Court of Appeal for British Columbia (Taylor, Goldie, and Ryan JJ.A)	Application to vary order of Prowse J.A. dismissed
November 15, 1995 Supreme Court of British Columbia (Esson C.J.)	Motion to quash application for summary judgment on alternative grounds, dismissed
April 25, 1996 Supreme Court of Canada (L'Heureux-Dubé, Sopinka, McLachlin JJ.)	Application for leave to appeal June 22, 1995 decision, dismissed
September 2, 1997 Court of Appeal for British Columbia (Cumming, Hollinrake, Finch JJ.A.)	Appeal of decisions of June 9, 1995 and November 15, 1995 dismissed, motion to adduce fresh evidence dismissed. Application for leave to appeal to the Supreme Court of Canada refused
November 7, 1997 Supreme Court of Canada	Application for leave to appeal and motion for an extension of time filed

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**Dr. Ismail Abrahams**

**v. (26224)**

**Holly Elaine Scott (B.C.)**

**NATURE OF THE CASE**

Torts - Battery - Damages - Intentional torts - Negligence - Physicians and Surgeons - Whether a trial judge can conclude that a physician is liable in battery without first finding the facts, that is, without deciding what it was that the physician,

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in fact, did - Whether an appellate court should order a new trial if it finds that a trial judge has misconstrued the evidence on an important point and that this error contributed to the trial judge's ultimate conclusion.

**PROCEDURAL HISTORY**

April 19, 1995 Supreme Court of British Columbia (Curtis J.)	Respondent's action for damages allowed
July 29, 1997 Court of Appeal for British Columbia (Rowles, Prowse J.J.A., Southin J.A. (dissenting in part))	Applicant's appeal and Respondent's cross-appeal dismissed
September 26, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Canadian Radio-Television and Telecommunications Commission**

**v. (26286)**

**Russel Pearson (Alta.)**

**NATURE OF THE CASE**

Constitutional Law - Division of Powers - Procedural Law - Pre-trial Procedure - Forum Conveniens - Dismissal of motion to strike out notice of motion seeking declaratory relief - Whether Alberta Court of Queen's Bench or the Federal Court of Canada has jurisdiction to consider the constitutionality under the *Charter* of a policy made by the Canadian Radio-Television and Telecommunications Commission - Whether the Federal Court of Canada has jurisdiction to consider the constitutional authority of the Canadian Radio-Television and Telecommunications Commission to license or regulate a particular broadcasting undertaking - Whether the Alberta Court of Queen's Bench rather than the Federal Court of Canada was the *forum conveniens* to determine the legality under the *Charter* of a broadcasting policy made by the Canadian Radio-Television and Telecommunications Commission.

**PROCEDURAL HISTORY**

December 12, 1995 Court of Queen's Bench of Alberta (Girgulis J.)	Motion dismissed
September 4, 1997 Court of Appeal for Alberta (Foisy, Hetherington and McFadyen J.J.A.)	Appeal dismissed
November 3, 1997 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**

**L.C.**

**v. (26358)**

**Brian Joseph Mills and Her Majesty the Queen**

**- and between -**

**Her Majesty the Queen**

**- and -**

**Brian Joseph Mills and L.C. (Crim.)(Alta.)**

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Right to a fair trial - Right to make full answer and defence - Right to privacy - When determining whether there has been a breach of the rights of the accused to a fair trial and to make full answer and defence pursuant to ss. 7 and 11(d) of the *Charter*, what is the required approach to recognizing and accommodating all of the *Charter* rights impacted by *Bill C-46*, specifically (a) the right to privacy protected by both ss. 7 and 8 of the *Charter* and (b) the right to equality before and under the law pursuant to ss. 15 and 28 of the *Charter* including the right to be free from discrimination on the basis of gender or physical and mental disability - If all of the *Charter* rights impacted by *Bill C-46* are recognized and accommodated does *Bill C-46* infringe the rights of an accused pursuant to ss. 7 or 11(d) of the *Charter* - In what circumstances is s. 1 available to justify a breach of the rights of an accused under s. 7 of the *Charter* - If *Bill C-46* is held to breach the ss. 7 or 11(d) rights of an accused, is the legislation saved by s. 1 of the *Charter*.

**PROCEDURAL HISTORY**

September 18, 1997  
October 31, 1997  
Alberta Court of Queen's Bench (Belzil J.)

*Bill C-46* held to be of no force or effect

December 4, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**Fédération des médecins résidents du Québec**

**c. (26163)**

**Université de Montréal**

**-et-**

**Fédération des médecins résidents du Québec**

**c.**

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**Université de McGill**

-et-

**Fédération des médecins résidents du Québec**

c.

**Université de Laval**

-et-

**Fédération des médecins résidents du Québec**

c.

**Université de Sherbrooke (Qué.)**

**NATURE DE LA CAUSE**

Droit administratif - Collèges et universités - Contrats - Politique de tarification - Résident en médecine - Frais de scolarité - Droits acquis - La Cour d'appel a-t-elle adéquatement appliqué la notion de "contrat d'adhésion" définie à l'art. 1379 du *Code civil du Québec*, L.Q. 1991, ch. 64? - La Cour d'appel a-t-elle adéquatement appliqué la notion de "clause abusive" d'un contrat d'adhésion que l'on trouve à l'art. 1437 *C.c.Q.*? - Subsidiairement, la Cour d'appel a-t-elle adéquatement appliqué la notion de droits acquis contractuels?

**HISTORIQUE PROCÉDURAL**

Le 6 juin 1994  
Cour supérieure du Québec (Tellier j.c.s.)

Requêtes en jugement déclaratoire de la demanderesse  
accueillies en partie

Le 2 juin 1997  
Cour d'appel du Québec  
(LeBel, Delisle et Zerbisias [*ad hoc*] j.j.c.a.)

