

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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Le Bulletin rassemble les procédures devant la Cour dans la langue du dossier. Quand un arrêt est rendu, on peut se procurer les motifs de jugement en adressant sa demande au registraire, accompagnée de 10 \$ par exemplaire. Le paiement doit être fait à l'ordre du Receveur général du Canada.

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Yaw Dwomoh

Yaw Dwomoh

v. (27534)

**The Minister of Citizenship and Immigration
(Ont.)**

Urszula Kaczmarczyk
A.G. of Canada

FILING DATE 29.9.1999

Cadillac Fairview Corporation Limited

Catherine A. Sloan
McKercher McKercher & Whitmore

v. (27537)

**Saskatchewan Human Rights Commission et al.
(Sask.)**

Milton C. Woodard
Saskatchewan Human Rights Commission

FILING DATE 7.10.1999

Michael Caswell

Douglas M. Baum

v. (27538)

Her Majesty the Queen (Ont.)

Christopher Webb
A.G. for Ontario

FILING DATE 8.10.1999

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

**Syndicat des travailleurs et travailleuses des
postes**

Paul Lesage
Trudel, Nadeau, Lesage, Larivière et
Associés, s.e.n.c.

c. (27539)

Société canadienne des postes et al. (Qué.)

Bernard Synnott
Bélanger, Sauvé

DATE DE PRODUCTION 8.10.1999

Marguerite Trussler

Donald N. Cherniawsky
Felesky Flynn

v. (27542)

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

S. David Frankel, Q.C.
A.G. of Canada

FILING DATE 12.10.1999

Ulybel Enterprises Limited

John R. Sinnott, Q.C.
Lewis, Sinnott, Shortall, Hurley

v. (27543)

Her Majesty the Queen (Nfld.)

Anne M. Fagan
Mercer, MacNab, Vavasour & Fagan

DATE DE PRODUCTION 13.10.1999

Galina Sokolova et al.
Galina Sokolova

v. (27546)

**The Ministry of Employment and Immigration
(F.C.A.)**
Rick Visca
A.G. of Canada

FILING DATE 14.10.1999

Ian Vincent Golden
David M. Tanovich
Pinkofsky Lockyer

v. (27547)

Her Majesty the Queen (Ont.)
Morris Pistyner
A.G. of Canada

FILING DATE 15.10.1999

Syndicat des travailleurs des pavillons jeunesse
Guy Martin
Sauvé et Roy

c. (27548)

**Marc Boisvert, ès qualités d'arbitre de griefs et al.
(Qué.)**

DATE DE PRODUCTION 15.10.1999

The Corporation of the City of Thunder Bay
Allan D. McKitrick
McKitrick, Jones

v. (27549)

1037618 Ontario Inc. et al. (Ont.)
William G. Shanks
Cheadle Johnson Shanks MacIvor

FILING DATE 18.10.1999

Olympia Interiors Ltd. et al.
Mary David

v. (27550)

Her Majesty the Queen (F.C.A.)
Bryan C. McPhadden
McPhadden, Samac, Merner, Darling

FILING DATE 18.10.1999

Co-Pac Limited et al.
Leon J. Melconian
Kramer & Henderson

v. (27551)

The Toronto-Dominion Bank (Ont.)
Michael Kestenberg
Kestenberg Siegal Lipkus

FILING DATE 18.10.1999

Raffieudeen Razac
Raffieudeen Razac

v. (27552)

Harold C. Lehrer (Que.)
Harold C. Lehrer

FILING DATE 4.10.1999

Leonardo G. Galuego
Leonardo G. Galuego

v. (27553)

**The Canadian Human Rights Commission et al.
(F.C.A.)**
Eddie Taylor
Canadian Human Rights Commission

FILING DATE 18.10.1999

Murielle Marcoux
Martine L. Tremblay
Kugler Kandestin

c. (27554)

Dr. Jean-Marie Bouchard et al. (Qué.)
Robert-Jean Chénier
McCarthy Tétrault

DATE DE PRODUCTION 21.10.1999

T.V.

v. (27556)

Her Majesty the Queen (Ont.)
Robert E. Houston, Q.C.
Burke-Robertson

FILING DATE 21.10.1999

B.G. Schickedanz Investments Limited et al.
Jarvis K. Postnikoff

v. (27557)

Paul George Szasz et al. (Ont.)
John S. McNeil, Q.C.
Fellowes, McNeil

FILING DATE 22.10.1999

Paul George Szasz et al.
John S. McNeil, Q.C.
Fellowes, McNeil

v. (27558)

Standard Trust Company et al. (Ont.)
Anne McNeely
Blake, Cassels & Graydon

FILING DATE 22.10.1999

Roshan Ali Tejani
Alan D. Gold
Gold & Fuerst

v. (27459)

Her Majesty the Queen (Ont.)
A.G. of Canada

FILING DATE 25.10.1999

Beverlee Jorgensen
Dida Berku

c. (27560)

Crédit M.P. Ltée et al. (Qué.)
David Brossard
Gilbert et Brossard

DATE DE PRODUCTION 25.10.1999

Jan Lackowiak

Jan Lackowiak

v. (27562)

**Maple Engineering & Construction Canada Ltd.
(Ont.)**

Malcolm J. MacLeod
Loopstra, Nixon & McLeish

FILING DATE 26.10.1999

Jacques Laurendeau

Jacques Laurendeau

c. (27563)

Sa Majesté la Reine (Qué.)

