SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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MARCH 8, 1999 / LE 8 MARS 1999

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

Muriel Mary Rain

v. (27041)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Right to counsel - Whether the possibility of incarceration is enough to satisfy the requirements of "seriousness" in the assessment of the need for counsel to ensure a fair trial - Whether the Court of Appeal erred in overturning the trial judge's finding of fact that the Applicant could not have a fair trial without counsel - Whether the Court of Appeal erred in concluding that a trial judge can ensure that the accused's trial is conducted fairly in the absence of counsel - Whether the trial judge erred in concluding that there was no foundation for the evidence of the lawyer who testified as an expert and that such evidence ought to have been rejected by the trial judge.

PROCEDURAL HISTORY

June 17, 1993 Provincial Court of Alberta (Bradley P.C.J.)	Applicant referred to legal aid for the appointment of counsel
December 13, 1993 Court of Queen's Bench of Alberta (Smith J.)	Respondent's application for certiorari denied
November 14, 1994 Court of Appeal of Alberta	Respondent's application for certiorari granted; Bradley P.C.J.'s order quashed; matter returned to Provincial Court
March 21, 1995 Provincial Court of Alberta (Bradley P.C.J.)	Order that the Applicant be provided with counsel at legal aid rates
April 12, 1995 Provincial Court of Alberta (Bradley P.C.J.)	Stay of proceedings entered until the Applicant provided with funded counsel
October 28, 1996 Court of Queen's Bench of Alberta (Andrekson J.)	Respondent's appeal dismissed
October 1, 1998 Court of Appeal of Alberta (Irving, Hunt and Sulatycky JJ.A.)	Respondent's appeal allowed in part; stay of proceedings entered due to unreasonable delay
December 23, 1998 Supreme Court of Canada	Application for leave to appeal filed

Anil Joshi

c. (26953)

Sa Majesté la Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit criminel - Preuve - Partialité - Doute raisonnable - La Cour d'appel a-t-elle erré en droit en concluant que le demandeur avait eu droit à un procès juste et équitable au sens de l'article 11d) de la *Charte canadienne des droits et libertés* - La Cour d'appel a-t-elle erré en droit en refusant d'intervenir suite aux nombreuses erreurs de faits et d'appréciation de la preuve commises par le juge de première instance.

HISTORIQUE PROCÉDURAL

Le 14 juillet 1994 Cour du Québec (Chambre criminelle et pénale) (Plante j.c.q.)	Déclaration de culpabilité: avoir intentionnellement causé le feu à une résidence contrairement à l'art. 434 du *Code criminel*
Le 26 octobre 1998 Cour d'appel du Québec (LeBel, Rousseau-Houle et Robert jj.c.a.)	Appel rejeté
Le 9 novembre 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Sandra Kim Krofchak-Smillie

v. (26984)

Melbourne James Smillie (Ont.)

NATURE OF THE CASE

Canadian Charter - Civil - Family Law - Divorce - Whether an appellate court's decision that they were not persuaded that there was a proper basis for setting aside a divorce judgment improperly dismissed questions of law that could have been be appealed to the Court of Appeal or violated s. 15 of the *Charter*.

PROCEDURAL HISTORY

December 12, 1997 Ontario Court (General Division) (Thompson J.)	Divorce granted; joint custody ordered
October 5, 1998 Court of Appeal for Ontario (Morden A.C.J., Rosenberg J.A. and Spence J. (*ad hoc*))	Appeal dismissed
February 5, 1999 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

The Coronation Insurance Company et The Eagle Star Insurance Company

c. (26840)

Marlene Gagnon (Qué.)

The Coronation Insurance Company et The Eagle Star Insurance Company

c. (26841)

Ginette Pelletier, personnellement et ès qualité de tutrice à son enfant mineure Marie-Chantale Filion
et
Patrice Filion (Qué.)

The Coronation Insurance Company et The Eagle Star Insurance Company

c. (26842)

Brigitte Bouchard, personnellement et ès qualité de tutrice à ses enfants mineurs Michael Boily, Geneviève Boily et Jean-Philippe Boily
et
Stéphanie Boily (Qué)

NATURE DES CAUSES

Droit commercial - Assurance - Responsabilité - Dommages-intérêts - Contrats - Risque - Étendue de la garantie - Police d'assurance émise en faveur d'une compagnie couvrant l'utilisation d'un avion pour des fins personnels ("pleasure") et d'affaires ("business") - Changement de proposant, préalablement à l'émission de la police - Écrasement de l'avion et décès d'employés d'une autre compagnie autorisés à utiliser l'avion comme faveur contre le paiement de frais d'essence - Dans un contrat de nature *intuitu personae* comme un contrat d'assurance, les représentations inexactes quant à l'identité de l'assuré sont-elles de nature à entraîner la nullité du contrat? - Peut-on lever le voile corporatif pour imposer un "assuré" n'ayant aucun intérêt assurable afin d'avantager des tiers? - Quelles activités sont directement liées à l'exercice d'une entreprise? - La Cour d'appel a-t-elle commis une erreur déterminante en renversant la conclusion de faits du juge de première instance à l'effet que des vols contre rémunération au sens de la police avaient été faits par l'assurée?

HISTORIQUE PROCÉDURAL

Le 12 août 1994 Cour supérieure du Québec (LaRue j.c.s.)	Actions en réclamation du produit d'assurance rejetées
Le 15 juin 1998 Cour d'appel du Québec (Michaud j.c.Q., et Baudouin et Delisle (dissident) jj.c.a.)	Appels accueillis; jugements de la Cour supérieure infirmés; actions accueillies en partie; demanderesses condamnées solidairement à payer à chaque série d'intimés 100 000$ avec intérêts et indemnité supplémentaire
Le 11 septembre 1998 Cour suprême du Canada	Demandes d'autorisation d'appel déposées

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Murdoch MacKay
and Colon Cameron Settle

v. (26997)

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

NATURE OF THE CASE

Property law - Real property - Real rights - Leases - Procedural law - Expropriation - Whether tenant entitled to compensation for loss of an option to renew a lease - Whether claim compensable under *Expropriation Act*, R.S.M. 1987, c. E190 - Whether claim disclosed reasonable cause of action - Whether claim barred by doctrine of *res judicata.*

PROCEDURAL HISTORY

December 23, 1997 Court of Queen's Bench of Manitoba (Nurgitz J.)	Application struck for failing to disclose a reasonable cause of action
September 28, 1998 Court of Appeal of Manitoba (Huband, Philp and Twaddle JJ.A.)	Appeal dismissed
November 25, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Accent Architectural

v. (26941)

Comité Conjoint des Matériaux de Construction

-and-

Procureur général du Québec (Que.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Freedom of conscience and religion - Freedom of association - Principals of a partnership not wishing to submit to the authority of a parity committee due to their religious beliefs - Refusing to submit monthly reports to parity committee as required by legislation - Whether the court has jurisdiction to grant relief from a refusal of leave by the appellate court - Whether a corporation can apply for a constitutional exemption because of the religious opinion of its principals - Whether a Court can pass judgment on the reasonableness of a religious belief once the sincerity of its holders is established, or whether it only needs to consider the reasonable nature of the accommodation required.