Pourvois des intimées accueillis

Le 29 août 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**J. Sidney Bradley**

v. (26308)

**Her Majesty the Queen (F.C.A.)(Ont.)**

**NATURE OF THE CASE**

Taxation - Assessment - Reasonable expectation of profit - Business or hobby - Whether this decision is inconsistent with the principles set out in *Moldowan v. The Queen* [1978] 1 S.C.R. 480 - Whether the Federal Court of Appeal erred in upholding the decision that the Applicant's farming business had no reasonable expectation of profit.

**PROCEDURAL HISTORY**

February 5, 1996 Tax Court of Canada (Bonner T.C.J.)	Applicant's appeals from assessments under the <i>Income Tax Act</i> for the 1989 and 1990 taxation years dismissed
September 18, 1997 Federal Court of Appeal (Stone, Strayer and Robertson JJ.A.)	Appeal dismissed
November 17, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Service Employees Union, local 210**

**v. (26233)**

**The Sisters of St-Joseph of the Diocese of London in Ontario,  
operating St-Joseph's Hospital, Chatham**

**and**

**R.H. McLaren, R.E. Burnell, Q.C., R.W. Stewart and J. Sasseville (Ont.)**

**NATURE OF THE CASE**

Labour law - Arbitration - Did the Court of Appeal err in holding that a board of arbitration must defer to the decisions of management and may not interpret the provisions of a collective agreement as a whole so as to require management to act reasonably in exercising its rights under the collective agreement, by basing its decisions on relevant and cogent considerations? - Did the Court of Appeal err in failing to apply the relevant principles of judicial review, by failing entirely to consider whether the job posting provisions of the collective agreement constituted an express provision which limited management's right to post the position outside the bargaining unit?

**PROCEDURAL HISTORY**

February 13, 1992 Ontario Court (Divisional Court) (O'Brien, Rosenberg and Austin JJ.)	Application for judicial review granted: arbitration award set aside and grievance of Applicant respecting posting of a position dismissed
July 29, 1997 Court of Appeal for Ontario (McKinlay, Catzman and Labrosse JJ.A.)	Appeal dismissed
September 29, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**CORAM: Iacobucci, Major and Bastarache JJ. /  
Les juges Iacobucci, Major et Bastarache**

**Steven Allen Turner**

**v. (26264)**

**Her Majesty the Queen**

**and between**

**Lorelei Ann Turner**

**v.**

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

**NATURE OF THE CASE**

Criminal law - Offences - Manslaughter - Unlawful act manslaughter - Failure to provide the necessities of life - Whether failure to provide the necessities of life can be a predicate offence to unlawful act manslaughter - Whether the requirement that an accused prove the presence of a lawful excuse violates s. 11(d) of the *Charter* - Whether the Crown proved the essential elements of the offence - Whether the Court of Appeal put an onus on the Applicant to call evidence of her incapacity .

**PROCEDURAL HISTORY**

June 14, 1995 New Brunswick Court of Queen's Bench (Riordan J.)	Conviction: Unlawful act manslaughter
February 24, 1997 New Brunswick Court of Appeal (Hoyt C.J.N.B., Ayles and Ryan JJ.A.)	Appeal dismissed
October 21, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**The City of Calgary**

**v. (26293)**

**Elizabeth Jean Costello and Mary Ann Dickhoff (Alta.)**

**NATURE OF THE CASE**

Torts - Trespass - Damages - Municipal law - Expropriation - Interest - Whether an expropriation declared void gives rise to damages for trespass - Appropriate measure of damages - Whether initiating proceedings to recover property is sufficient mitigation - Loss of opportunity - Awarding of compound interest.

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**PROCEDURAL HISTORY**

January 6, 1995 Court of Queen's Bench of Alberta (Rooke J.)	Respondents' action for trespass to property allowed; award of \$1,928,061, interest included
September 8, 1997 Court of Appeal of Alberta (Picard, O'Leary, Hunt JJ.A.)	Appeal dismissed on all grounds except the award of interest
November 7, 1997 Supreme Court of Canada	Application for leave to appeal filed
December 5, 1997 Supreme Court of Canada	Application for leave to cross-appeal filed

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**Mary Lawlor**

**v. (26212)**

**M.J. Oppenheim, C.A., Attorney in fact in Canada for Lloyd's Non-Marine Underwriters (Nfld.)**

**NATURE OF THE CASE**

Commercial law - Insurance - Motor vehicles - Agency - mandate - Whether a valid contract of insurance is created when the renewal policy is delivered by an insurance agent to the insured, and the premium is paid to the agent, notwithstanding that the premium is not remitted by the agent to the insurer and the insurer is not advised of the policy - whether an existing contract of automobile insurance may be terminated apart from the circumstances expressly stipulated in the governing legislation - whether an agent can unilaterally terminate a contract of insurance without the knowledge or consent of the insured.

**PROCEDURAL HISTORY**

August 5, 1996 Supreme Court of Newfoundland (Trial Division) (Wells J.)	Respondent insurer liable to indemnify Craig Royal in respect of a claim made by Applicant
July 23, 1997 Court of Appeal for Newfoundland (Mahoney J.A. [dissenting], O'Neill and Steele JJ.A.)	Appeal allowed
September 26, 1997 Supreme Court of Canada (Sopinka J.)	Motion to extend time to file leave to appeal to October 20, 1997 granted
October 20, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**Mary Fritz**

**v. (26349)**

**Pimm Investments Limited and Metske Veenstra (Ont.)**

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**NATURE OF THE CASE**

Property law - Real property - Landlord tenant - Remedies - Could the Respondents maintain an action for contractual damages notwithstanding the fact that they had an order for possession, an order determining and expunging the Agreement for Sale of Land, merged the lands with a fourth apartment unit and sold all the units to a third party?

**PROCEDURAL HISTORY**

May 11, 1989  
Ontario Court (General Division) (Hollingworth J.)

Applicant to pay Respondents \$110,945.71 in damages

September 26, 1997  
Court of Appeal for Ontario  
(Brooke, Carthy and Moldaver JJ.A.)