Michel Fortin
P.G. du Québec

DATE DE PRODUCTION 21.10.1999

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

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

NOVEMBER 1, 1999 / LE 1^{ER} NOVEMBRE 1999

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

H.A.R.

v. (27189)

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

NATURE OF THE CASE

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

PROCEDURAL HISTORY

January 16, 1998
Ontario Court (General Division)
(Poupore J.)

Convictions: assault and sexual assault; Acquittal on one
charge of uttering threats

December 14, 1998
Court of Appeal for Ontario
(Carthy, Goudge, Feldman JJ.A.)

Appeal dismissed

April 28, 1999
Supreme Court of Canada
(Binnie J.)

Extension of time to serve and file leave application to
May 31, 1999 granted

June 2, 1999
Supreme Court of Canada

Application for leave to appeal filed

Tina Kochylema

v. (27492)

William Blair Fulton (Sask.)

NATURE OF THE CASE

Family law - Division of property - Matrimonial home - Debts - Applicant unaware that matrimonial home was purchased with unsecured loans from Respondent's mother to Respondent - Parties paying nothing on the loans during the marriage - Value of matrimonial home equal to amount of debt owing by Respondent to his mother at date of trial - Trial judge vesting title to matrimonial home in Respondent - Whether trial judge erred in applying s. 22(1) of *The Matrimonial Property Act*, S.S. 1979, c. M-6.1, and in failing to consider companion legislation.

PROCEDURAL HISTORY

September 29, 1993 Court of Queen's Bench of Saskatchewan (Halvorson J.)	Title to matrimonial home granted to Respondent
May 17, 1999 Court of Appeal for Saskatchewan (Vancise, Wakeling, and Jackson [<i>dissenting</i>] JJ.A.)	Appeal dismissed
September 16, 1999 Supreme Court of Canada	Application for leave to appeal filed

**Bennett Jones Verchere, Garnet Schulhauser, Arthur Anderson & Co.,
Ernst & Young, Alan Lundell, The Royal Trust Company, William R. MacNeill,
R. Byron Henderson, C. Michael Ryer, Gary L. Billingsley, Peter K. Gummer,
James G. Engdahl, Jon R. MacNeill**

v. (27138)

**Western Canadian Shopping Centres Inc. and Muh-Min Lin and Hoi-Wah Wu,
representatives of all holders of Class "A", Class "E" and Class "F" Debentures Issued by Western Canadian
Shopping Centres Inc. (Alta.)**

NATURE OF THE CASE

Procedural law - Civil procedure - Representative action - Fiduciary duty - Appropriate test for determining whether a representative action has been properly constituted - Whether a representative action should be permitted to continue in circumstances where there is a dispute about whether the plaintiffs to be represented all relied upon the alleged wrongful acts of the defendants, or all relied upon such acts in the same way - Whether reliance (or reliance and vulnerability) must be proved in order to prove the existence of a fiduciary duty.

PROCEDURAL HISTORY

October 2, 1996 Court of Queen's Bench of Alberta (Wilkins J.)	Order dismissing applications to strike out portions of an amended statement of claim under Rule 42 for failing to meet the requirements of a representative action
December 11, 1998 Court of Appeal of Alberta (Irving, Russell and Picard JJ.A.)	Appeal dismissed: order that each of the 229 represented Respondents afford all Applicants documentary and oral discovery
February 8, 1999 Supreme Court of Canada	Application for leave to appeal filed
March 19, 1999 Supreme Court of Canada	Application for leave to cross-appeal and for an extension of time filed

M.S.

v. (27151)

P.I.S. (B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Procedural law - Whether lower courts erred in making declaration under s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 that requires Applicant to obtain leave to bring commencing any proceeding with reference either to the children of the Applicant and the Respondent or to the Respondent.

PROCEDURAL HISTORY

October 7, 1997 Supreme Court of British Columbia (Spencer J.)	Applicant's application for habeas corpus dismissed
December 15, 1998 Court of Appeal for British Columbia (Esson, Donald, and Hall JJ.A.)	Appeal dismissed
February 18, 1999 Supreme Court of Canada	Application for leave to appeal filed

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

Joseph D. Yue

v. (27314)

**Her Majesty The Queen
(Human Resources Development Canada) (F.C.A.)**

NATURE OF THE CASE

Procedural law - Standing - Applicant's motion to become co-applicant in wife's judicial review application before the Federal Court of Appeal dismissed - Whether Federal Court of Appeal erred in so doing.

PROCEDURAL HISTORY

March 10, 1999 Federal Court of Appeal (Sexton J.A.)	Applicant's application to be added as an additional applicant in his wife's judicial review application dismissed
April 13, 1999 Federal Court of Appeal (Sexton J.A.)	March 10th, 1999 order confirmed
May 3, 1999 Supreme Court of Canada	Application for leave to appeal filed

Raymond Lebeuf

c. (27236)

**Groupe SNC-Lavalin inc., SNC-Lavalin inc. et
Lalonde, Girouard, Letendre & Associés (1993) ltée (Qué.)**

NATURE DE LA CAUSE

Droit commercial - Contrats - Vente d'actions par le demandeur - Engagements de non-concurrence - Ingénieurs - Demandeur s'engageant à ne pas employer le personnel de l'acheteur et de l'entreprise dont les actions font l'objet de la vente et à ne pas inciter le personnel à quitter - Compte tenu des dispositions du *Code de déontologie des ingénieurs*, R.R.Q. 1981, ch. I-9, l'action des intimées est-elle irrecevable pour des motifs d'ordre public? - La fusion de plusieurs entreprises a-t-elle pour effet de transmettre les droits prévus à une clause de non-concurrence? - L'interprétation restrictive d'une clause de non-concurrence doit-elle faire place à une interprétation large et libérale favorable au bénéficiaire de la clause? - L'incitation est-elle une contravention à caractère continu ou ponctuel? - Portée des mots "engager" ou "employer" - Caractère abusif de la clause pénale.