PROCEDURAL HISTORY

February 27, 1998 Court of Quebec (Criminal and Penal Division) (Melançon J.)	Applicant found guilty of failing to submit monthly reports to Respondent as required under the *Act*
July 8, 1998 Superior Court, Criminal Division (Mayrand J.)	Appeal dismissed
September 4, 1998 Court of Appeal of Quebec (Baudouin J.A.)	Application for leave to appeal dismissed
November 3, 1998 Supreme Court of Canada	Application for leave to appeal filed

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Ville de Saint-Laurent

c. (26821)

150460 Canada Inc.

- et -

Centre d'initiative technologique de Montréal ("Citec") (Qué.)

NATURE DE LA CAUSE

Droit municipal - Expropriation - Ville procédant à l'expropriation partielle des immeubles de l'intimée - Requête de l'intimée en vertu de l'art. 65 de la *Loi sur l'expropriation*, L.R.Q., ch. E-24, afin que le tribunal ordonne à la Ville d'exproprier les parties restantes de ses immeubles puisqu'elles ne peuvent plus être convenablement utilisées - La Cour du Québec a-t-elle ignoré l'exigence d'un lien de causalité entre les expropriations et les contraintes alléguées par l'intimée? - Lorsque la Cour du Québec ordonne l'expropriation d'un résidu de terrain au motif que la réglementation d'urbanisme empêche de l'utiliser convenablement, agit-elle sans compétence et se substitue-t-elle illégalement à la Cour supérieure qui a juridiction exclusive pour annuler cette réglementation lorsqu'elle entraîne une expropriation déguisée? - *Régie des transports en commun de la région de Toronto c. Dell Holdings Ltd.*, [1997] 1 R.C.S. 32.

HISTORIQUE PROCÉDURAL

Le 10 juin 1998 Cour du Québec, chambre de l'expropriation (Nichols j.c.q.)	Requêtes de l'intimée visant à enjoindre à la demanderesse de procéder à l'expropriation totale des parties résiduelles de ses immeubles accueillies

Le 30 juin 1998 Cour d'appel du Québec (Brossard j.c.a.)	Requête pour permission d'appeler rejetée
Le 13 août 1998 Cour d'appel du Québec (Baudouin j.c.a.)	Requête pour suspendre l'exécution des deux jugements du juge Nichols rejetée
Le 2 septembre 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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

Joseph Reed

v. (27018)

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

NATURE OF THE CASE

Charter - Criminal - Criminal Law - Crown counsel's discretion to stay prosecutions commenced by private information - Judicial power to review prosecutor's discretion - Whether a decision to stay a prosecution interfered with religious freedom.

PROCEDURAL HISTORY

January 23, 1998 Supreme Court of British Columbia (Josephson J.)	Petition for *mandamus* dismissed
September 21, 1998 Court of Appeal for British Columbia (Hollinrake, Braidwood, and Mackenzie JJ.A.)	Appeal dismissed
November 20, 1998 Supreme Court of Canada	Application for leave to appeal filed

The Corporation of the Town of Ajax

v. (26994)

National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW - Canada) and its Local 222 Charterways Transportation Limited AND Ontario Labour Relations Board (Ont.)

NATURE OF THE CASE

Labour Law - Certification - Transfer of rights and obligations - Successive Employers - Municipal corporation terminated a contract under which the contractor operated a transit service using its own employees and the municipality's tangible assets - Contractor's principal duty had been to recruit, hire, train, discipline, schedule and deploy drivers, mechanics and cleaners - Municipal corporation took over operation of the transit service and hired its own drivers, mechanics and cleaners - Most had been employees of the contractor - Whether the termination of the contract and hiring of the contractor's employees amounted to a sale or transfer of a business for the purposes of applying successor employer

provisions of the *Ontario Labour Relations Act*, R.S.O. 1990, c. L.2 (as amended) - Whether the contractor's employee complement constituted a part of a business under the sale of business provisions of the *Ontario Labour Relations Act*, R.S.O. 1990, c. L.2 (as amended).

PROCEDURAL HISTORY

June 27, 1995 Ontario Court (Divisional Court) (Carruthers J., Feldman and Winkler JJ.)	Application for judicial review granted, Ontario Labour Relations Board decision quashed
September 30, 1998 Ontario Court of Appeal (Austin, Laskin and Goudge JJ.A.)	Appeal granted, Ontario Labour Relations Board decision restored
November 27, 1998 Supreme Court of Canada	Application for leave to appeal filed

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K.I.M.

v. (26999)

B.C.C.O (B.C.)

NATURE OF THE CASE

Family law - Custody - Access - Parental alienation syndrome - Children 17 and 13 refusing all contact with mother following separation in 1996 - Trial judge ordering that best interests of 13 year old would be served by having him in mother's custody - Court of Appeal reversing decision based on fresh evidence that the child repeatedly ran away from Applicant's home - Whether the practicality of the enforcement order, as opposed to the statutory best interests of the child test in s. 16(10) of the *Divorce Act, 1985*, is the paramount consideration in making orders regarding child custody and access orders.

PROCEDURAL HISTORY

February 9, 1998 Supreme Court of British Columbia (Ralph J.)	Order granting Applicant decree of divorce; Order requiring children to visit with Applicant two hours per week for three months, and four hours per week for next three months
August 7, 1998 Supreme Court of British Columbia (Cole J.)	Order granting Applicant custody of younger child with restricted access to Respondent
October 1, 1998 Court of Appeal for British Columbia (Donald, Braidwood and Hall JJ.A.)	Appeal by Respondent allowed; Respondent granted custody of younger child, with reasonable access to the Applicant
November 27, 19998 Supreme Court of Canada	Application for leave to appeal filed

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Apotex Inc.

v. (26979)

Bayer Aktiengesellschaft and Miles Canada Inc. (Ont.)

NATURE OF THE CASE

Property law - Patents - Patented medicines - Compulsory licences - Interpretation - What is the threshold of inventive ingenuity required for the grant of a patent in Canada and in what manner is this threshold a matter of national importance - What are the appropriate principles of interpretation applicable to contracts whose very existence and terms are imposed by statutory authority, and in what manner is the proper interpretation a matter of national importance.