Appeal and cross appeal dismissed

November 24, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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

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

Edward Lian-Seng Wen v. Canadian Airlines International Ltd. et al. (B.C.)(25653).

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**JUDGMENTS ON APPLICATIONS  
FOR LEAVE**

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

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**JANUARY 29, 1998 / LE 29 JANVIER 1998**

**26262**            **MARY SAUVE - v. - IVAN J. POKORNY** (Ont.)

CORAM:            The Chief Justice and Cory and McLachlin JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Procedural law - Civil procedure - Trial - Evidence - Torts - Civil jury trial - Fresh Evidence - When should the Court replace a juror who has been discharged from a civil jury trial - Burden of proving informed consent for elective surgery - Causation - Admission of fresh evidence.

**PROCEDURAL HISTORY**

June 11, 1993 Ontario Court (General Division) (Killeen J.)	Applicant's action dismissed in accordance with jury verdict
April 28, 1997 Court of Appeal for Ontario (Morden A.C.J.O., Weiler and Goudge JJ.A.)	Motion to adduce fresh evidence dismissed
August 19, 1997 Court of Appeal for Ontario (Morden A.C.J.O., Weiler and Goudge JJ.A.)	Appeal dismissed
October 20, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**26239**            **JOZEF GROCHOCKI v. SOCILITOR GENERAL OF CANADA** (F.C.A.)(Man.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Administrative law - Jurisdiction - Whether the Court of Appeal correctly determined that it had no jurisdiction to grant an extension of time in which to appeal from a decision of the Federal Court (Trial Division).

**PROCEDURAL HISTORY**

February 19, 1997  
Federal Court (Trial Division) (Richard J.)

Application under s.41 of the *Privacy Act* dismissed

July 17, 1997  
Federal Court of Appeal (Linden J.A.)

Application for extension of time to appeal from a  
decision of the Federal Court (Trial Division) dismissed

September 29, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**26301**      **CLAUDE DESLAURIERS c. L'ORDRE DES ARPENTEURS-GÉOMÈTRES DU QUÉBEC, ROCH LABELLE, ÈS QUALITÉS DE SYNDIC, JEAN-CHARLES LEGAULT, ÈS QUALITÉS DE SYNDIC-ADJOINT ET YVON CHABOT, ÈS QUALITÉS DE SECRÉTAIRE-GÉNÉRAL DE L'O.A.G.Q. et LE COMITÉ DE DISCIPLINE DE L'ORDRE DES ARPENTEURS-GÉOMÈTRES DU QUÉBEC, L'OFFICE DES PROFESSIONS DU QUÉBEC, LE TRIBUNAL DES PROFESSIONS DU QUÉBEC ET LE PROCUREUR GÉNÉRAL DU QUÉBEC** (Qué.)

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

La requête en sursis d'exécution et la demande d'autorisation d'appel sont rejetées avec dépens.

The motion for a stay of execution and the application for leave to appeal are dismissed with costs.

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Appel - Compétence - Accès aux tribunaux - Ordonnance de la Cour supérieure obligeant le demandeur à obtenir l'autorisation préalable d'un juge avant d'intenter de nouvelles procédures contre les intimés - Le juge de première instance pouvait-il restreindre le droit du demandeur de recourir aux tribunaux? - Est-ce que trois juges de la Cour d'appel du Québec ont compétence pour réviser le jugement d'un juge unique de la même Cour refusant au demandeur la permission d'en appeler?

**HISTORIQUE PROCÉDURAL**

Le 15 juillet 1997 Cour supérieure du Québec (Archambault j.c.s)	Requête des intimés pour obtention de mesures spéciales d'instruction accordée
Le 6 août 1997 Cour d'appel du Québec (Fish j.c.a.)	Requête pour permission d'appel rejetée
Le 15 septembre 1997 Cour d'appel du Québec (Deschamps, Delisle et Robert jj.c.a.)	Requête en révision du jugement du juge Fish rejetée pour absence de compétence
Le 4 novembre 1997 Cour suprême du Canada	Demande d'autorisation d'appel déposée
Le 7 novembre 1997 Cour d'appel du Québec (Forget j.c.a.)	Requête en sursis d'exécution rejetée
Le 28 novembre 1997 Cour suprême du Canada	Requête en sursis d'exécution déposée

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**26134**            **INTERCREDIT ESTABLISHMENT VADUZ c. VILLE DE PINCOURT ET LE PROCUREUR GÉNÉRAL DU QUÉBEC** (Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

**NATURE DE LA CAUSE**

Droit municipal - Droit fiscal - Taxes foncières basées sur la superficie des immeubles - Validité - Lorsqu'un règlement municipal impose une taxe foncière spéciale pour défrayer le coût de travaux d'infrastructures à deux secteurs distincts de propriétaires, soit ceux qui retirent des travaux un bénéfice éventuel et à long terme et ceux qui en retirent un bénéfice immédiat, la municipalité doit-elle créer deux bassins de taxation de façon à ce que les propriétaires de chaque secteur ne supportent le fardeau fiscal de ces travaux que dans la proportion du bénéfice qu'ils en retirent? - Les règlements municipaux attaqués en l'espèce sont-ils nuls, abusifs, déraisonnables, injustes, oppressifs et discriminatoires au motif qu'ils violent le principe qu'une taxe foncière spéciale doit être imposée aux bénéficiaires et proportionnellement au bénéfice que ceux-ci en retirent?

**HISTORIQUE PROCÉDURAL**

Le 22 novembre 1993  
Cour supérieure du Québec  
(Archambault j.c.s.)

Action en nullité de plusieurs règlements édictés par l'intimée imposant des taxes spéciales sur des immeubles rejetée

Le 3 juin 1997  
Cour d'appel du Québec  
(Vallerand, Delisle et Forget jj.c.a.)

Appel rejeté

Le 29 août 1997  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**26235**            **FREDERICK SENGMUELLER v. HOLDEN DAY WILSON, CHARLES COCHRAN MARK AND THOMAS G. BASTEDO** (Ont.)

