

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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**APPLICATIONS FOR LEAVE TO  
APPEAL FILED**

**Sa Majesté la Reine**

Jacques Casgrain  
Substitut du procureur général

c. (27050)

**Marie-Suzanne Caouette (Qué.)**

Nathalie Caron  
Gaudreau & Associés

DATE DE PRODUCTION 29.12.1998

**Nalley's Canada Ltd.**

Kimberley L.D. Cook  
Heath Giovando Hansen

v. (27058)

**Deputy Minister of Revenue Canada (F.C.A.)**

John Bongers  
Dept. of Justice

FILING DATE 31.12.1998

**Cernato Holdings Inc.**

Franco Iezzoni  
Pateras & Iezzoni

c. (27057)

**147 197 Canada Inc. (Qué.)**

Charles Tibshirani  
Tibshirani & Associés

DATE DE PRODUCTION 30.12.1998

**Pepsi-Cola Canada Beverages (West) Ltd.**

Robert G. Richards  
MacPherson Leslie & Tyerman

v. (27060)

**Retail, Wholesale and Department Store Union  
Local 558, et al (Sask.)**

FILING DATE 30.12.1998

**Christopher Tinkasimire**

v. (26996)

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

**Valeo Engine Cooling Limited (Ont.)**

John M. Skinner, Q.C.  
Skinner, Rogerson, & Dunphy

FILING DATE 23.11.1998

**Lévesque Beaubien Geoffrion Inc. et al**

Jean-Pierre Rémillard  
Dunton Rainville Senc

c. (27059)

**Les Immeubles Jacques Robitaille Inc. (Qué.)**

Georges R. Thibaudeau  
McMaster Gervais

DATE DE PRODUCTION 29.12.1998

**Conrad Therrien et al**

c. (27049)

**Banque Royale du Canada (Qué.)**

Durocher Madar

DATE DE PRODUCTION 24.12.1998

**The Attorney General of British Columbia**

Joseph J. Arvay  
Arvay Finlay

v. (27045)

**Pacific Press, A Division of Southam Inc. et al  
(B.C.)**

Robert S. Anderson  
Farris, Vaughan, Wills & Murphy  
Donald Jordan, Q.C.  
Taylor Jordan Chafetz

FILING DATE 23.12.1998

**Burnhamthorpe Square Inc.**

Bryan Finlay, Q.C.  
Gary M. Caplan  
Weir & Foulds

v. (27056)

**Goodyear Canada Inc. (Ont.)**

Mark S. Hayes  
Jonathan F. Lancaster  
Fasken Campbell Godfrey

FILING DATE 29.12.1998

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**Evangelos Exarhos**

v. (27048)

**Bank of Nova Scotia (Que.)**

Gérald R. Temblay, Q.C.  
McCarthy Tétrault

FILING DATE 18.12.1998

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**Abbott Laboratories, Limited et al**

Marie Lafleur  
Jean-François Buffoni  
Alain Leclerc  
Martineau Walker

v. (27051)

**Nu-Pharm Inc. et al (F.C.A.)**

Harry B. Radomski  
Goodman Phillips & Vineberg

FILING DATE 26.11.1998

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**Sherif Abdel-Kerim**

v. (27038)

**Alicia Caro et al (Alta.)**

Laurie J. Hnatuik  
Hnatuik & Associates  
Tod LaRoche  
Alberta Justice Dept: Civil Division

FILING DATE 18.12.1998

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**Gerald W. Veinot**

Walton W. Cook, Q.C.  
David R. Hirtle  
Walton Cook & Associate

v. (27047)

**Reginald A. Veinot et al (N.S.)**

Kenneth O. Thomas  
Coughlan & Coughlan  
J. Patrick Morris  
Milner & Morris

FILING DATE 24.12.1998

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**Westfair Foods Ltd.**

Robert S. Russell  
Adam F. Fanaki  
Borden & Elliot  
Frank R. Foran, Q.C.  
Howard Mackie

v. (27055)