PROCEDURAL HISTORY

January 30, 1995 Ontario Court of Justice (General Division) (Lederman J.)	Action allowed, Applicant ordered to pay royalties due and owing under compulsory licences
September 25, 1998 Court of Appeal for Ontario (McKinlay and Moldaver JJ.A., Cumming J. (*ad hoc*))	Appeal dismissed, cross-appeal allowed
November 24, 1998 Supreme Court of Canada	Application for leave to appeal filed

MARCH 11, 1999 / LE 11 MARS 1999

26850 **STEFAN HADRIAN COMSA - v. - HER MAJESTY THE QUEEN** (Crim.)(Alta.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

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

La demande de prorogation de délai est accordée. La requête en modification de la demande d'autorisation d'appel et la demande d'autorisation d'appel sont rejetées.

NATURE OF THE CASE

Criminal law - Did Court of Appeal err by imposing starting point for sentence - Whether Applicant could withdraw guilty plea.

PROCEDURAL HISTORY

January 24, 1997 Court of Queen's Bench (Perras J.)	Conviction: two counts of trafficking in cocaine; Sentence: seven years imprisonment
November 12, 1997 Court of Appeal for Alberta (Fraser C.J.A., and Gallant and Rawlins JJ.A.)	Appeal against sentence allowed; sentence varied to four years four months
August 25, 1998 Supreme Court of Canada	Application for leave to appeal filed

26959 **PAUL FAUSTO SPANEVELLO - v. - HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

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

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

NATURE OF THE CASE

Criminal law - Right to silence - Police - Whether the trial judge erred in admitting statements made by the Applicant to an undercover police officer while detained in a police holding cell - Whether the trial judge erred in restricting the evidence of a psychiatrist who had interviewed the Applicant's co-accused concerning the co-accused's character - Trial - Whether the trial judge erred in refusing to sever the trials - Whether the trial judge erred in providing a written copy of his charge to the jury - Whether the curative proviso ought to have been applied.

PROCEDURAL HISTORY

May 30, 1996 Supreme Court of British Columbia (McKinnon J.)	Conviction: second degree murder
May 22, 1998 Court of Appeal of British Columbia (Goldie, Prowse and Newbury JJ.A.)	Appeal from conviction dismissed
November 12, 1998 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

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26897 **CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION - v. - ATTORNEY GENERAL OF CANADA** (Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil rights - Procedural law - Public interest standing - Whether the majority of the Ontario Court of Appeal erred in their interpretation of the first and third components of the 3-part test for public interest standing - Do ss. 12 and 21 to 26, in conjunction with s. 2 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23 violate ss. 2b), c), d) and 8 of the *Charter*?

PROCEDURAL HISTORY

August 16, 1990 Supreme Court of Ontario (Potts J.)	Standing granted to the Corporation of the Canadian Civil Liberties Association to pursue their application
March 25, 1992 Ontario Court of Justice (General Division) (Potts J.)	Application for a declaration that s.12 and ss.21 to 26 of the Act are unconstitutional and for an interim and permanent injunction against CSIS dismissed
July 9, 1998 Court of Appeal for Ontario (Abella, Austin, Charron JJ.A.)	Appeal dismissed; cross-appeal on issue of standing allowed
September 29, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26932 **DENNIS CARMICHAEL JOHN - v. - HER MAJESTY THE QUEEN** (B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Constitutional law - Procedural law - Trial - Evidence - Indians - Prerogative writs - Applicant charged with three hunting offences under the *Wildlife Act* - Applicant claims an aboriginal right to hunt as he did - Crown closed case - Trial judge ordered Applicant to make submissions on undue hardship and interference with the preferred means of exercising his aboriginal right to hunt before addressing the nature of the alleged right - Whether the Applicant had the right to call evidence on the nature of the right and the aboriginal perspective of that right before a determination on infringement - Whether the trial judge's order denied the Applicant's right to make full answer and defence - Whether a provincial court trial judge has the jurisdiction to alter the procedure set down by this Court in *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

PROCEDURAL HISTORY

August 19, 1997 Provincial Court of British Columbia (Saunderson J.)	Applicant ordered to address undue hardship and interference with the preferred means of exercising his aboriginal right to hunt first
November 12, 1997 Supreme Court of British Columbia (Lander J.)	Applicant's petition for *certiorari* and prohibition dismissed
September 3, 1998 Court of Appeal for British Columbia (Macfarlane, Hall and Proudfoot JJ.A.)	Appeal dismissed
November 2, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26684 **DORIS MERRILL NELSON - v. - HER MAJESTY THE QUEEN** (F.C.A.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal as well as all ancillary motions are dismissed with costs.

La demande d'autorisation d'appel et toutes requêtes accessoires sont rejetées avec dépens.

NATURE OF THE CASE

Taxation - Assessment - Whether the Federal Court of Appeal erred in dismissing the application for judicial review of the decision of the Tax Court of Canada - *Income Tax Act*, R.S.C. 1952, c. 148, as amended.

PROCEDURAL HISTORY

August 29, 1997 Tax Court of Canada (Hamlyn J.T.C.C.)	Applicant's appeals from reassessments for the 1989-1994 taxation years dismissed; Appeal from reassessments number 02229 and 02231 under s. 160 of *Income Tax Act* dismissed
April 27, 1998 Federal Court of Appeal (Strayer, Desjardins and McDonald JJ.A.)	Appeal dismissed
June 2, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26903 **MERCK FROSST CANADA INC. AND MERCK & CO., INC. - v. - THE MINISTER OF HEALTH AND APOTEX INC.** (F.C.A.)(Ont.)

CORAM: Cory, Iacobucci and Major JJ.

The application for leave to appeal as well as all ancillary motions are dismissed with costs.

La demande d'autorisation d'appel et toutes requêtes accessoires sont rejetées avec dépens.

NATURE OF THE CASE

Property law - Patents - Interpretation - Statutory instruments - *Patented Medicines (Notice of Compliance) Regulations*, as amended in SOR/98-166 - Whether the Federal Court of Appeal correctly interpreted section 6(6) of the *Patented Medicines (Notice of Compliance) Regulations*.

PROCEDURAL HISTORY

March 26, 1998 Federal Court of Canada, Trial Division (Pinard J.)	Motion by Respondent Apotex for an Order setting a schedule for the filing of affidavit evidence granted
July 2, 1998 Federal Court of Appeal (Denault, Décary and Létourneau JJ.A.)	Appeal dismissed
September 29, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26942 **CREDIT LYONNAIS CANADA IN ITS CAPACITY AS SECURITY AGENT FOR THE ABITIBI AND GULF LENDERS - v. - NATIONAL BANK OF CANADA AND PRICEWATERHOUSE COOPERS INC., (FORMERLY COOPERS & LYBRAND LIMITED) THE TRUSTEE OF THE ESTATE OF OLYMPIA & YORK DEVELOPMENTS LIMITED** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs to National Bank of Canada.