CORAM:            L'Heureux-Dubé, Gonthier and Bastarache 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 - Quashing appeals - Whether Court of Appeal properly quashed appeal.

**PROCEDURAL HISTORY**

November 7, 1996  
Ontario Court (General Division) (Ground J.)

Motions to dismiss action granted

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July 29, 1997  
Court of Appeal for Ontario  
(Robins, Charron and Moldaver JJ.A.)

Appeal quashed

September 29, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**26306**            **VACATION BROKERS INC. v. ALAN HILLS PATTERSON** (Ont.)

CORAM:            L'Heureux-Dubé, Gonthier and Bastarache 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**

International law - Procedural law - *Reciprocal Enforcement of Judgments (U.K.) Act*, R.S.O. 1990, c.R-6 and the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, set out as a Schedule to that act - Whether the Court of Appeal for Ontario correctly allowed the registration of a United Kingdom order for enforcement in Ontario.

**PROCEDURAL HISTORY**

September 10, 1993  
Ontario Court of Justice (General Division)  
(Lazier J.)

Order for costs registered pursuant to the *Reciprocal Enforcement of Judgments (U.K.) Act*

April 25, 1997 and August 29, 1997  
Court of Appeal for Ontario (McMurtry C.J.O.,  
Rosenberg and Southey (*ad hoc*) JJ.A.)

Appeal dismissed

October 30, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**26296**            **L.J.H. v. HER MAJESTY THE QUEEN** (Crim.)(Man.)

CORAM:            Iacobucci, Major and Bastarache JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Full answer and defence - Whether the effect of the judgment of the Court of Appeal is to not allow a trial judge discretion to enter a judicial stay of proceedings when the court is satisfied that the accused cannot make full answer and defence within the meaning of the *Criminal Code* and ss. 7 and 11(d) of the *Charter* - Whether the effect of the judgment of the Court of Appeal is to force an accused to have to rely solely on the Crown's obligation to prove guilt

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beyond a reasonable doubt in circumstances where the accused does not have the ability to make full answer and defence for himself in his trial.

**PROCEDURAL HISTORY**

December 18, 1996 Manitoba Court of Queen's Bench (Mykle J.)	Judicial stay of proceedings
September 8, 1997 Court of Appeal for Manitoba (Philp, Kroft, Monnin JJ.A.)	Appeal allowed; new trial ordered
November 7, 1997 Supreme Court of Canada	Application for leave to appeal filed

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**26130**            **THOMAS RICHARD NELSON v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:            Iacobucci, Major and Bastarache JJ.

The application for extension of time and the application to file a lengthy memorandum are granted; the application for leave to appeal is dismissed.

La demande de prorogation de délai est accordée et la demande visant le dépôt d'un long mémoire est accordée; la demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Defences - Self-defence - Whether the Court of Appeal erred in its conclusion that the trial judge did not err in failing to direct the jury to assess the Applicant's defence of self-defence by the standard of a reasonable person with the diminished intelligence of the Applicant.

**PROCEDURAL HISTORY**

March 8, 1993 Ontario Court (General Division) (Karam J.)	Conviction: second degree murder
June 28, 1996 Court of Appeal for Ontario (Doherty, Charron and Moldaver JJ.A.)	Appeal dismissed
July 28, 1997 Supreme Court of Canada	Application for leave to appeal, motion for extension of time and motion to file a lengthy memorandum filed

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**26242/26243**     **ROBERT J. McMYNN v. HER MAJESTY THE QUEEN - AND - JOANNE J. McMYNN v. HER MAJESTY THE QUEEN** (B.C.)

CORAM:         Iacobucci, Major and Bastarache JJ.

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

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

**NATURE OF THE CASE**

Taxation - Assessment - Statutes - Interpretation - Whether buses owned by the Applicants who, in their personal capacities, are in the business of leasing out buses, come within the statutory definition of "qualified transportation equipment", so as to qualify for refundable investment tax credits and deductions under section 127 of the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 - Meaning of "principal business is passenger, property or passenger and property transport".

**PROCEDURAL HISTORY**

July 22, 1994 Tax Court of Canada (Rowe J.)	Applicants' appeals from assessments for the years 1985, 1986, 1987, 1988 and 1989 allowed; assessments referred back to the Minister of National Revenue for reconsideration and reassessment
May 30, 1997 Federal Court of Appeal (Marceau, Linden and Robertson JJ.A.)	Appeal allowed; Decision of Tax Court is set aside and the assessments of the Minister of National Revenue for the years 1985, 1986, 1987 and 1988 is affirmed
June 16, 1997 Tax Court of Canada (Rowe J.)	Amended judgment: Appeal from the assessments is dismissed
October 2, 1997 Supreme Court of Canada	Application for leave to appeal and motion for extension of time filed

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**26171**         **CHARLES D. LIENAU AND KAREN L. TURNER-LIENAU v. WESLEY G. CAMPBELL et al.** (N.S.)

CORAM:         Iacobucci, Major and Bastarache 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 - Civil Procedure - Motion to strike out statement of claim - Whether the Court of Appeal erred in finding that there was no abuse of process.

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**PROCEDURAL HISTORY**

January 17, 1997 Supreme Court of Nova Scotia (Goodfellow J.)	Applicant's application to strike out the statement of claim as an abuse of process dismissed; 2301072 Nova Scotia Limited's application for leave to substitute and file an amended statement of claim granted
May 12, 1997 Nova Scotia Court of Appeal (Clarke C.J.N.S. Hallett and Hart JJ.A.)	Applicant's appeal dismissed
September 11, 1997 Supreme Court of Canada	Application for leave to appeal filed
September 30, 1997 Nova Scotia Court of Appeal (Bateman J.A.)	Granted: extension of time to serve application for leave to appeal; Respondents to file response within 30 days of this order

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**25058**     **HER MAJESTY THE QUEEN v. DENNIS W. FOSTER** (Crim.)(Sask.)