HISTORIQUE PROCÉDURAL

Le 17 octobre 1994
Cour supérieure du Québec
(Letarte j.c.s.)

Demande d'injonction permanente rejetée, action en dommages-intérêts accueillie en partie et demandeur condamné à payer aux intimées la somme de 496 000\$ pour avoir contrevenu à ses engagements de non-concurrence

Le 10 février 1999
Cour d'appel du Québec
(Baudouin, Chamberland et Nuss jj.c.a.)

Appel accueilli aux seules fins d'infirmer la conclusion déclaratoire contre Société de gestion Raymond Lebeuf inc. et de fixer le montant de la condamnation à 486 000\$

Le 7 avril 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**Monsieur Michel S. Loignon,
Madame Louise St-Pierre,
Monsieur Alain Bussière,
Monsieur Michel Chagnon**

- et -

**Les Syndicats des professionnels et professionnelles
du Collège Montmorency, André-Laurendeau, Alma
et Joliette de Lanaudière**

c. (27201)

**Collège (CÉGEP) Montmorency,
Collège (CÉGEP) André-Laurendeau,
Collège (CÉGEP) d'Alma,
Collège Joliette de Lanaudière**

-et-

Me Fernand Morin (Qué.)

NATURE DE LA CAUSE

Droit administratif - Contrôle judiciaire - Décision manifestement déraisonnable - Arbitrage - Droit du travail - Convention collective - Libération syndicale - Fonctions syndicales nationales - La Cour d'appel a-t-elle erré en droit en intervenant à l'égard d'une décision de l'arbitre qui interprétait une loi en vertu du Code du Travail du Québec et des dispositions de la convention collective? - La Cour d'appel a-t-elle erré en qualifiant de manifestement déraisonnable la décision de l'arbitre et en refusant d'intervenir sur le jugement de la Cour supérieure qui a accueilli les griefs des intimés?

HISTORIQUE PROCÉDURAL

Le 29 novembre 1995
Cour supérieure du Québec
(Gervais j.c.s.)

Requête en révision judiciaire amendée accueillie

Le 21 janvier 1999
Cour d'appel du Québec
(Rousseau-Houle, Pidgeon, et Denis [*ad hoc*] j.j.c.a.)

Appel rejeté

Le 22 mars 1999
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Charles Murray Bennett

v. (27493)

Patricia Anne Bennett (Ont.)

NATURE OF THE CASE

Procedural law - Whether Ontario Court (General Division) or Court of Appeal for Ontario erred in law by determining that there should be no adjournment allowed to the Applicant despite the medical evidence which was tendered in support - Whether the lower courts' refusal to grant an adjournment for medical reasons offends the Charter of Rights and Freedoms.

PROCEDURAL HISTORY

November 21, 1997 Ontario Court of Justice (General Division) (Métivier J.)	Order as to the amount of equalization and child support payments
July 13, 1999 Court of Appeal for Ontario (Brooke, Weiler and Charron JJ.A.)	Appeal dismissed
September 16, 1999 Supreme Court of Canada	Application for leave to appeal filed

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

Monica Lynn Tailleux, by her next friend, Irene Desrosiers, and Irene Desrosiers

v. (27169)

Joseph Sendziak (Alta.)

NATURE OF THE CASE

Torts - Negligence - Medical malpractice - Whether the Court of Appeal inappropriately interfered with the trial judge's findings given that common sense principles play a significant role in assessing, or deviating from, expert opinion evidence - Whether the Court of Appeal's decision is consistent with *ter Neuzen v. Korn*, [1995] 3 S.C.R. 674.

PROCEDURAL HISTORY

January 16, 1996 Court of Queen's Bench of Alberta (Cooke J.)	Respondent found liable
February 25, 1996 Court of Queen's Bench of Alberta (Cooke J.)	Applicant awarded general and special damages
January 5, 1999 Court of Appeal of Alberta (McFadyen, Hunt and Binder JJ.A.)	Appeal allowed and judgment set aside
March 1, 1999 Supreme Court of Canada	Application for leave to appeal filed

Jag D. Bhaduria

v. (27259)

**Toronto Board of Education, Antonio Silipo,
Joan Green, Beverley Brophy, Irene Atkinson,
Sandra Bussin, Olivia Chow, Alexander Chumak,
John Doherty, Joan Doiron, Tam Goosen, Denise Gosnell,
Esther Harshaw, Rosario Marchese, Pam McConnell,
David Moll, Fiona Nelson, Dorothy Ottaway,
Alison Pearce, Susan Ruskin, Linda Sparling, Ann Vanstone,
and Beare Weatherup (Ont.)**

NATURE OF THE CASE

Canadian Charter - Labour law - Collective agreement - Arbitration - Jurisdiction - Application to strike - Action alleging misconduct on part of school trustees and board employees leading up to dismissal - Whether trustees are properly in the same legal position as the employer - Whether provisions of a collective agreement are enforceable on persons not parties to the collective agreement - Whether publicly elected trustees whose statutory function is purely legislative may be deemed to be a part of the management for the purpose of bringing them within the definition of parties to a collective agreement - Whether an arbitrator has jurisdiction over "third parties" who are not a part of the administration, not a party to a collective agreement and not under the control of the employer - Whether courts have jurisdiction over disputes involving employees and third parties who fall outside the provisions of a collective agreement - Whether third parties in an employment context may circumvent the requirements of due process and protection of s. 7 of the *Charter* while carrying out a statutory discipline proceeding against an employee.