La demande d'autorisation d'appel est rejetée avec dépens à la Banque Nationale du Canada.

NATURE OF THE CASE

Commercial Law - Guaranty-suretyship - Principal debtor clauses in guarantees - Co-guarantors execute guarantees of the same loan and each guarantee contains a principal debtor clause - Debtor defaults - Debtor and one co-guarantor become bankrupt - Creditor realizes upon security pledged by second co-guarantor and seeks to file a proof of claim in the estate of the bankrupt co-guarantor for the full amount of the loan based upon the bankrupt co-guarantor's guarantee of the loan - Whether the principal debtor clause in the non-bankrupt co-guarantor's guarantee required treating the realization upon security as a payment by a principal debtor for the purpose of deducting the realized amount from the creditor's proof of claim before filing in the estate of the bankrupt co-guarantor.

PROCEDURAL HISTORY

April 14, 1997 Ontario Court (General Division) in Bankruptcy (Farley J.)	Order to deduct payments from proof of claim
September 1, 1998 Court of Appeal for Ontario (Borins, Brooke, and Moldaver JJ.A.)	Appeal dismissed
November 2, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26965 **PAMELA KHAN - v. - CHARLES HARNICK, ATTORNEY GENERAL FOR ONTARIO** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal as well as all ancillary motions are dismissed.

La demande d'autorisation d'appel et toutes requêtes accessoires sont rejetées.

NATURE OF THE CASE

Procedural law - Pre-trial procedure - Application for leave to institute or continue a proceeding pursuant to s. 140 of the *Courts of Justice Act*, R.S.O. 1990, chap. 43 - Whether the lower courts disposed of the case properly.

PROCEDURAL HISTORY

August 26, 1998 Ontario Court (General Division) (Lax J.)	Applicant's application for leave to institute or continue a proceeding dismissed
September 10, 1998 Court of Appeal for Ontario (Charron J.A.)	Appeal dismissed
October 7, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26951 **F.G.N. - v. - HER MAJESTY THE QUEEN** (Crim.) (B.C.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Reasonable doubt - Whether the trial judge erred in the manner in which she applied the principle of reasonable doubt and the burden of proof - Whether the trial judge erred by shifting the burden of proof to the Applicant - Whether the Court of Appeal erred in finding that the verdicts were not unreasonable or unsafe.

PROCEDURAL HISTORY

October 7, 1996 Supreme Court of British Columbia (Koenigsberg J.)	Conviction: Indecent Assault (2 counts) and Gross Indecency (1 count)
September 11, 1998 Court of Appeal for British Columbia (Rowles, Donald and Braidwood JJ.A.)	Appeal dismissed
November 9, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26952 **ANTHONY JOSEPH KUBANOWSKI - v. - PRIMERICA LIFE INSURANCE COMPANY OF CANADA** (Sask.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Insurance - Insurance premiums - Contracts - Contract of insurance - Offer - Acceptance - Waiver - Whether the postal acceptance rule applies to life insurance policies, where the insured has accepted by post the offer of the insurer to extend the time for payment of a premium - Whether an insurer can unilaterally alter the conditions upon which a premium is paid by an insured, after the insurer has accepted the payment and cashed the insured's cheque.

PROCEDURAL HISTORY

June 20, 1997 Court of Queen's Bench of Saskatchewan (Hunter J.)	Applicant's action dismissed with costs
September 10, 1998 Court of Appeal for Saskatchewan (Cameron, Gerwing, and Sherstobitoff JJ.A.)	Appeal dismissed with costs
November 9, 1998 Supreme Court of Canada	Application for leave to appeal filed

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26910 **GARY T. ALLEN - v. - MCLEAN, BUDDEN LIMITED, GARTMORE INVESTMENTS (CANADA) LTD., PAUL MYNERS, LEWIS MCNAUGHT** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs to McLean, Budden Limited and Gartmore Investment (Canada) Ltd.

La demande d'autorisation d'appel est rejetée avec dépens à McLean, Budden Limited et Gartmore Investment (Canada) Ltd.

NATURE OF THE CASE

Labour law - Contract of employment - Employee - Action for constructive dismissal - Whether the Court of Appeal erred in law in holding that there was no breach of an employment agreement between the parties and/or the shareholder agreement between the parties prior to the resignation of the Applicant from his employment - Whether the Court of Appeal erred in holding that the Applicant resigned from his employment - Whether the Court of Appeal erred in law in reversing a finding of fact of the trial judge - Whether the lower courts disposed of the case properly.

PROCEDURAL HISTORY

December 10, 1993 Ontario Court of Justice (General Division) (Gotlib J.)	Applicant's action for damages for constructive dismissal allowed; Respondents' counter-claim dismissed
August 24, 1998 Court of Appeal for Ontario (Catzman, McKinlay, Osborne JJ.A.)	Respondents' MB and Gartmore Canada appeal allowed: counter-claim allowed
October 23, 1998 Supreme Court of Canada	Application for leave to appeal filed

2.3.1999

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the appellant's book of authorities

Requête en prorogation du délai imparti pour signifier et déposer le cahier de jurisprudence et de doctrine de l'appelant

Minister of Justice

v. (26129)

Glen Sebastien Burns et al. (B.C.)

GRANTED / ACCORDÉE Time extended to February 26, 1999.

2.3.1999

Before / Devant: THE REGISTRAR

Motion for an order permitting the appellant A.G. of Alberta to file the record in the format of the Alberta Court of Appeal and for leave to file a supplementary record

Requête visant à obtenir une ordonnance autorisant l'appelant le procureur général de l'Alberta à déposer le dossier tel que présenté à la Cour d'appel de l'Alberta et l'autorisation de déposer un dossier supplémentaire

Reference re: Firearms Act (Alta.)(26933)

GRANTED / ACCORDÉE

3.3.1999

Before / Devant: IACOBUCCI J.

Motions for leave to intervene

Requêtes en autorisation d'intervention

BY/PAR: Shooting Federation of Canada;
Coalition for Gun Control et al.;
Coalition of Responsible Firearm Owners and Sportsmen (CORFOS);
CAVEAT et al.;
Association pour la santé publique du Québec Inc.