CORAM:     Iacobucci, Major and Bastarache JJ.

The application for this Court to appoint counsel and the application for leave to file an appeal *in forma pauperis* are dismissed. The application for leave to appeal is dismissed.

La demande à la Cour visant à commettre d'office un avocat et la demande d'autorisation d'appel *in forma pauperis* sont rejetées. La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Procedural law - Appeal - Whether the Court of Appeal granted the Applicant leave to appeal to this Court.

**PROCEDURAL HISTORY**

April 29, 1993 Court of Queen's Bench for Saskatchewan (Klebuc J.)	Conviction: five counts of sexual assault
November 16, 1993 Saskatchewan Court of Queen's Bench (Baynton J.)	Application for severance dismissed
March 24, 1995 Court of Appeal for Saskatchewan (Sherstobitoff, Lane and Jackson JJ.A.)	Appeal dismissed (reasons delivered April 6, 1995)
July 4, 1996 Supreme Court of Canada (La Forest, Cory and Major JJ.)	Leave to appeal denied; order made under s. 161 of <i>Criminal Code</i> , R.S.C., 1985, c. C-46, remanded to Court of Appeal
November 7, 1996 Court of Appeal for Saskatchewan (Sherstobitoff, Lane and Jackson JJ.A.)	Order made under s.161 of <i>Criminal Code</i> deleted

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November 25, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**26246**            **REVA SCHAFFER, ELI SCHAFFER, A MINOR BY HIS LITIGATION GUARDIAN, REVA SCHAFFER, LINDA SHUB AND MITCHELL SHUB, A MINOR BY HIS LITIGATION GUARDIAN, LINDA SHUB v. ATTORNEY GENERAL OF CANADA** (Ont.)

CORAM:            Iacobucci, Major and Bastarache JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Canadian Charter - Civil - *Unemployment Insurance Act*, R.S.C. 1985, c. U-1, ss. 11(3)(a) and (4)(a) - Whether the distinctions drawn between adoptive and biological families by these sections are contrary to s. 15(1) of the Charter - Whether the effect of these sections on adoptive children is contrary to s. 15(1) of the Charter.

**PROCEDURAL HISTORY**

May 31, 1996  
Ontario Court (General Division)  
(Cameron J.)

Declaration that the *Unemployment Insurance Act*, ss. 11(3)(a), 11(4)(a), 11(7)(a), 18(2)(a)(ii) and 18(2)(b)(ii) violate the *Charter of Rights and Freedoms*

August 8, 1997  
Court of Appeal for Ontario  
(Brooke, Osborne and Austin JJ.A.)

Appeal allowed in relation to ss. 11(3) and (4) of the *Unemployment Insurance Act*; trial decision confirmed with respect to s. 11(7)(a) of the *Unemployment Insurance Act*

October 6, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**26241**            **LONDON SALVAGE & TOWING CO. LTD. v. SUNOCO INC. AND SNC/FW LTD.** (Ont.)

CORAM:            Iacobucci, Major and Bastarache JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Commercial Law - Contracts - Acceptance of bids - Deemed acceptance by failure to promptly reject all or part of an offer to purchase - Whether the Court of Appeal failed to find that deemed acceptance of a bid in its entirety can be based on the absence of a prompt rejection of any part of the bid.

**PROCEDURAL HISTORY**

March 22, 1994  
Ontario Court (General Division) (Haines J.)

Action and counterclaim dismissed

August 12, 1997  
Court of Appeal for Ontario  
(McMurtry C.J., Laskin and Goudge JJ.)

Appeal dismissed

September 30, 1997  
Supreme Court of Canada

Application for leave to appeal filed

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**25840**      **ALEXANDER FLINT McLELLAN - v. - HER MAJESTY THE QUEEN** (F.C.A.)(Man.)

CORAM:      Gonthier, Major and Bastarache JJ.

The application for reconsideration of the application for leave to appeal is dismissed.

La demande de réexamen de la demande d'autorisation d'appel est rejetée.

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14.1.1998

Before / Devant: LE REGISTRAIRE

**Requête en dispense d'impression**

Edwin Pearson

c. (24107)

Procureur général du Canada (Qué.)

**ACCORDÉE / GRANTED**

**Motion to dispense with printing**

Avec le consentement des parties.

22.1.1998

Before / Devant: GONTHIER J.

**Motion for leave to intervene**

BY/PAR: Minority Advocacy and Rights  
Council et al.;  
Canadian Centre for Philanthropy

IN/DANS: Vancouver Society of Immigrant &  
Visible Minority Women

v. (25359)

Minister of National Revenue (B.C.)

**GRANTED / ACCORDÉE** Motion granted as per requests a) and b) provided that the factum be filed by February 2, 1998, and that oral argument not exceed 15 minutes.

23.1.1998

Before / Devant: GONTHIER J.

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

Bradley Roderick Forrayi

v. (26343)

Her Majesty The Queen (N.S.)

**DEFERRED / RÉFÉRÉE** The application for an extension of time to apply for leave to appeal is deferred to the panel seized of the application for leave.

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

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26.1.1998

Before / Devant: THE REGISTRAR

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

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

Jeffrey Rose

v. (25448)

Her Majesty The Queen (Ont.)

**GRANTED / ACCORDÉE** Time extended to January 15, 1998.

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26.1.1998

Before / Devant: GONTHIER J.

**Motion for a stay of execution**

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

Edward Charles Richardson

v. (26313)

Judith Richardson (B.C.)

**DISMISSED / REJETÉE**

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27.1.1998

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to file the  
applicants' reply**

**Requête en prorogation du délai imparti pour  
déposer la réplique des requérants**

Nancy Brohman et al.

v. (26367)

Ginus Raymond Jonkman et al. (Ont.)

**GRANTED / ACCORDÉE** Time extended to January 27, 1998.

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28.1.1998

Before / Devant: THE REGISTRAR

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

Jeffrey Rose

v. (25448)

Her Majesty The Queen (Ont.)