**Douglas Wright (Alta.)**

D.A. McDermott, Q.C.  
McDermott & Company

FILING DATE 29.12.1998

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**Joanna Smith as Executor of the Estate of  
Dr. Michael S.W. Smith, deceased, et al**  
J. Bruce Carr-Harris

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Fay Brunning-Howard  
Scott & Aylen

v. (27061)

**The College of Physicians and Surgeons of  
Ontario, et al (Ont.)**  
Donald Posluns

FILING DATE 29.12.1998

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**Her Majesty the Queen**  
Scott C. Hutchison  
Min. of the Attorney General

v. (27052)

**A.S. (Ont.)**  
Irwin Kozibrocki

FILING DATE 15.12.1998

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**DECEMBER 31, 1998 / LE 31 DÉCEMBRE 1998**

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

**Royal John Derry**

**v. (26523)**

**Her Majesty the Queen (Crim.)(Sask.)**

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal Law - Production of therapeutic records - Whether the accused was denied his constitutional rights to full answer and defence because the trial judge disallowed the application under s. 278.3 of the *Criminal Code* to have the complainant's counselling records examined

**PROCEDURAL HISTORY**

June 27, 1997 Court of Queen's Bench (Pritchard J.)	Conviction: sexual assault
January 16, 1998 Court of Appeal for Saskatchewan (Bayda C.J.S., Wakeling and Lane JJ.A.)	Appeal dismissed
March 16, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**La Caisse populaire de Saint-Boniface Limitée**

**v. (26847)**

**Hongkong Bank of Canada**

**AND**

**La Caisse populaire de Saint-Boniface Limitée**

**v.**

**Hongkong Bank of Canada, Phyllis Kuklica and Steven Kuklica (Man.)**

**NATURE OF THE CASE**

Property Law - Mortgages - Priorities - Mortgagee holding second mortgage applies proceeds of sale of property to discharge debt secured by the second mortgage and seeks to apply the balance of the sales proceeds against the debt secured by the prior first mortgage of which it is also the mortgagee - Holder of a subsequent encumbrance registered against title, a judgment debt against the former property owners, claims priority to the balance of the sales proceeds under

s. 136(3) of *The Real Property Act*, R.S.M. 1988, c. R30 - Whether subsequent encumbrance or prior first mortgage has priority.

**PROCEDURAL HISTORY**

March 18, 1996 Court of Queen's Bench of Manitoba (Hamilton J.)	Equitable mortgage declared invalid and a nullity
August 13, 1997 Court of Queen's Bench of Manitoba (Schulman J.)	Application dismissed
June 17, 1998 Court of Appeal for Manitoba (Scott C.J., Huband and Kroft JJ.A.)	Appeal dismissed
September 15, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**Aditya Narayan Varma**

**v. (26750)**

**Gordon Newton Forsyth (Ont.)**

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

June 28, 1996 Ontario Court (General Division) (Pitt J.)	Applicant's statement of claim struck out and action dismissed
April 22, 1998 Court of Appeal for Ontario (Robins, McKinlay and Osborne JJ.A.)	Appeal dismissed
June 24, 1998 Supreme Court of Canada	Application for leave to appeal filed
June 30, 1998 Supreme Court of Canada	Motion to extend time filed

---

**Lovey Cridge**

**v. (26838)**

**Lawrence Pierce (B.C.)**

**NATURE OF THE CASE**

Procedural law - Appeal - Extension of time - Civil Procedure - Motion to Strike Pleadings - Whether the Court of Appeal erred in concluding that the statement of claim did not disclose a cause of action - Whether the Court of Appeal erred in declining to grant the extension of time - Whether the Court of Appeal disposed of the case properly.