IN/DANS: Reference re: Firearms Act (Alta.)(26933)

GRANTED / ACCORDÉES

IT IS HEREBY ORDERED THAT:

1. The motion for leave to intervene of the applicant Shooting Federation of Canada is granted, the applicant shall be entitled to serve and file a factum not to exceed 30 pages in length and to present oral argument not to exceed 15 minutes;

2. The motion for leave to intervene of the applicant l'Association pour la Santé publique du Québec Inc., 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;

3. The motion for leave to intervene of the applicant Alberta Council of Women's Shelters 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;

4. The motion for leave to intervene of the applicants CAVEAT, Fondation des victimes du 6 décembre contre la violence, the Canadian Association for Adolescent Health/Association Canadienne pour la Santé des Adolescents, and the Canadian Pediatric Society is granted, the applicants 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;

5. The motion for leave to intervene of the applicants Coalition for Gun Control, the Canadian Association of Chiefs of Police, the City of Toronto, the City of Montréal and the City of Winnipeg is granted, the applicants shall be entitled to serve and file a factum not to exceed 30 pages in length and to present oral argument not to exceed 15 minutes;

6. The motion for an extension of time and for leave to intervene of the applicant Coalition of Responsible Firearm Owners and Sportsmen (CORFOS) is granted, the applicant shall be entitled to serve and file a factum not to exceed 30 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 its factum and oral submissions.

4.3.1999

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le mémoire et le dossier de jurisprudence et de doctrine de l'intimé

Her Majesty the Queen

v. (26329)

L.F.W. (Crim.)(Nfld.)

GRANTED / ACCORDÉE Time extended to March 3, 1999.

5.3.1999

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer la réplique du requérant

Shiu Dular

v. (26992)

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

GRANTED / ACCORDÉE Time extended to March 12, 1999.

5.3.1999

Before / Devant: THE REGISTRAR

Motion by Goodyear Canada for leave to file a response to the argument of the intervener Canada Life Assurance

Requête de Goodyear Canada visant à obtenir l'autorisation de déposer une réponse à l'argument de l'intervenante Canada Life Assurance

Burnhamthorpe Square Inc.

v. (27056)

Goodyear Canada Inc. (Ont.)

GRANTED / ACCORDÉE

8.3.1999

Before / Devant: IACOBUCCI J.

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

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

Ontario Secondary School Teachers' Federation

v. (27085)

Ontario Teachers' Pension Plan Board et al. (Ont.)

GRANTED / ACCORDÉE Time extended to January 19, 1999.

8.3.1999

Before / Devant: IACOBUCCI J.

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

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

Hanna Engel

v. (27112)

Public Curator of Quebec et al. (Qué.)

DISMISSED / REJETÉE

8.3.1999

Before / Devant: IACOBUCCI J.

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

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

Ura Greenbaum

v. (27113)

Public Curator of Quebec et al. (Que.)

DISMISSED / REJETÉE

1.3.1999

AUSTIN RALPH "JOE" BUNN - v. - HER MAJESTY THE QUEEN (Crim.)(Ont.)(26918)

CORAM: Cory, McLachlin, Major, Bastarache and Binnie JJ.

The motion to quash is dismissed. The time of the respondent appellant to file material and bring an application for leave to appeal on other issues is extended to the 15th of March.

La requête en annulation est rejetée. Le délai accordé à l'intimé appelant pour déposer des documents et une demande d'autorisation d'appel concernant d'autres questions est prorogé au 15 mars.

24.2.1999

Her Majesty the Queen

v. (27120)

David Patrick Fleming (Nfld.)

AS OF RIGHT

5.3.1999

Can-Air Manufacturing (1990) Inc.

v. (26877)

Belsey Technical Services Ltd. (Ont.)

(leave)

AGENDA for the week beginning March 15, 1999.
ORDRE DU JOUR pour la semaine commençant le 15 mars 1999.

Date of Hearing/ Date d'audition	Case Number and Name/ Numéro et nom de la cause
1999/03/15	Pierre Poliquin of the firm Samson Bélair/ Déloitte & Touche Inc. trustee of the bankruptcy c. Colette Perron-Malenfant, et al. (Qué.)(Civile) (Autorisation) 26451
1999/03/17	Her Majesty the Queen v. R.W.S. (Crim.)(Man.)(As of Right) 26757
1999/03/18	Donald Bond v. Barbara Novak, et al. (Civil) (B.C.)(By Leave) 26811
1999/03/19	Kok Leong Liew v. Her Majesty the Queen (Crim.)(Alta.) (As of Right) 26676

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.

26451 *Pierre Poliquin of the firm Samson Bélair/Deloitte & Touche Inc., trustee in the bankruptcy of debtors Raymond Malenfant, Colette Perron, Alain Malenfant, Eusthelle Malenfant, France Malenfant and Lynn Malenfant v. Colette Perron-Malenfant and La Laurentienne Vie Inc.*

Commercial law - Bankruptcy - Whether the trustee in bankruptcy can claim the surrender value of a life insurance policy, which is seizable at common law, for which the bankrupt is the policy holder and beneficiary, under the powers vested in him by s. 67(1)(*d*) of the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3 - Whether the right to request the surrender of a life insurance policy is a right exclusively attached to the person.

The Respondent Colette Perron-Malenfant was the owner and beneficiary of an insurance policy on the life of her husband Raymond Malenfant. In 1992, the Superior Court annulled the proposal by debtors Raymond Malenfant, Colette Perron, Alain Malenfant, Eusthelle Malenfant, France Malenfant and Lynn Malenfant and held that they were deemed to have made an assignment of their property. The Appellant Pierre Poliquin was then appointed trustee in the bankruptcy of the debtors. He asked La Laurentienne Vie Inc. for the surrender value of the policy and that the policy be terminated. The insurer acceded to the trustee's request and sent him a cheque for $84,900 without notifying Colette Perron-Malenfant. She learned of this payment in July 1993 and brought a motion "to review and set aside the decision of the trustee and to restore the rights strictly personal to the debtor" before the Superior Court, pursuant to s. 37 of the *Bankruptcy and Insolvency Act*. She asked that the amount at issue be returned to the insurer and that the policy be revived.

The Superior Court dismissed the motion and held that the surrender privilege of the policy was part of the property of the bankrupt vested in the trustee under ss. 2 and 67(1) of the *Bankruptcy and Insolvency Act*. The Court of Appeal unanimously allowed Colette Perron-Malenfant's appeal and ordered the trustee to return to La Laurentienne Vie Inc. the surrender value he had received plus accumulated interest from May 5, 1993 at the rate at which the money was invested. The Court also ordered the insurer to revive the insurance policy when the $84,900 and the premiums due since May 5, 1993 were paid, as if the policy had always been in force without interruption.