**GRANTED / ACCORDÉE** Time extended to January 21, 1998.

La requête de l'intervenant, le Procureur général du Québec pour obtenir une ordonnance prorogeant le délai pour produire le mémoire au 21 janvier 1998 est accordée.

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28.1.1998

Before / Devant: GONTHIER J.

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

Patricia Carolyn Hickey

v. (26430)

Walter Donald Hickey (Man.)

**GRANTED / ACCORDÉE** Time extended to January 19, 1998.

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

With the consent of the parties.

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

With the consent of the parties.

**NOTICE OF APPEAL FILED SINCE  
LAST ISSUE**

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

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29.12.1997

**Her Majesty The Queen**

**v. (26404)**

**Isaac Monney (Ont.)**

**AS OF RIGHT**

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14.1.1998

**Arthur Robert Winters**

**v. (26180)**

**Legal Services Society (B.C.)**

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16.1.1998

**The Minister of Health and Community Services**

**v. (26321)**

**M.L. and R.L. (N.B.)**

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**NOTICES OF INTERVENTION  
FILED SINCE LAST ISSUE**

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

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BY/PAR: Attorney General of Alberta

IN/DANS: **Dennis David Wilson**

**v. (25970)**

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

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**APPEALS HEARD SINCE LAST  
ISSUE AND DISPOSITION**

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

20.1.1998

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

**Robert J. Dowling**

Eric K. Slone and Andrew J. Munro, for the appellant.

v. (25493)

**City of Halifax (N.S.)**

Mary Ellen Donovan and Joel E. Fichaud, Q.C., for the respondent.

[TRANSDUCTION]

JUSTICE L'HEUREUX-DUBÉ (orally for the Court) -- The Court is ready to render judgment now. Justice Cory will give the judgment of the Court.

LE JUGE L'HEUREUX-DUBÉ (oralement au nom de la Cour) -- La Cour est prête à rendre jugement séance tenante, lequel sera rendu par le juge Cory.

CORY J. -- The appeal is allowed with costs to the appellant in this Court and in the Nova Scotia Court of Appeal.

LE JUGE CORY -- Le pourvoi est accueilli avec dépens en faveur de l'appellant devant notre Cour et la Cour d'appel de la Nouvelle-Écosse.

The judgment of the Court of Appeal is set aside and the matter is remitted to the Nova Scotia Supreme Court to determine the reasonable notice which should have been given to the appellant for wrongful dismissal. We do not accept any argument relating to near cause.

L'arrêt de la Cour d'appel est annulé et l'affaire est renvoyée devant la Cour suprême de la Nouvelle-Écosse pour qu'elle détermine le préavis raisonnable qui aurait dû être donné à l'appellant relativement à son congédiement injustifié. Nous n'acceptons pas que l'existence de quelque motif insuffisant soit pertinente.

This disposition is without prejudice to the respondent bringing any separate action to address any claims it may have against the appellant apart from reducing the period of reasonable notice owing to the appellant.

La présente décision est sans préjudice à tout recours distinct que l'intimée pourrait exercer au sujet de toute réclamation qu'elle pourrait faire valoir contre l'appellant, sauf quant à la réduction du préavis raisonnable auquel celui-ci a droit.

23.1.1998

CORAM: L'Heureux-Dubé, Cory, McLachlin, Iacobucci and Major JJ.

**Damon Gregory Horne**

Damon Gregory Horne, in person.

v. (25240)

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

Paul Moreau, for the respondent.

L'HEUREUX-DUBÉ J. (orally for the Court) -- We

are ready to render judgment.

[TRADUCTION]

Mr. Horne, before rendering judgment, the court wishes, as a matter of courtesy, to acknowledge the great effort you obviously went to in preparing and conducting your appeal before us. You should know that, in our view, no lawyer could have changed the result at which we have arrived.

LE JUGE L'HEUREUX-DUBÉ (oralement pour la Cour) -- Nous sommes prêts à rendre jugement.

Monsieur Horne, avant de rendre sa décision, la Cour tient, par courtoisie, à souligner les efforts considérables que vous avez de toute évidence déployés afin de préparer et de présenter votre pourvoi devant nous. Sachez que, à notre avis, aucun avocat n'aurait pu obtenir un résultat différent de celui que nous avons décidé.

Mr. Justice Cory will deliver the judgment of the Court.

Monsieur le juge Cory va prononcer le jugement de la Cour.

CORY J. -- A clear and correct warning was properly given to the jury with regard to the evidence of Ms. McKenzie.

LE JUGE CORY -- Une mise en garde appropriée, claire et correcte a été donnée au jury relativement au témoignage de Mme McKenzie.

There was as well a great deal of cogent evidence that corroborated her testimony.

Il y avait, de plus, une preuve convaincante considérable corroborant son témoignage.

In these circumstances, we agree with the reasons of the majority of the Alberta Court of Appeal that the verdict of the jury was not unreasonable.

Dans ces circonstances, nous souscrivons aux motifs de la majorité de la Cour d'appel selon lesquels le verdict du jury n'était pas déraisonnable.

This appeal as of right is therefore dismissed.

Le présent appel de plein droit, est par conséquent, rejeté.

23.1.1998

CORAM: L'Heureux-Dubé, Cory, McLachlin, Iacobucci and Major JJ.

**Mark John Maracle**

John R. Mann and Noëlle Caloren, for the appellant.

**v. (26034)**

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

Alexander Alvaro, for the respondent.

L'HEUREUX-DUBÉ J. (orally for the Court) -- The majority of Cory, McLachlin and Major JJ. would allow the appeal. In their view, the trial judge carefully considered all the relevant factors referred to by this Court in *Askov* and *Morin* and

made no error in the manner in which he exercised his discretion, L'Heureux-Dubé and Iacobucci JJ. dissenting for the following reasons. In their view, the Ontario Court of Appeal was correct in finding error in the trial judge's dealing with the period of

delay and the matter of prejudice to the appellant. Balancing all of the relevant guidelines from *Askov* and *Morin*, the Court of Appeal properly reversed the stay ordered by the trial judge and so they would accordingly dismiss the appeal.