PROCEDURAL HISTORY

August 21, 1997
Ontario Court of Justice (General Division)
(Feldman J.)

Applicant's motion to strike statement of claim granted in part; Action in defamation against Respondent (Toronto Board of Education) allowed to stand

March 3, 1999
Court of Appeal for Ontario
(Finlayson, Catzman and Laskin JJ.A.)

Applicant's appeal dismissed; Respondent's (Toronto Board of Education) cross-appeal granted

April 19, 1999
Supreme Court of Canada

Application for leave to appeal filed

Mary Glass, Hin F. Ko, Mabel W. Ko, Roy Westwick, Gwyneth M. Westwick, Kerry-Lynne Ferris, Stephen W. Findlay, Norah C. Findlay, Jerry Janes, Diana Janes, Gregory Pappas, Tasie Pappas, Solon S. Wang, Peter M. Lee, Herbert M. Lewis, Alexander Kalinowski, Katarina Kalinowski, John W. Whitefoot, Sheila M. Whitefoot, Lisbet MacKay, Pierre Dow, Mona McKinnon, Wong L. Lee, Man-Loong Lee, John M. Glaiserman, Juan L. G. Cam, Elizabeth C. Cam, Evelyn M. Murray, William T. Ziemba, James R. Thompson, Ann B. Thompson, Yum C. Lau, Irene Lau, James Y. P. King, Tjin K. Tan, Eiji Murakami, Miyako Murakami, Thomas W. F. Fung, Amy M. L. Chan, Gertrude Henneken, Hans T. Henneken, Howard G. Isman, Marjorie E. Isman, Stanley Evans, Dorothy Evans, Khi Yoeng Tjin, Wen-Tien Tai, Kui-Hsiang Huang, Phyllis Weinstein, Patricia Lai, Wilfred E. Patton, Jean M. Patton, Attilio Girardi, Mary Girardi, Irma E. Boulter, George S. Boulter, John G. Cragg, Olga B. Cragg, Howard E. Cadinha, Arlene B. Cadinha, Maria C. Ormond, Douglas R. Eyrl, Judith F. Eyrl, Cheung K. Choi, Chan P. K. Choi, Celia Kaan, Cecil S. C. Kaan, Ramon Y. Kan, Helena Kan, Leslie Bara, Ottilia Bara, Alfred K. Lee, Esther K. Lee, Diana W. C. Sung, Donald C. Graham, Winnifred A. Graham, Ronald J. MacKee, Alexander

H. Wong, Stella L. Wong, Edward B. Huyck, Dorothy A. Huyck, Frederick S. Edy, Ellen V. Edy, Victor H. Hildebrand, John E. Egan, Chi K. Ching, Siu Y. Chan, Lavender Chu, Frederick Chu, George E. Rush, Anne L. Rush, Herta J. Neuman, Cornelius Neumann, James A. Forsythe, Diane R. Forsythe, Peter J. Funk, Elizabeth Funk, Elfriede Machek, Adelheid Machek, Lillian P. Toews, Hui C. Keung, Patricia H. K. S. Wah, Vadilal J. Modi, Mira V. Modi, Charles H. Shnier, Elaine C. Shnier, Agnes P. C. Shen, Carol M. Lau, Dennis Lau, Marjorie McClelland, Arthur Nee, Laura T. Nee, Donald W. Scheideman, Kathryn M. Scheideman, William N. King, Allan J. Hunter, Grace K. Hunter, Grace Ng, Irving Glassner, Noreen G. Glassner, Priscilla Fratkin, Nancy B. Berner, Gregory Hryhorchuk, Darcy L. Hryhorchuk, Astley E. Smith, Betty Ann Smith and Lily R. Eng

v. (27154)

Musqueam Indian Band and Chief Joseph Ralph Becker, Ernie Campbell, Wayne Sparrow, Leona M. Sparrow, Nolan Charles, Mary Charles, Johnna Crawford, Gail Y. Sparrow, Myrtle McKay, Larry Grant and Her Majesty the Queen (F.C.A.)

NATURE OF THE CASE

Native law - Property law - Leases - Rent review - Evaluation of lands located on a reserve - Whether the Federal Court of Appeal erred by introducing a presumption that, in the determination of annual rent for leased reserve land, the “land” must be valued as if it were surrendered absolutely for sale in fee simple, free of the market benefits and limitations associated with its status as reserve land? - Whether the Federal Court of Appeal erred in its construction of the words “current land value”? - Whether the Federal Court of Appeal erred in construing “this agreement” in clause 2(2)(a) of the lease agreement to mean an antecedent agreement for the development of 40 acres of Musqueam Reserve No. 2, rather than the individual lease agreements themselves? Whether the Federal Court of Appeal erred in requiring the costs of developing and servicing the land be calculated and deducted from the “current land value” of the lots?