**PROCEDURAL HISTORY**

July 30, 1996 Supreme Court of British Columbia (MacKenzie J.)	Respondent's motion to strike out statement of claim granted
June 26, 1997 Court of Appeal for British Columbia (Hollinrake J.A.)	Motion for an extension of time dismissed
June 11, 1998 Court of Appeal for British Columbia (Esson J.A.)	Motion for an extension of time dismissed
September 9, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**Union of Nova Scotia Indians, a body corporate under the *Societies Act*, R.S.N.S. 1989,  
c. 435, on behalf of all registered Indians in Nova Scotia and Paul Kenneth Francis,  
on his own behalf and on behalf of all registered Indians in Nova Scotia**

**v. (26861)**

**Attorney General of Nova Scotia, representing  
Her Majesty The Queen in Right of the Province of Nova Scotia (N.S.)**

**NATURE OF THE CASE**

Constitutional law - Division of powers - Indians - Administrative law - Applicant is a registered Indian - Applicant wishes to purchase tobacco products from Indians in Quebec, transport them to reserves in Nova Scotia and resell them to registered Indians acting as retailers without paying tax under the *Revenue Act*, S.N.S. 1995-96, c.17 - Whether Francis must comply with the licensing requirements imposed by the *Revenue Act* - Whether s.92(2) of the *Constitution Act, 1867* gives the provinces the power to regulate access to the exemption of Indians from taxation through licences, quotas and licensing conditions - Whether adopting a regulatory regime that only applies to Indians and Indian reserves is legislating in respect of Indians and/or Indian reserves contrary to s.91(24) of the *Constitution Act, 1867* - Whether the provincial finance department can impose a mandatory regulatory regime by policy without clear statutory authority from the legislative branch.

**PROCEDURAL HISTORY**

November 27, 1997 Supreme Court of Nova Scotia (Tidman J.)	Application dismissed
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July 21, 1998  
Nova Scotia Court of Appeal  
(Bateman, Roscoe and Jones JJ.A.)

Appeal dismissed

September 16, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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

**Sylvio Richer**

**c. (26769)**

**Sa Majesté la Reine**

**ET**

**Sylvio Richer**

**c.**

**Sa Majesté la Reine**

**ET**

**Sylvio Richer**

**c.**

**Le directeur du Centre de prévention Parthenais, Le procureur général du Canada,  
Jean Claude Perron, Lilly Tronche, Le directeur de l'établissement Archambault,  
Roger Mercier et Le directeur, Centre régional de réception (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Appel - Appel déserté - Demande en rétractation de jugement - La Cour d'appel du Québec a-t-elle erré en rejetant les demandes en rétractation de jugement au motif que le demandeur avait fait preuve d'un manque de diligence?

**HISTORIQUE PROCÉDURAL**

Le 5 septembre 1989  
Cour du Québec  
(Ouellette j.c.q.)

Condamnation: un chef d'accusation d'avoir induit ou tenté d'induire une personne à se prostituer (art. 212(d) C.cr.)

Le 20 octobre 1989  
Cour supérieure du Québec  
(Boilard j.c.s.)

Condamnation: un chef d'accusation d'avoir utilisé ou menacé d'utiliser une arme en commettant une agression sexuelle (art. 272(a) *C.cr.*)

Le 17 juin 1991  
Cour d'appel du Québec  
(Rothman, Mailhot et Baudouin jj.c.a.)

Appel de la condamnation du 20 octobre 1989 déclaré déserté

Le 17 juin 1991  
Cour d'appel du Québec  
(Rothman, Mailhot et Baudouin jj.c.a.)

Appel de la condamnation du 5 septembre 1989 déclaré déserté

Le 26 juin 1991  
Cour supérieure du Québec  
(Ducros j.c.s.)

Requête pour l'émission d'un bref d'habeas corpus avec certiorari ancillaire et requête pour réparation en vertu de l'art. 24 (1) de la *Charte canadienne des droits et libertés* rejetées

Le 20 décembre 1993  
Cour d'appel du Québec  
(Deschamps, Chamberland et Steinberg jj.a.)