[TRANSLATION] LE JUGE L'HEUREUX-DUBÉ (oralement au nom de la Cour) -- Les juges majoritaires Cory, McLachlin et Major sont d'avis d'accueillir l'appel. Selon eux, le juge du procès a examiné attentivement tous les facteurs pertinents mentionnés par notre Cour dans *Askov* et *Morin* et n'a commis aucune erreur dans la façon dont il a exercé son pouvoir discrétionnaire, les juges L'Heureux-Dubé et Iacobucci étant dissidents pour les raisons suivantes. À leur avis, la Cour d'appel de l'Ontario a eu raison de conclure que le juge du procès a commis une erreur en ce qui a trait à la longueur du délai et au préjudice causé à l'appellant. Soupesant toutes les lignes directrices pertinentes tirées de *Askov* et de *Morin*, la Cour d'appel a, à bon droit, infirmé l'arrêt des procédures ordonné par le juge du procès, et, en conséquence, ils rejeteraient l'appel.

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26.1.1998

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

**Continental Bank Leasing Corporation**

v. (25532)

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

and between

**Her Majesty The Queen**

v. (25521)

**Continental Bank of Canada (F.C.A.)(Ont.)**

H. Lorne Morphy and Kent E. Thomson, for the appellant the Continental Bank Leasing Corporation (25532).

Harry Underwood and Ira Nishisato, for the intervener the Canadian Bankers' Association.

Larry R. Olsson, Q.C. and S. Patricia Lee, for the respondent Her Majesty The Queen (25532).

S. Patricia Lee and Larry R. Olsson, Q.C., for the appellant Her Majesty The Queen (25521).

Kent E. Thomson and H. Lorne Morphy, for the respondent Continental Bank of Canada (25521).

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Taxation - Assessment - Commercial Law - Partnership - A subsidiary of a bank formed a partnership, transferred the assets of its leasing business into the partnership and was wound-up into the bank - The bank purported to sell the partnership interest - The Bank's motivation was to dispose of the subsidiary's business - Whether a partnership had been formed - Whether the partnership was void for illegality or *ultra vires* the bank - Whether the disposition of the partnership interest was an adventure in the nature of trade.

**Nature de la cause:**

Droit fiscal - Cotisation - Droit commercial - Société - Une filiale d'une banque a formé une société et transféré l'actif de son entreprise de location à la société, puis a elle-même été liquidée et transférée à la banque - La banque a voulu vendre la participation dans la société - La banque voulait disposer de l'entreprise de la filiale - Une société avait-elle été formée? - La société était-elle nulle parce qu'illégale ou *ultra vires* de la banque? - La disposition de la participation dans la société était-elle une opération commerciale?

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27.1.1998

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

**Retail, Wholesale and Department Store Union et al.**

Leila J. Gosselin and Larry W. Kowalchuk, for the appellants (25356 - 25366).

**v. (25356)**

Larry B. LeBlanc, Q.C., for the respondent Canada Safeway.

**Canada Safeway Ltd. et al. (Sask.)**

Dale K. Hallson, for the respondent Battlefords & District Co-Operative.

**and between**

**Retail, Wholesale and Department Store Union et al.**

**v. (25366)**

**Battlefords and District Co-Operative Ltd. (Sask.)**

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Labour law - Arbitration - Collective agreement - Interpretation - Judicial review - Standard of review - Part-time employee - Grievance alleged breach of "most available hours clause" of collective agreement - Reduction in scheduled hours of work - "Constructive lay-off" - Whether the Court of Appeal erred in finding that the decision of the Board was patently unreasonable.

**Nature de la cause:**

Droit du travail - Arbitrage - Convention collective - Interprétation - Contrôle judiciaire - Norme du contrôle - Employée à temps partiel - Grief de l'appelante alléguant violation de la clause de la convention collective relative à la «disponibilité optimale des heures de travail»- Réduction du nombre des heures de travail prévues à l'horaire - «Licenciement par interprétation» - La Cour d'appel a-t-elle commis une erreur en concluant que la décision du conseil était manifestement déraisonnable?

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28.1.1998

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

**Fayezah Jassim Shalaan**

Patrick J. Duncan, Q.C., for the appellant.

**v. (26029)**

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

Stephanie A. Cleary, for the respondent.

THE CHIEF JUSTICE (orally) -- This appeal comes to us as of right. Substantially for the reasons of Jones J.A. of the Court of Appeal of Nova Scotia, we are all of the view that this appeal fails and is therefore dismissed and the Order of the Court of Appeal is affirmed.

[TRADUCTION] LE JUGE EN CHEF (oralement) -- Le présent pourvoi est formé de plein droit. Essentiellement pour les raisons exposées par le juge Jones de la Cour d'appel de la Nouvelle-Écosse, nous sommes tous d'avis que le présent pourvoi échoue et il est donc rejeté, l'ordonnance de la Cour d'appel étant confirmée.

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28.1.1998

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

**Melville Neuman**

Joe E. Hershfield, Q.C., Ralph D. Neuman and Christopher M. Paterson, for the appellant.

**v. (25565)**

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

Roger Taylor and Robert Gosman, for the respondent.

## **RESERVED / EN DÉLIBÉRÉ**

### **Nature of the case:**

Taxation - Statutes - Interpretation - Tax planning - Dividend income from family holding company paid to Appellant's wife attributed to Appellant under subs. 56(2) of the *Income Tax Act* - Holding company incorporated for tax purposes only and wife having no involvement in business - Whether pre-conditions for application of subs. 56(2) of the *Income Tax Act* were met - In applying s. 56(2) of the *Income Tax Act* to a dividend, must there be a *quid pro quo* contribution by a shareholder who is in receipt of a dividend? - Whether reference can be made to subsequent legislation in determining the parliamentary intent and scope of subsection 56(2) of the *Income Tax Act*.