PROCEDURAL HISTORY

December 11, 1997
Federal Court of Canada, Trial Division
(Rothstein J.)

Order as to the calculation of the annual rent for the Applicants’ lots in the Musqueam Park Subdivision

December 21, 1998
Federal Court of Appeal
(Desjardins, Robertson and Sexton JJ.A.)

Appeal granted in part: modifications to the calculations of annual rent

February 25, 1999
Supreme Court of Canada

Application for leave to appeal filed

March 29, 1999
Supreme Court of Canada

Application for leave to cross-appeal filed

The City of Edmonton

v. (27186)

Protection Mutual Insurance Company (Alta.)

NATURE OF THE CASE

Commercial law - Insurance - Contract of Insurance - Limitation of actions - Whether the lower courts applied the wrong test or failed to properly apply the test as set out by this Court in *Consolidated-Bathurst Export Ltd. v. Mutual Boiler and Machinery Insurance Company*, [1980] 1 S.C.R. 888 regarding the incorporation of the statutory conditions into the policy of insurance - Whether the lower courts erred in deciding that the applicable limitation period was one year - Whether as a result of this decision the case law regarding the interpretation of insurance contracts is in disarray.

PROCEDURAL HISTORY

February 14, 1997 Court of Queen's Bench of Alberta (Lee J.)	Applicant's claim dismissed
January 11, 1999 Court of Appeal of Alberta (Heatherington, Picard and Sulatycky JJ.A.)	Appeal dismissed
March 12, 1999 Supreme Court of Canada	Application for leave to appeal filed

Tatiana Tabatadze

v. (27506)

The Ministry of Employment and Immigration (F.C.A.)(Ont.)

NATURE OF THE CASE

Immigration law - Judicial review - Appeals - Jurisdiction - Immigration and Refugee Board dismissing claim for refugee status - Federal Court, Trial Division refusing leave to commence application for judicial review - Whether Supreme Court of Canada has jurisdiction to hear matter - Whether board failed to observe principle of natural justice or procedural fairness in making decision.

PROCEDURAL HISTORY

December 17, 1998 Immigration and Refugee Board (Refugee Division) (McCauley and Khan, members)	Determination by Refugee Division that the Applicant is not a Convention refugee
June 29, 1999 Federal Court of Canada, Trial Division (Muldoon J.)	Application for leave to commence an application for judicial review dismissed
September 24, 1999 Supreme Court of Canada	Application for leave to appeal filed

NOVEMBER 4, 1999 / LE 4 NOVEMBRE 1999

27476 RUSSELL GRANT - v. - HER MAJESTY THE QUEEN (Alta.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

An oral hearing is ordered and fixed for Monday December 6, 1999.

Une audition est ordonnée et fixée pour lundi le 6 décembre 1999.

NATURE OF THE CASE

Criminal law (Non *Charter*) - Evidence - Admissibility of evidence - Documentary evidence excluded - Accused acquitted
- Whether exclusion of evidence was an error of law.

PROCEDURAL HISTORY

April 7, 1998
Court of Queen's Bench of Alberta
(Murray J.)

Charges of violation of ss. 7(1) and 5(2) of the *Controlled
Drugs and Substances Act* dismissed;
Applicant acquitted

July 6, 1999
Court of Appeal of Alberta (Edmonton)
(Fraser C.J.A., Conrad and Fruman JJ.A.)

Appeal against acquittal allowed;
New trial ordered

September 9, 1999
Supreme Court of Canada

Application for leave to appeal and for an extension of time
filed; oral hearing requested

June 1, 1998
Court of Queen's Bench of Alberta
(Hembroff J.)

Applicants' application for an order of mandamus directing the Respondent to issue a stop work order with respect to the construction of a barn dismissed

January 18, 1999
Court of Appeal of Alberta
(Irving, Russell and Hunt JJ.A.)

Appeal dismissed

March 18, 1999
Supreme Court of Canada

Application for leave to appeal filed

27125 **TORONTO-DOMINION BANK - v.- LAW SOCIETY OF UPPER CANADA** (Ont.)

CORAM: **Major, Binnie and Arbour 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 - Banks/banking operations - Trust and trustees - Misappropriation of funds from lawyer's mixed trust account - Beneficiaries' claims exceeding balance of funds - Whether the Court of Appeal for Ontario erred in finding that the lowest intermediate balance rule was not to be applied in conjunction with *pro rata* sharing, among innocent beneficiaries, of available funds in a mixed trust account - Whether the Court of Appeal for Ontario erred in failing to apply the lowest intermediate balance rule.

PROCEDURAL HISTORY

October 17, 1995
Ontario Court of Justice (General Division)
(Farley J.)

Application for declaration that Applicant ranks equally with other clients allowed: co-mingled funds to be distributed on a *pro rata* basis

March 17, 1996
Ontario Court of Justice (General Division)
(Farley J.)

Continuation of application: Applicant not entitled to apply the lowest intermediate balance rule

December 7, 1998
Court of Appeal for Ontario
(Osborne, Labrosse and Blair (*ad hoc*) JJ.A.)