Appel de la décision du 26 juin 1991 déclaré abandonné

Le 11 mai 1998  
Cour d'appel du Québec  
(Delisle, Otis et Chamberland jj.c.a.)

Requêtes en rétractation des jugements du 17 juin 1991 et du jugement du 20 décembre 1993 rejetées

Le 23 juillet 1998  
Cour suprême du Canada

Demandes d'autorisation d'appel de la décision du 11 mai 1998 et demande de prorogation de délai déposées

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**Certain Underwriters at Lloyd's**

**v. (26799)**

**Shama Textiles Inc. / Les Tissus Shama Inc. (Que.)**

**NATURE OF THE CASE**

Procedural Law - Evidence - Pre-trial procedure - Affidavit - Attorney-client privilege - Right to full defence -

**PROCEDURAL HISTORY**

May 13, 1998  
Superior Court of Québec  
(Melançon J.C.S.)

Respondent's objections to questions on cross-examination on affidavit upheld in part

June 23, 1998  
Court of Appeal of Québec  
(Mailhot J.C.A.)

Motion for leave to appeal dismissed

August 5, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**The CSL Group Inc.  
- and -  
Canada Steamship Lines Inc.**

**v. (26828)**

**Her Majesty The Queen in Right of Canada (F.C.A.)(Que.)**

**NATURE OF THE CASE**

Torts - Negligence - Maritime law - Foreseeability and proximity - Economic loss - Treasury board late in filing list of designated employees under the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 - Strike by part of Canadian coast guard causing problems for navigation on St. Lawrence River and Seaway necessitating a temporary closure of part of the system - Applicants claiming loss of revenues and increased expenses resulting from consequent delays in ship movements - Whether Treasury Board employees were negligent - Whether those employees had a duty to the Applicants - Whether the Respondent's only obligation to ensure public safety, was in the sense of loss of life or damage to property, in the context of where the designation of employees is required to maintain an essential service and "safety" means the ability to navigate safely - *Crown Liability and Proceedings Act*, R.S.C. , 1985, c. C-50, as amended.

**PROCEDURAL HISTORY**

December 3, 1996 Federal Court of Canada, Trial Division (Nadon J.)	Applicants' action dismissed
July 3, 1998 Federal Court of Appeal (Marceau, Décary and Létourneau JJ.A.)	Appeal dismissed
September 8, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**Claudette Gariépy**

**v. (26794)**

**The Queen In Right of Canada (F.C.A.)(Que.)**

**NATURE OF THE CASE**

Commercial law - Labour law - Contracts - Torts - Negligence - Whether perceptions of political affiliation may disqualify a person for a position in the Public Service - Whether contractual (or quasi-contractual) terms between the Queen and a worker can exist outside the legislation.

**PROCEDURAL HISTORY**

February 12, 1996 Federal Court of Canada, Trial Division (Tremblay-Lamer J.)	Action by Applicant dismissed
May 20, 1998 Federal Court of Appeal (Marceau, Denault and Desjardins JJ.A.)	Appeal dismissed

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August 19, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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

**Cyril E. Battye**

**v. (26917)**

**Maria Jose Viera Tirano (Ont.)**

**NATURE OF THE CASE**

Procedural law - Did lower courts err in disposition of case?

**PROCEDURAL HISTORY**

February 6, 1997 Small Claims Court of Ontario (Fitzhenry Deputy J.)	Judgment for Applicant for \$6,000
September 9, 1997 Small Claims Court of Ontario (Richardson Deputy J.)	Judgment for \$2,000 substituted
December 15, 1997 Small Claims Court of Ontario (Selley Deputy J.)	Action dismissed
January 22, 1998 Small Claims Court of Ontario (Fitzhenry Deputy J.)	Motion to set aside judgment of Deputy Judge Selley dismissed
March 6, 1998 Ontario Court of Justice (General Division) (Morrison J.)	Appeal dismissed
August 12, 1998 Court of Appeal for Ontario ( Finlayson, Goudge and Feldman, JJ.A.)	Appeal dismissed
August 28, 1998 Ontario Court of Justice (General Division) (Clarke J.)	Motion for leave denied
October 6, 1998 Supreme Court of Canada	Application for leave filed