Origin of the case:	Quebec
File No.:	26451
Judgment of the Court of Appeal:	November 25, 1997
Counsel:	Maurice Dussault and Madeleine Roy for the Appellant Jean-Philippe Gervais for the Respondent

26451 *Pierre Poliquin de la firme Samson Bélair/Deloitte & Touche Inc., syndic à la faillite des débiteurs Raymond Malenfant, Colette Perron, Alain Malenfant, Eusthelle Malenfant, France Malenfant et Lynn Malenfant c. Colette Perron-Malenfant et La Laurentienne Vie Inc.*

Droit commercial - Faillite - Le syndic à la faillite peut-il réclamer la valeur de rachat d'une police d'assurance-vie, saisissable suivant le droit commun et dont le failli est preneur et bénéficiaire et ce, en vertu des pouvoirs qui lui sont dévolus par l'art. 67(1)d) de la *Loi sur la faillite et l'insolvabilité*, L.R.C., ch. B-3? - Le droit de demander le rachat d'une police d'assurance-vie constitue-t-il un droit exclusivement attaché à la personne?

L'intimée Colette Perron-Malenfant était propriétaire et bénéficiaire d'une police d'assurance sur la vie de son époux Raymond Malenfant. En 1992, la Cour supérieure annule une proposition des débiteurs Raymond Malenfant, Colette Perron, Alain Malenfant, Eusthelle Malenfant, France Malenfant et Lynn Malenfant et déclare que ces derniers sont réputés avoir fait cession de leurs biens. L'appelant Pierre Poliquin est alors nommé syndic à la faillite des débiteurs. Ce dernier s'adresse à La Laurentienne Vie Inc. pour obtenir le paiement de la valeur de rachat de la police et résilier celle-ci. L'assureur donne suite à la demande du syndic et lui fait parvenir un chèque au montant de 84 900$ sans en aviser Colette Perron-Malenfant. Elle apprend l'existence de ce paiement en juillet 1993 et présente alors devant la Cour supérieure une "Requête en révision et en annulation de la décision du syndic et en restitution de droits purement personnels à la débitrice" selon l'art. 37 de la *Loi sur la faillite et l'insolvabilité*. Elle demande que la somme en question soit rendue à l'assureur et que la police soit remise en vigueur.

La Cour supérieure rejette la requête en concluant que le droit de rachat de la police fait partie du patrimoine du failli dont le syndic a la saisine selon les art. 2 et 67(1) *Loi sur la faillite et l'insolvabilité*. La Cour d'appel accueille à l'unanimité le pourvoi de Colette Perron-Malenfant et ordonne au syndic de remettre à La Laurentienne Vie Inc. la valeur de rachat reçue par lui, plus les intérêts accumulés depuis le 5 mai 1993 au taux auquel les sommes ont été placées. La Cour ordonne également à l'assureur de remettre la police d'assurance en vigueur sur paiement de la somme de 84 900$ et des primes qui étaient payables depuis le 5 mai 1993 comme si la police avait toujours été en vigueur sans interruption.

Origine:	Québec
N° du greffe:	26451
Arrêt de la Cour d'appel:	Le 25 novembre 1997
Avocats:	Me Maurice Dussault et Me Madeleine Roy pour l'appelant Me Jean-Philippe Gervais pour l'intimée

26757 ***Her Majesty The Queen v. R.W.S.***

Criminal law - Credibility - Standard of proof - Whether the Court of Appeal erred in deciding that the trial judge applied the wrong standard in finding that she was satisfied beyond a reasonable doubt of the Respondent's guilt.

The complainant is the Respondent's daughter, 15 years old at the time of the trial in September 1997. The most substantial allegations were that the accused had sexual intercourse with his daughter regularly and cause her to masturbate him when she was 12 and 13 years old. This alleged conduct was the subject of charges of sexual assault, incest and invitation to sexual touching.

At trial, the Respondent was convicted of the five charges of sexual assault, sexual interference, incest, sexual invitation and assault causing bodily harm. There was never really any doubt that she was physically assaulted by the Respondent on several occasions. The Respondent eventually acknowledged that there were assaults causing bodily harm and that there was improper sexual touching.

On appeal, the majority of the Court of Appeal allowed the appeal, set aside the convictions and ordered a new trial. Kroft J.A. dissenting would have dismissed the appeal against conviction.

Origin of the case:	Manitoba
File No.:	26757
Judgment of the Court of Appeal:	June 30, 1998
Counsel:	Gregg Lawlor for the Appellant Erin Magas for the Respondent

26757 ***Sa Majesté la Reine c. R.W.S.***

Droit criminel - Crédibilité - Norme de preuve - La Cour d'appel a-t-elle commis une erreur en décidant que le juge du procès a appliqué la mauvaise norme pour conclure qu'elle était convaincue hors de tout doute raisonnable de la culpabilité de l'intimé?

La plaignante est la fille de l'intimé. Elle était agée de 15 ans au moment du procès en septembre 1997. Les allégations les plus importantes étaient que l'accusé a eu régulièrement des rapports sexuels avec sa fille et s'est fait masturber par elle alors qu'elle avait 12 et 13 ans. Cette conduite alléguée a fait l'objet d'accusations d'agression sexuelle, d'inceste et d'incitation à des contacts sexuels.

Au procès, l'intimé a été reconnu coupable relativement aux cinq accusations d'agression sexuelle, de contacts sexuels, d'inceste, d'incitation sexuelle et de voies de fait causant des lésions corporelles. Il n'y a jamais eu réellement de doute qu'elle a été agressée physiquement par l'intimé à plusieurs occasions. L'intimé a éventuellement reconnu qu'il y a eu voies de fait causant des lésions corporelles et contatcs sexuels inconvenants.

La Cour d'appel à la majorité a accueilli l'appel, infirmé les déclarations de culpabilité et ordonné la tenue d'un nouveau procès. Le juge Kroft, dissident, aurait rejeté l'appel interjeté contre la déclaration de culpabilité.

Origine:	Manitoba
N^{o} du greffe:	26757
Arrêt de la Cour d'appel:	Le 30 juin 1998
Avocats:	Gregg Lawlor pour l'appelante Erin Magas pour l'intimé

26811 ***Donald Bond v. Barbara Novak and Anton Novak***

Statutes - Interpretation - Limitation of actions - prescription - *Limitation Act*, R.S.B.C. 1996, Ch. 266, s.6(4) - Whether limitation period was postponed - Whether the Court of Appeal erred in its interpretation of s. 6(4) of the *Limitation Act* - Whether the Court of Appeal erred in setting aside a finding of fact by the trial judge and substituting a finding that the personal preferences of a plaintiff can give rise to a postponement pursuant to s. 6(4) of the *Limitation Act*.