Appeal dismissed

February 5, 1999
Supreme Court of Canada

Application for leave to appeal filed

27118 **MARY DANYLUK - v. - AINSWORTH TECHNOLOGIES INC., AINSWORTH ELECTRIC CO. LIMITED, F. JACK PURCHASE, PAUL S. GOODERHAM, JACK A. TAYLOR, ROSS A. POOL, DONALD W. ROBERTS, TIMOTHY I. PRYOR, CLIFFORD J. AINSWORTH, JOHN F. AINSWORTH, KENNETH D. AINSWORTH, MELVILLE O'DONOHUE, DONALD J. HAWTHORNE, WILLIAM I. WELSH, JOSEPH MCBRIDE WATSON** (Ont.)

CORAM: Major, Binnie and Arbour JJ.

The application for leave to appeal is granted with costs.

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

NATURE OF THE CASE

Administrative law - Labour law - Issue estoppel - *Employment Standards Act*, R.S.O. 1990, c. E.14 - Whether the Court of Appeal erred in holding that the doctrine of issue estoppel applied to the decision of an employment standards officer despite the failure of the employment standards officer to observe the principles of natural justice in the decision making process?

PROCEDURAL HISTORY

June 10, 1996
Ontario Court (General Division) (McCombs J.)

Applicant's claim for unpaid wages and commissions set forth in the statement of claim struck out

December 2, 1998
Court of Appeal for Ontario
(Morden A.C.J.O., Rosenberg J.A., Spence J. [*ad hoc*])

Appeal dismissed

February 1, 1999
Supreme Court of Canada

Application for leave to appeal filed

25.10.1999

Before / Devant: CHIEF JUSTICE LAMER

Motion to state a constitutional question

Requête pour énoncer une question constitutionnelle

Advance Cutting & Coring Ltd. et al.

v. (26664)

Her Majesty the Queen (Que.)

GRANTED / ACCORDÉE Notices of intervention are to be filed no later than December 6, 1999.

- | | |
|--|---|
| <p>1. Do ss. 28-40, 85.5, 85.6, 119.1 and 120 of an <i>Act respecting labour relations, vocational training and manpower management in the construction industry</i> and s. 23 of the <i>Regulation respecting the election of a representative association by the employees of the construction industry</i> restrict the guarantees of freedom of association under s. 2(d) of the <i>Canadian Charter of Rights and Freedoms</i>?</p> <p>2. If so, is the restriction justified under s. 1 of the <i>Charter</i>?</p> | <p>1. Est-ce que les art. 28 à 40, 85.5, 85.6, 119.1 et 120 de la <i>Loi sur les relations du travail, la formation professionnelle et la gestion de la main-d'oeuvre dans l'industrie de la construction</i> et l'art. 23 du <i>Règlement sur le choix d'une association représentative par les salariés de l'industrie de la construction</i> restreignent la liberté d'association garantie par l'al. 2d) de la <i>Charte canadienne des droits et libertés</i>?</p> <p>2. Dans l'affirmative, cette restriction est-elle justifiée au regard de l'article premier de la</p> |
|--|---|

27.10.1999

Before / Devant: ARBOUR J.

Motion for leave to intervene

Requête en autorisation d'intervention

BY/PAR: Office des droits de détenus (ODD)
and l'Association des services de
réhabilitation sociale du Québec

IN/DANS: Mr. Justice Richard Therrien, Q.C.J.

v. (27004)

Minister of Justice, et al. (Que.)

GRANTED / ACCORDÉE

IT IS HEREBY ORDERED THAT:

1. The motion for leave to intervene of the applicants l'Office des droits de détenus (ODD) and l'Association des services de réhabilitation sociale du Québec is granted in part.

-
2. The applicants shall be restricted exclusively to issues on the interpretation, effect and scope of pardon and section 18.2 of the Quebec *Charter of Rights and Freedoms*, L.R.Q., c. C-12.
 3. The applicants shall be entitled to serve and file a joint factum not to exceed 20 pages in length and to present joint oral submissions not to exceed 15 minutes.

The interveners shall not be entitled to adduce further evidence or otherwise to supplement the record apart from its factum.

Pursuant to Rule 18(6), the interveners shall pay to the appellant and respondents any additional disbursements occasioned to the appellant and respondents by the intervention.

27.10.1999

Before / Devant: ARBOUR J.

Motions for extension of time and leave to intervene

Requêtes en prorogation de délai et en autorisation d'intervenir

BY/PAR: Advocates' Society and the Criminal
Lawyers' Association (Ontario)

IN/DANS: J.C.

v. (27109)

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

GRANTED / ACCORDÉES

IT IS HEREBY ORDERED THAT:

- a) The motion for an extension of time and for leave to intervene of the applicant Advocates' Society is granted, the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 15 minutes.
- b) The motion for an extension of time and for leave to intervene of the applicant Criminal Lawyers' Association (Ontario) is granted, the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length and to present oral argument not to exceed 15 minutes.

The interveners shall not be entitled to adduce further evidence or otherwise to supplement the record apart from their factums and oral submissions.

Pursuant to Rule 18(6) the interveners shall pay to the appellant and respondents any additional disbursements occasioned to the appellant and respondents by the interventions.

27.10.1999

Before / Devant: ARBOUR J.

Motion to extend the time in which to serve and file the application for leave to appeal

Requête en prorogation du délai imparti pour signifier et déposer la demande d'autorisation d'appel

Philip Douglas Backman

v. (27561)

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

GRANTED / ACCORDÉE Time extended to November 30, 1999.

27.10.1999

Before / Devant: ARBOUR J.