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**General Motors Corporation**

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v. (26864)

**Dekran Baljian, Rita Baljian, Kerop Baljian, Zebur Kalmyan, Ara Baljian and Andre Baljian**

- and -

**Peter Tolkovski, Chris Anthopoulos as litigation administrator for the Estate of Jane Tolkovski (a.k.a Jan Tolkovski), the Superintendent of Insurance, Allstate Insurance Company of Canada, Royal Insurance Company of Canada and National Car Rental Systems Incorporated**

- and -

**Golden Mile Motors Limited (Ont.)**

**NATURE OF THE CASE**

Torts - Limitations - Applicant added as party defendant after expiration of limitation period - Whether pattern of decision making by the Court of Appeal inconsistent with the legal test, as stated by the Supreme Court of Canada, applicable in cases where amendments to pleadings are sought to add a party defendant after the expiry of the applicable limitation period has run in favour of that proposed defendant - Whether Court of Appeal decision means there is a risk of third party being added as a party defendant after the limitation period has expired by virtue of exercising rights under the Rules of Practice - Whether decision of the Court of Appeal is inconsistent with the underlying rationales for limitation periods stated by the Supreme Court of Canada.

**PROCEDURAL HISTORY**

June 19, 1997 Ontario Court (General Division) (Master Cork)	Applicant added as party defendant to action between Respondent plaintiffs and Respondent defendants
September 25, 1997 Ontario Court of Justice (General Division) (Wright J.)	Appeal allowed
June 22, 1998 Court of Appeal for Ontario (Krever, Carthy and Osborne JJ.A.)	Appeal allowed
September 18, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**Little Sisters Book and Art Emporium, B.C. Civil Liberties Association,  
James Eaton Deva and Guy Allen Bruce Smythe**

v. (26858)

**Minister of Justice, Attorney General of Canada and Minister of National Revenue,  
and Attorney General of British Columbia (B.C.)**

**NATURE OF THE CASE**

---

*Charter of Rights and Freedoms* - Civil - Civil rights - Administrative Law - Whether the “prior restraint” of freedom of expression before goods being imported are determined to be “obscene” under the Customs regime violates s. 2(b) of the *Charter of Rights and Freedoms* - Whether the legislative prohibition of importation of “obscene” goods is contrary to s. 2(b) of the *Charter of Rights and Freedoms* - Whether the prohibition of importation of “obscene” goods violates s. 15(1) of the *Charter of Rights and Freedoms* by discriminating against homosexuals

**PROCEDURAL HISTORY**

January 19, 1996 Supreme Court of British Columbia (Smith J.)	Application for declaration that the legislative scheme prohibiting the importation of obscene goods was of no force and effect for violating s. 2(b) and s. 15(1) of the <i>Charter</i> dismissed; granted a declaration to the effect that the administration of the legislative scheme had, from time to time, resulted in violations of the Applicants’ s. 2(b) and s. 15(1) <i>Charter</i> rights
June 24, 1998 Court of Appeal for British Columbia (Macfarlane and Hall JJ.A. and Finch J.A. [dissenting])	Appeal dismissed
September 16, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**Rochelle Claire Stenzler and Arthur Shinji Ito**

**v. (26820)**

**Ontario College of Pharmacists (Ont.)**

**NATURE OF THE CASE**

Canadian Charter, s. 2(d) - Civil - Freedom of expression - Whether the granting of a grocery coupon constitutes “expression” within the meaning of s. 2(b) of the Charter and is thus entitled to constitutional protection - Whether Ontario Divisional Court erred in dismissing application - Whether Court of Appeal erred in dismissing motion for leave to appeal.