The Appellant was the Respondent Mrs. Novak's family physician. Between October 18, 1989 and October 1, 1990, Mrs. Novak saw the Appellant about a lump and soreness in her left breast on at least six occasions. Each time, the Appellant assured her that she had 'mammary dysplasia' and 'lumpy breasts', reassuring her that "cancer is not like this" and that she had nothing to worry about. On October 1, 1990, Mrs. Novak insisted on a referral to a specialist. On October 3, 1990, she was examined by a surgeon who performed a biopsy on October 4, 1990. The biopsy showed breast cancer. On October 9, 1990, she had a partial radical mastectomy and it was discovered that the cancer had spread to at least twelve of her thirteen lymph nodes. In October, 1990, Mrs. Novak began seeing a new family physician as she no longer had confidence in the Appellant. From October, 1990 until April, 1991, she underwent chemotherapy and radiation therapy. She had no symptoms of cancer from April, 1991 to May, 1995, but her health was closely monitored. In May, 1995, she was diagnosed with cancer of the spine, liver and lung. The cancer was a recurrence of the breast cancer originally diagnosed and treated in October, 1990.

Mrs. Novak believed that the Appellant was mistaken in diagnosing mammary dysplasia and that he should have diagnosed her cancer earlier. Although she could not predict recurrence, she was aware that it was a possibility and took steps to prepare for it. She did not consult a lawyer, but discussed the Appellant's care with her parish priest. She decided not to pursue litigation as it would revive the pain and unpleasantness she had put behind her. She decided to "wait to see for a few years what's going to happen down the road."

When her cancer recurred, Mrs. Novak decided to initiate legal action, and this action was commenced on April 9, 1996. The Respondents made no claim with respect to the initial cancer, nor for its treatment. They claim damages relating to the recurrence of cancer in May, 1995 on the basis that those damages arose from Mrs. Novak's increased susceptibility to recurrence caused or contributed to by the Appellant's late diagnosis of her breast cancer. The Appellant moved that the action be dismissed as statute barred. The motions judge found that the limitation period began to run in October, 1990 and was postponed until April or May, 1991. He dismissed the action as it was still outside the two-year limitation period. The Court of Appeal granted the Respondents' appeal.

Origin of the case:	British Columbia
File No.:	26811
Judgment of the Court of Appeal:	June 24, 1998
Counsel:	C.E. Hinkson Q.C. for the Appellant Joseph J.M. Arvay Q.C. and John L. Finlay for the Respondents

26811 ***Donald Bond c. Barbara Novak et Anton Novak***

Lois - Interprétation - Prescription d'actions - Prescription - *Limitation Act*, R.S.B.C. 1996, ch. 266, art. 6(4) - La période de prescription a-t-elle été prorogée? - La Cour d'appel a-t-elle commis une erreur dans son interprétation de l'art. 6(4) de la *Limitation Act*? - La Cour d'appel a-t-elle commis une erreur en infirmant une conclusion de fait du juge de première instance et en y substituant une conclusion que les préférences personnelles d'un demandeur peuvent donner naissance à une prorogation, en application de l'art. 6(4) de la *Limitation Act*?

L'appelant était le médecin de famille de l'intimée M^me^ Novak. Entre le 18 octobre 1989 et le 1^er^ octobre 1990, M^me^ Novak a consulté l'appelant à au moins six reprises au sujet d'une grosseur et d'une douleur au sein gauche. Chaque fois, l'appelant lui a assuré qu'elle souffrait de "dysplasie mammaire" et de "actinomycose des seins", la rassurant en disant que [TRADUCTION] "le cancer, ce n'est pas comme cela" et qu'elle n'avait pas à s'en faire. Le 1^er^ octobre 1990, M^me^ Novak a insisté pour être référée à un spécialiste. Le 3 octobre 1990, elle a été examinée par un chirurgien qui a exécuté une biopsie le lendemain. La biopsie a révélé un cancer du sein. Le 9 octobre 1990, elle a subi une mastectomie radicale partielle et on a découvert que le cancer avait atteint au moins 12 de ses 13 ganglions lymphatiques. En octobre 1990, M^me^ Novak a commencé à consulter un nouveau médecin de famille car elle n'avait plus confiance en l'appelant. D'octobre 1990 à avril 1991, elle a subi des traitements de chimiothérapie de radiothérapie. Elle n'a eu aucun symptôme de cancer d'avril 1991 à mai 1995, mais son état de santé était suivi de près. En mai 1995, on a diagnostiqué un cancer de la colonne vertébrale, du foie et du poumon. Il s'agissait d'une récurrence du cancer du sein diagnostiqué à l'origine et traité en octobre 1990.

Madame Novak croyait que l'appelant a commis une erreur en diagnostiquant une dysplasie mammaire et qu'il aurait dû diagnostiquer son cancer plus tôt. Bien qu'elle n'ait pas pu prédire la récurrence, elle savait que c'était une possibilité et a pris des mesures pour s'y préparer. Elle n'a pas consulté d'avocat, mais a discuté des soins reçus de l'appelant avec le prêtre de sa paroisse. Elle a décidé de ne pas poursuivre en justice car cela lui ferait revivre la douleur et la situation déplaisante qu'elle avait essayé d'oublier. Elle a décidé de [TRADUCTION] "attendre quelques années pour voir ce qui allait arriver".

Lorsque le cancer a réapparu, M^me^ Novak a décidé d'intenter une action en justice et la présente action a été lancée le 9 avril 1996. Les intimés n'ont fait aucune réclamation relativement au cancer initial, ni relativement à son traitement. Ils réclament des dommages-intérêts relatifs à la récurrence du cancer en mai 1995 pour le motif que les dommages ont découlé de la possibilité accrue de récurrence, chez M^me^ Novak, causée par le diagnostique tardif de son cancer du sein par l'appelant, ou à laquelle a contribué ce diagnostique tardif. L'appelant a demandé le rejet de l'action pour le motif qu'elle était prescrite. Le juge des requêtes a conclu que le délai de prescription a commencé à courir en octobre 1990 et a été reporté jusqu'en avril ou mai 1991. Il a rejeté l'action car elle avait tout de même été intentée après le délai de prescription de deux ans. La Cour d'appel a accueilli l'appel des intimés.

Origine :	Colombie-Britannique
N^os^ du greffe :	26811
Arrêt de la Cour d'appel :	Le 24 juin 1998
Avocats :	C.E. Hinkson, c.r., pour l'appelant Joseph J.M. Arvay, c.r., et John L. Finlay pour les intimés

26676 ***Kok Leong Liew v. Her Majesty The Queen***

Criminal law - Evidence - Canadian Charter of Rights and Freedoms - Whether the Court of Appeal erred in holding that the s. 7 *Charter* rights of the Appellant were not violated because (a) the statements of the Appellant were not actively elicited by the undercover police officer (b) the conversation between the undercover police officer and the Appellant was not the functional equivalent of an interrogation and (c) s. 10(b) *Charter* issues were not material to an analysis of the s. 7 *Charter* violations.