Motion to appoint counsel

Requête en nomination d'un procureur

Her Majesty the Queen

v. (27013)

Donald Deschamps (Crim.)(Ont.)

GRANTED / ACCORDÉE Motion for an order appointing Andras Schreck as counsel for the respondent, and for an order that the Crown pay his reasonable legal expenses in this appeal is granted, no order as to costs.

28.10.1999

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the intervener Attorney General for Ontario's factum

Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'intervenant le procureur général de l'Ontario

Her Majesty the Queen

v. (26535)

Richard Floyd Oickle (Crim.)(N.S.)

GRANTED / ACCORDÉE Time extended to October 8, 1999.

29.10.1999

Before / Devant: THE REGISTRAR

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

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

F.N.

v. (26805)

Her Majesty the Queen, et al. (Crim.)(Nfld.)

GRANTED / ACCORDÉE Time extended to August 26, 1999.

29.10.1999

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the amended factum and book of authorities of the intervener Law-Abiding Unregistered Firearms Association (LUFA)

Requête en prorogation du délai imparti pour signifier et déposer le mémoire et le recueil de jurisprudence et de doctrine modifiés de l'intervenante Law-Abiding Unregistered Firearms Association (LUFA)

Reference respecting the Firearms Act

v. (26933)

Attorney General of Canada (Alta.)

GRANTED / ACCORDÉE Time extended to October 14, 1999.

1.11.1999

Before / Devant: ARBOUR J.

Motion to extend the time in which to serve and file the application for leave to appeal

Requête en prorogation du délai imparti pour signifier et déposer la demande d'autorisation d'appel

C.L.L.

v. (27564)

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

GRANTED / ACCORDÉE Time extended to October 27, 1999.

1.11.1999

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the response of the respondent Saskatchewan Crop Insurance Corporation

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimée Saskatchewan Crop Insurance Corporation

Wayne Bacon, et al.

v. (27469)

Saskatchewan Crop Insurance Corporation, et al. (Sask.)

GRANTED / ACCORDÉE Time extended to October 15, 1999.

1.11.1999

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the intervener Attorney General for Ontario's book of authorities

Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine de l'intervenant le procureur général de l'Ontario

Marty Lorraine Morrisey

v. (26703)

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

GRANTED / ACCORDÉE Time extended to October 20, 1999.

16.9.1999

Karl Find

v. (27495)

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

AS OF RIGHT

8.10.1999

Gerald Augustine Regan

v. (27541)

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

AS OF RIGHT

20.10.1999

Her Majesty the Queen

v. (27555)

Michael O'Brien (Ont.)

AS OF RIGHT

27.10.1999

Ahmad Abdulaal Al Sagban

v. (27111)

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

**NOTICE OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

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

28.10.1999

Xeme Inc.

v. (27513)

Attorney General for Ontario (Ont.)

(leave)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

2.11.1999

CORAM: L'Heureux-Dubé, McLachlin, Iacobucci, Major, Bastarache, Binnie and Arbour JJ.

Her Majesty the Queen

v. (26535)

Richard Floyd Oickle (Crim.)(N.S.)

William D. Delaney, for the appellant.

Arthur J. Mollon, Q.C. and Marian Mancini, for the respondent.

Gary T. Trotter, for the intervener the Attorney General for Ontario.

Michael Code and John Norris, for the intervener Criminal Lawyers' Association (Ontario).

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Evidence - Police - Confessions - Polygraph tests - Whether the Court of Appeal erred in ruling the Respondent's inculpatory statements inadmissible - Whether the tactics used by police to extract a confession was improper.

Nature de la cause:

Droit criminel - Preuve - Police - Aveux - Tests polygraphiques - La Cour d'appel a-t-elle commis une erreur en décidant que les déclarations incriminantes de l'intimé étaient inadmissibles? - Est-ce que les moyens employés par les policiers afin de soutirer un aveu étaient inappropriés?

2.11.1999

CORAM: Les juges L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Bastarache, Binnie et Arbour.

Placements Armand Laflamme Inc.

c. (26659)

Jules Roy, Prudential-Bache Commodities Canada Ltd. (Qué.)

Serge Létourneau et Odette Jobin-Laberge, pour l'appelante.

Edward E. Aronoff et Sophie Crevier, pour les intimés.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Civil liability - Stockbrokers - Damages - Assessment - Evidence - Point at which chain of causation broken - Duty to mitigate damages - Where a stockbroker's negligence lies in making an inappropriate stock market investment on behalf of his client, whether the broker's liability extends to depreciation of the investment after it was made, when holding on to the investment was not unreasonable under the prevailing circumstances at the time - If so, whether it is the client or the broker who bears the burden of establishing that it was reasonable or unreasonable to hold on to the investment - Whether the Court of Appeal erred in disturbing the trial judge's findings on the assessment of damages.

Nature de la cause:

Responsabilité civile - Courtiers en valeurs mobilières - Dommages-intérêts - Évaluation - Preuve - Point de rupture du lien de causalité - Obligation de mitiger les dommages - Lorsque la faute d'un courtier en valeurs mobilières a consisté à acquérir sur le marché boursier un placement non approprié pour le compte de son client, l'obligation de réparation du courtier s'étend-elle à la dépréciation de ce placement survenue après sa remise, quand le fait de conserver ce placement ne revêt pas un caractère déraisonnable dans le contexte prévalant lors de sa remise? - Dans l'affirmative, qui du client ou du courtier supporte le fardeau de démontrer le caractère raisonnable ou déraisonnable du fait de conserver le placement? - La Cour d'appel a-t-elle erré en modifiant les conclusions du juge de première instance portant sur l'évaluation des dommages?