**PROCEDURAL HISTORY**

February 19, 1998 Ontario Court (General Division) Divisional Court (Boland, Pardu and Sedgwick JJ.)	Application to quash the proceedings for professional misconduct dismissed
June 4, 1998 Court of Appeal for Ontario (McMurtry C.J.O., Osborne and Abella JJ.A.)	Motion for leave to appeal dismissed
September 2, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**JANUARY 11, 1999 / LE 11 JANVIER 1999**

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

**Terrance Horrod and B.C. Transit**

**v. (26768)**

**Jane Wang (B.C.)**

**NATURE OF THE CASE**

Torts - Motor Vehicles - Public carriers - Standard of care applicable to drivers where elderly and infirm passengers aboard - Whether the onus shifts to the public carrier to disprove negligence in accordance with *Day v. Toronto Transportation Committee*, [1940] S.C.R. 433 where injury occurs to passenger as a result of an alleged omission - Whether Court of Appeal erred in concluding in determining whether actions of driver were negligent, that there is a distinction to be drawn between duty of care and standard of care, and that in the case of the latter, reasonable foreseeability is not the test

**PROCEDURAL HISTORY**

June 19, 1997 Supreme Court of British Columbia (Loo J.)	Judgment for Respondent; Applicants liable for 75% of the Respondent's damages
June 2, 1998 Court of Appeal for British Columbia (Rowles and Prowse JJ.A. and Southin J.A. (dissenting))	Applicants' appeal dismissed
July 31, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**Cislyn Spence**

**v. (26823)**

**Commission des droits de la personne  
et des droits de la jeunesse (Que.)**

**NATURE OF THE CASE**

Administrative law - Quebec *Charter of Human Rights and Freedoms*, s. 77 - Whether Human Rights Commission properly exercised discretion not to act in favour of complainant when complaint filed more than two years after material events

**PROCEDURAL HISTORY**

January 29, 1998 Superior Court of Quebec (Grenier J.)	Application for judicial review dismissed
March 12, 1998 Court of Appeal of Quebec (Baudouin J.A.)	Motion for leave to appeal dismissed

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September 4, 1998  
Supreme Court of Canada

Application for leave to appeal and notice of motion for  
extension of time filed

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**Walter P. Andrushko**

**v. (26896)**

**Canada Safeway Limited, and  
United Food and Commercial Workers Union, Local 2000 (B.C.)**

**NATURE OF THE CASE**

Procedural law - Appeal - Civil Procedure - Motion for an extension of time - Labour law - Collective agreement -  
Whether the Court of Appeal erred in declining to grant the Applicant's motion for an extension of time.

**PROCEDURAL HISTORY**

April 24, 1998  
Supreme Court of British Columbia  
(Arkell J.)

Respondents' application granted: the Applicant's action  
is dismissed

August 7, 1998  
Court of Appeal for British Columbia  
(Ryan J.A., in chambers)

Applicant's application for extension of time to file the  
appeal dismissed

October 2, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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

**Sylvio Richer**

**c. (26852)**

**Sa Majesté la Reine (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Preuve - Preuve reliée à la moralité - Réouverture d'enquête - La Cour d'appel du Québec a-t-elle erré  
en ne statuant pas que le juge de première instance avait erré en ne permettant pas au demandeur de présenter des témoins?  
- La Cour d'appel a-t-elle erré en ne statuant pas que le juge de première instance avait erré en permettant la présentation  
d'une preuve reliée à la moralité de l'accusé? - La Cour d'appel du Québec a-t-elle erré en permettant à la couronne de  
faire entendre un témoin qui n'avait pas fait l'objet d'une communication de la preuve? - La Cour d'appel du Québec a-t-  
elle erré en permettant la production de la robe de chambre de la victime? - La Cour d'appel a-t-elle erré en ne statuant  
pas que le juge de première instance avait erré en droit en refusant la réouverture d'enquête?