An undercover police officer, Jones, negotiated the purchase of one kilogram of cocaine for approximately $48,000. The police planned to arrest the alleged drug dealers at the time of the buy. This "take-down", which occurred at approximately 4:20 pm on March 4, 1994, went awry.

The Appellant was identified by some members of the undercover team, but not by Jones, as the driver of a black car involved in the drug deal. While driving a white Oldsmobile at around 4:35 pm that day, the Appellant was stopped, detained and arrested a short distance away. The Appellant was advised of his right to counsel and was taken by police car to the location of the take-down. The police pretended to arrest Jones at the scene. The police placed Jones with the Appellant in the back seat of the police vehicle and they were taken to police headquarters.

At the police station, the Appellant was given the opportunity to contact a lawyer, but had been unable to do so. He did not tell the police he had been unable to speak to a lawyer and the police did not ask. Following a conversation with other police officers about a cell block interview, Jones was placed in the same room at the Appellant. Jones just sat down, hung his head and avoided eye contact. The Appellant initiated the conversation. The Appellant was charged with trafficking in cocaine.

At trial, a voir dire was held and the trial judge found a breach of ss. 7 and 10(b) of the *Charter* and after considering s. 24(2) excluded the Appellant's statements. On appeal, the majority of the Court of Appeal allowed the appeal and ordered a new trial. Berger J.A. dissented in law on whether the Appellant's statements were actively elicited.

Origin of the case:	Alberta
File No.:	26676
Judgment of the Court of Appeal:	April 2, 1998
Counsel:	Sid M. Tarrabain for the Appellant Larry Ackerl for the Respondent

26676 ***Kok Leong Liew c. Sa Majesté la Reine***

Droit criminel - Preuve - Charte canadienne des droits et libertés - La Cour d'appel a-t-elle commis une erreur en concluant qu'il n'y avait pas eu violation des droits reconnus à l'appelant par l'art. 7 de *la Charte* parce que a) les déclarations de l'appelant n'ont pas été sollicitées activement par le policier banalisé, b) la conversation entre le policier banalisé et l'appelant n'était pas l'équivalent fonctionnel d'un interrogatoire, et c) les questions relatives à l'art. 10*b*) de la *Charte* n'étaient pas pertinentes pour ce qui est d'une analyse des violations de l'art. 7 de la *Charte*?

Jones, un policier banalisé, a négocié l'achat d'un kilogramme de cocaïne pour environ 48 000 $. La police projetait arrêter les trafiquants de drogue au moment de l'achat. Cette "remise", qui a eu lieu vers 16 h 20 le 4 mars 1994, s'est mal déroulée.

Certains membres de l'équipe d'agents banalisés, mais non Jones, ont identifié l'appelant comme étant le conducteur d'une auto noire impliquée dans le marché de drogue. Vers 16 h 35 le même jour, pas très loin de là, on a fait stopper l'appelant alors qu'il conduisait une Oldsmobile blanche; il a été détenu et arrêté. On a avisé l'appelant de son droit à l'assistance d'un avocat et on l'a conduit, dans une auto de police, à l'endroit de la remise. Les policiers ont fait semblant d'arrêter Jones à ce même endroit. Les policiers ont fait monter Jones avec l'appelant sur la banquette arrière du véhicule de police et les ont conduits au poste de police.

Au poste, on a donné à l'appelant la possibilité de communiquer avec un avocat, mais il n'a pas pu le faire. Il n'a pas dit aux policiers qu'il avait été incapable de parler à un avocat et les policiers ne le lui ont pas demandé. Après une conversation avec d'autres policiers, au sujet d'une interview en cellule, Jones a été placé dans la même pièce que l'appelant. Jones s'est contenté de s'asseoir, de se tenir la tête, et il a évité le contact avec les yeux. L'appelant a entamé la conversation. L'appelant a été accusé de trafic de cocaïne.

Au procès, après un voir-dire, le juge du procès a conclu à une violation de l'art. 7 et de l'al. 10*b*) de la *Charte* et, après examen du par.24(2), a écarté les déclarations de l'appelant. La Cour d'appel à la majorité a accueilli l'appel interjeté et ordonné la tenue d'un nouveau procès. Le juge Berger a exprimé sa dissidence en droit sur la question de savoir si les déclarations de l'appelant avaient été sollicitées activement.

Origine:	Alberta
N° du greffe:	26676
Arrêt de la Cour d'appel:	le 2 avril 1998
Avocats:	Sid M. Tarrabain pour l'appelant Larry Ackerl pour l'intimée

This index includes applications for leave to appeal standing for judgment at the beginning of 1999 and all the applications for leave to appeal filed or heard in 1999 up to now.

Cet index comprend les requêtes en autorisation de pourvoi en délibéré au début de 1999 et toutes celles produites ou entendues en 1999 jusqu'à maintenant.

***01**	**Refused/Refusée**	***A**	**Applications for leave to appeal filed/Requêtes en autorisation de pourvoi produites**
***02**	**Refused with costs/Refusée avec dépens**		
***03**	**Granted/Accordée**		
***04**	**Granted with costs/Accordée avec dépens**	***B**	**Submitted to the Court/Soumises à la Cour**
***05**	**Discontinuance filed/Désistement produit**	***C**	**Oral Hearing/Audience**
		***D**	**Reserved/En délibéré**

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

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

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

c) The order granted on March 19, 1997 by Farley J. in Ontario Court

(General Division) Commercial List File Nos. B55/95B, B55/95F and B55/95M.

This index includes appeals standing for judgment at the beginning of 1999 and all appeals heard in 1999 up to now.

Cet index comprend les pourvois en délibéré au début de 1999 et tous ceux entendus en 1999 jusqu'à maintenant.

***01 dismissed/rejeté**
***02 dismissed with costs/rejeté avec dépens**
***03 allowed/accueilli**
***04 allowed with costs/accueilli avec dépens**
***05 discontinuance/désistement**

DEADLINES: APPEALS

The Spring Session of the Supreme Court of Canada will commence April 19, 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:

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

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

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

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

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

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

DÉLAIS: APPELS

La session du printemps de la Cour suprême du Canada commencera le 19 avril 1999.

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

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

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

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

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

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

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

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 1998 -

OCTOBER - OCTOBRE

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

- 1999 -

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	**M 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	2	3	4	5	6
7	M 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
	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	31			

APRIL - AVRIL

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

JUNE - JUIN

S D	M L	T M	W M	T J	F V	S S
		1	2	3	4	5
6	**M 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:

M

H

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