3.11.1999

CORAM: L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Bastarache, Binnie and Arbour JJ.

F.N.

Joan Dawson, for the appellant.

v. (26805)

Cheryl Milne, for the intervener Canadian Foundation for Children, Youth and The Law.

Her Majesty the Queen, et al. (Crim.)(Nfld.)

Bernard Coffey, Q.C., for the respondent Her Majesty the Queen.

R. Wayne Bruce, for the respondents Roman Catholic School Board for St. John's, et al.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Young offenders - Criminal law - Whether the Youth Court exceeded its jurisdiction by releasing and distributing the Youth Court docket to the Respondent school boards - Whether distribution of the Youth Court docket is a violation of the non-disclosure requirements of the *Young Offenders Act* - Whether distribution of the Youth Court docket is a violation of the non-publication requirement of s. 38 of the *YOA*.

Nature de la cause:

Jeunes contrevenants - Droit criminel - Le tribunal pour adolescents a-t-il outrepassé sa compétence en permettant que son registre soit rendu public et communiqué aux conseils scolaires intimés? - La communication du registre du tribunal pour adolescents constitue-t-elle une violation des exigences de non-divulgence contenues dans la *Loi sur les jeunes contrevenants*? - La communication du registre du tribunal pour adolescents constitue-t-elle une violation de l'exigence de non-divulgence contenue à l'art. 38 de la *LJC*?

3.11.1999

CORAM: L'Heureux-Dubé, Gonthier, McLachlin, Major, Bastarache, Binnie and Arbour JJ.

City of Nanaimo

Guy McDannold, for the appellant.

v. (26786)

Rascal Trucking Ltd. (B.C.)

Patrick G. Foy, Q.C. and Angus M. Gunn, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Administrative law - Judicial review - Standard of review - Statutes - Interpretation - Municipal Law - Jurisdiction - Nuisance - *Municipal Act*, R.S.B.C. 1979, c. 290, s. 936 - *Ejusdem generis* rule of statutory interpretation - Whether the Appellant municipality had jurisdiction under s. 936 of the *Municipal Act* to declare a pile of topsoil to be a nuisance and to order it removed - Whether the Court of Appeal unjustifiably interfered in a decision of an elected municipal council - What is the threshold test for judicial interference in municipal decisions?

Nature de la cause:

Droit administratif - Contrôle judiciaire - Norme de contrôle - Législation - Interprétation - Droit municipal - Compétence - Nuisance - *Municipal Act*, R.S.B.C. 1979, ch. 290, art. 936 - Principe d'interprétation des lois *ejusdem generis* - La municipalité appelante avait-elle compétence en vertu de l'art. 936 de la *Municipal Act* pour déclarer qu'un amas de terre végétale constituait une nuisance et pour ordonner qu'on procède à son enlèvement - La Cour d'appel a-t-elle de façon injustifiée modifié la décision d'un conseil municipal élu? - Quel est le critère préliminaire justifiant une cour de modifier les décisions municipales?

WEEKLY AGENDA

**ORDRE DU JOUR DE LA
SEMAINE**

AGENDA for the weeks beginning November 15 and November 22, 1999.
ORDRE DU JOUR pour les semaines commençant le 15 novembre et le 22 novembre 1999.

Date of Hearing/
Date d'audition

Case Number and Name/
Numéro et nom de la cause

The Court will not be sitting during those weeks

La Cour ne siègera pas pendant ces semaines

NOTE:

This agenda is subject to change. Hearing dates should be confirmed with 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 : **December 6, 1999**
Service : November 15, 1999
Filing : November 19, 1999
Respondent : November 26, 1999

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 : **6 décembre 1999**
Signification : 15 novembre 1999
Dépôt : 19 novembre 1999
Intimé : 26 novembre 1999

DEADLINES: APPEALS

DÉLAIS: APPELS

The Fall Session of the Supreme Court of Canada will commence October 4, 1999.

La session d'automne de la Cour suprême du Canada commencera le 4 octobre 1999.

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:

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:

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.

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.

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.

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.

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.

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.

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

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

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

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

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

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

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 1999 -

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

NOVEMBER - NOVEMBRE						
S D	M L	T M	W M	T J	F V	S S
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21	22	23	24	25	26	27
28	29	30				

DECEMBER - DECEMBRE						
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
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19	20	21	22	23	24	25
26	H 27	H 28	29	30	31	

- 2000 -

JANUARY - JANVIER						
S D	M L	T M	W M	T J	F V	S S
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16	M 17	18	19	20	21	22
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30	31					

FEBRUARY - FÉVRIER						
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27	28	29				

MARCH - MARS						
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APRIL - AVRIL						
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23	H 24	25	26	27	28	29
30						

MAY - MAI						
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14	M 15	16	17	18	19	20
21	H 22	23	24	25	26	27
28	29	30	31			

JUNE - JUIN						
S D	M L	T M	W M	T J	F V	S S
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11	M 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:

M
H

18 sitting weeks / semaines séances de la cour

77 sitting days / journées séances de la cour

9 motion and conference days / journées requêtes, conférences

4 holidays during sitting / jours fériés durant les sessions