**HISTORIQUE PROCÉDURAL**

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Le 14 avril 1994  
Cour supérieure du Québec  
(Daviault j.c.s.)

Requête pour arrêt des procédures fondée sur l'art. 7 de  
la *Charte canadienne des droits et libertés* rejetée

Le 3 mai 1994  
Cour supérieure du Québec  
(Daviault j.c.s.)

Verdict: deux inculpations de voies de faits

Le 2 juillet 1998  
Cour d'appel du Québec  
(Proulx, Deschamps et Pidgeon jj.c.a.)

Appel rejeté

Le 22 septembre 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Commonwealth Insurance Company**

**c. (26721)**

**Hôtel Le Chantecler (1985) Inc.  
Jacques Giasson  
Jean-Yves Fortin**

**et**

**Zurich Insurance Company  
New Hampshire Insurance Company  
Canadian Indemnity Company  
Prudential Insurance Company of Canada  
Aetna Casualty of Canada  
Gerling Global General Insurance Company  
Chubb Insurance Company  
Kansa General Insurance Company (Qué.)**

**NATURE DE LA CAUSE**

Droit commercial - Assurance - Interprétation - Assurance de biens - Évaluation du préjudice - Taux d'occupation - Coassurance - Divergence entre la proposition et le contrat d'assurance - La Cour d'appel du Québec a-t-elle commis une erreur en rejetant l'appel de la demanderesse?

**HISTORIQUE PROCÉDURAL**

Le 19 mars 1993  
Cour supérieure du Québec  
(Marx, J.C.S.)

Action des intimés en dommages accueillie en partie

Le 20 avril 1998  
Cour d'appel du Québec  
(Deschamps et Pidgeon, JJ.C.A et  
Biron, J.C.A. (*Ad hoc*))

Appel de la demanderesse rejeté

Le 18 juin 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Cruise Canada Inc.**

**c. (26730)**

**André Clermont (Qué.)**

**NATURE DE LA CAUSE**

Droit civil - Action - Contrat - Dommages - Fraude - La Cour d'appel du Québec a-t-elle commis une erreur en concluant que le juge de première instance n'a pas erré en fait et en droit en préférant la version de l'intimé? - La Cour d'appel du Québec a-t-elle erré en s'écartant des principes établis par la Cour suprême sur le rôle qu'une cour d'appel peut jouer dans la modification des jugements des instances inférieures dans le cas où le premier juge, en raison d'une erreur manifeste et dominante qui fausse l'appréciation des faits qu'il a lui-même déterminés, tire des conclusions de faits erronées et déraisonnables?

**HISTORIQUE PROCÉDURAL**

Le 25 octobre 1995  
Cour supérieure du Québec  
(Marcelin J.C.S.)

Action de l'intimé en réclamation de loyers et en dommages accueillie en partie et demande reconventionnelle de la demanderesse rejetée

Le 27 avril 1998  
Cour d'appel du Québec  
(Dussault, Otis et Robert, J.J.C.A.)

Appel de la demanderesse accueilli en partie

Le 26 juin 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Reevin Pearl et James Murphy**

**c. (26807)**

**Gentra Canada Investments Inc., Compagnie Trust R-M, The Royal Trust Company**

**- et -**

**Tisserand Enterprises Inc., Laprairie Shopping Centre Ltd. et 2867-6732 Québec Inc. (Qué.)**

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Jugements et ordonnances - Dépens - Quelle procédure devrait s'appliquer lorsqu'une partie recherche la condamnation personnelle d'un avocat aux dépens? - La Cour d'appel, à la majorité, a-t-elle erré en décidant que le juge de première instance pouvait, après avoir rejeté la demande principale avec dépens, réserver sa compétence pour statuer sur une demande des intimées de condamner solidairement les demandeurs au paiement des dépens? - Art. 477 du *Code de procédure civile*, L.R.Q., ch. C-25.