### **Nature de la cause:**

Droit fiscal - Lois - Interprétation - Planification fiscale - Revenu de dividendes d'une société de portefeuille familiale versé à l'épouse de l'appellant attribué à l'appellant en vertu du par. 56(2) de la *Loi de l'impôt sur le revenu* - Société de portefeuille constituée à des fins exclusivement fiscales, l'épouse n'ayant aucune implication dans l'entreprise - Les conditions préalables à l'application du par. 56(2) de la *Loi de l'impôt sur le revenu* ont-elles été remplies? - Pour que le par. 56(2) de la *Loi de l'impôt sur le revenu* s'applique à un dividende, l'actionnaire qui reçoit le dividende doit-il avoir fourni une contribution en contrepartie? - Peut-on se fonder sur une disposition législative subséquente pour déterminer l'intention du législateur et la portée du par. 56(2) de la *Loi de l'impôt sur le revenu*?

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29.1.1998

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

**Consolidated Maybrun Mines Ltd. et al.**  
**v. (25326)**

Edward L. Greenspan, Q.C. and Marie Henein, for the appellants.

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

Lori Sterling and Jerry Herlihy, for the respondent.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Administrative law - Environmental law - *Environmental Protection Act*, R.S.O. 1980, c. 141 - Collateral attack - Whether an administrative order is immune from collateral attack in the context of proceedings for failure to comply with an administrative order - Whether an administrative order ought to be accorded the same deference as a court order - Whether the administrative principle of adequate alternative remedy as a bar to collateral attack should be applicable where a defendant is charged with failing to obey an administrative order.

**Nature de la cause:**

Droit administratif — Droit de l'environnement — *Environmental Protection Act*, R.S.O. 1980, ch. 141 — Attaque indirecte — Une ordonnance administrative est-elle à l'abri d'une attaque indirecte dans le contexte de procédures intentées pour omission de se conformer à une ordonnance administrative? — Une ordonnance administrative devrait-elle bénéficier de la même réserve judiciaire que celle accordée à une ordonnance de la cour? — Le principe administratif du recours subsidiaire adéquat comme fin de non-recevoir contre une attaque indirecte devrait-il s'appliquer lorsque le défendeur est accusé de ne pas s'être conformé à une ordonnance administrative?

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29.1.1998

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

**Her Majesty The Queen**  
**v. (25670)**

Brian A. Crane, Q.C. and J.H. Gescher, for the appellant.

**Al Klippert Ltd. (Alta.)**

Gary C. Courtney, for the respondent.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Administrative law - Appeal - Jurisdiction - Statutes - Interpretation - S. 81(1) of the *Planning Act*, R.S.A. 1980, c. P-9 - Collateral attack on administrative order - Whether an accused charged with the breach of an administrative order under the *Planning Act* of Alberta may question the validity of the order in quasi criminal proceedings for breach of the order even though no appeal from such order was taken under the *Planning Act*.

**Nature de la cause:**

Droit administratif - Appel - Compétence - Lois - Interprétation - Art. 81(1) de la *Planning Act*, R.S.A. 1980, ch. P-9 - Contestation indirecte d'une ordonnance administrative - Une personne accusée de violation d'une ordonnance administrative en vertu de la *Planning Act* de l'Alberta peut-elle contester la validité de l'ordonnance dans une procédure quasi criminelle pour violation de l'ordonnance, même si aucun appel de cette ordonnance n'a été interjeté en vertu de la *Planning Act*?

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## WEEKLY AGENDA

## ORDRE DU JOUR DE LA SEMAINE

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**AGENDA for the week beginning February 2, 1998.**  
**ORDRE DU JOUR pour la semaine commençant le 2 février 1998.**

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Date of Hearing/  
Date d'audition

Case Number and Name/  
Numéro et nom de la cause

The Court is not sitting this week

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La Cour ne siège pas cette semaine

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### NOTE:

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

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

## DEADLINES: MOTIONS

## DÉLAIS: REQUÊTES

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### 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** : **February 2, 1998**  
Service : January 12, 1998  
Filing : January 19, 1998  
Respondent : January 26, 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** : **2 février 1998**  
Signification : 12 janvier 1998  
Dépôt : 19 janvier 1998  
Intimé : 26 janvier 1998

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## DEADLINES: APPEALS

The Winter Session of the Supreme Court of Canada will commence January 19, 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:

### 1. WHERE NOTICE OF APPEAL FILED BEFORE OCTOBER 29, 1997:

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

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

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

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

### 2. WHERE NOTICE OF APPEAL FILED ON OR AFTER OCTOBER 29, 1997:

**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.

**In all cases**, 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 d'hiver de la Cour suprême du Canada commencera le 19 janvier 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:

### 1. SI L'AVIS D'APPEL EST DÉPOSÉ AVANT LE 29 OCTOBRE 1997:

**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 quatre mois du dépôt de l'avis d'appel.

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

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

### 2. SI L'AVIS D'APPEL EST DÉPOSÉ LE 29 OCTOBRE 1997 OU APRÈS CETTE DATE:

**Le dossier de l'appellant, 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'appellant.

**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.

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

**Dans tous les cas**, le registraire inscrit l'appel pour audition après le dépôt du mémoire de l'intimé ou à l'expiration du délai de signification du mémoire de l'intimé.

SUPREME COURT OF CANADA SCHEDULE  
CALENDRIER DE LA COUR SUPREME

REVISED

- 1997 -

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

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

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

- 1998 -

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

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

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

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

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

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

Sittings of the court:  
Séances de la cour:



Motions:  
Requêtes:

Holidays:  
Jours fériés:

17 sitting weeks / semaines séances de la cour  
78 sitting days / journées séances de la cour  
7 motion and conference days /  
journées requêtes, conférences  
3 holidays during sitting days /  
jours fériés durant les sessions