**HISTORIQUE PROCÉDURAL**

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Le 17 avril 1996  
Cour supérieure du Québec  
(Reeves j.c.s.)

Requête en irrecevabilité à l'encontre de la requête des intimées visant à obtenir la condamnation personnelle des demandeurs au paiement des dépens rejetée

Le 19 mai 1998  
Cour d'appel du Québec  
(Proulx, Forget et Pidgeon [dissident] jj.c.a.)

Appel rejeté

Le 18 août 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**The National Bank of Canada**

**v. (26848)**

**The Honourable Alfonso Gagliano, Minister of Labour acting pursuant to Subsection 242(1) of the *Canada Labour Code*; and Michelle A. Pineau, Adjudicator appointed pursuant to Subsection 242(1) of the *Canada Labour Code*; and Myrelle Paris (F.C.A.)(Ont.)**

**NATURE OF THE CASE**

Administrative law - Judicial review - Statutes - Interpretation - *Canada Labour Code*, R.S.C. 1985, L-2, ss. 168, 242(1), 246 - Labour law - Dismissal of employee - Effect of agreement and release executed between employer and employee - Whether the Court of Appeal erred in upholding the motions judge's decision that the Minister of Labour had the authority pursuant to s. 242(1) of the Code to appoint an adjudicator to adjudicate the unjust dismissal complaint of the employee, despite the fact that the employer and employee executed a full and final release of all claims against the employer, including claims under the Code - Whether there are conflicting appellate authorities - Whether this decision will have a chilling effect on settlements.

**PROCEDURAL HISTORY**

June 19, 1997  
Federal Court of Canada, Trial Division  
(Rothstein J.)

Applicant's application for judicial review dismissed

June 17, 1998  
Federal Court of Appeal  
(Stone, Létourneau and Robertson JJ.A.)

Appeal dismissed

September 16, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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

**Desmond Murray Ray Davies**

v. (26870)

**Her Majesty The Queen (Crim.)(Y.T.)**

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Search and seizure - Exclusion of evidence - Whether the Court of Appeal erred in holding that the evidence obtained from the Applicant's knapsack as a result of an unlawful search was not conscriptive

**PROCEDURAL HISTORY**

June 25, 1997 Territorial Court of Yukon (Jackson T.C.J.)	Conviction: possession of a break-in instrument
June 25, 1998 Court of Appeal for the Yukon Territory (Hinds, Richard and Donald JJ.A.)	Conviction appeal dismissed
September 24, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**Headway Property Investment 78-1 Inc.**

v. (26857)

**Edgecombe Properties Limited, Edgecombe Investment Services Limited, Ontario Municipal Employees Retirement Board and Mark Mackenzie (Ont.)**

**NATURE OF THE CASE**

Property Law - Mortgages - Commercial Law - Interest- Torts - Negligence - Mortgage interest rates - Negligent misrepresentation in a commercial transaction - Whether an award of damages on an undertaking was an award of damages at a rate of interest higher than the rate specified in a mortgage and, therefore, prohibited by s. 8(1) of the *Interest Act* - Whether damages should have been recoverable as a result of misrepresentation by an agent.

**PROCEDURAL HISTORY**

January 19, 1995 Ontario Court (General Division) (Davidson J.)	Action dismissed, counterclaim granted
June 25, 1998 Ontario Court of Appeal (Krever, Osborne and Doherty JJ.A.)	Appeal dismissed, counterclaim varied
September 16, 1998 Supreme Court of Canada	Application for leave to appeal filed

**MOTION FOR RECONSIDERATION – REHEARING /  
DEMANDE DE RÉEXAMEN – NOUVELLE AUDITION**

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

Robert Weidenfeld v. Hanson Hashey (Ont.) 26629

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**JANUARY 18, 1999 / LE 18 JANVIER 1999**

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

**Christian Albert Cruz**

**v. (26901)**

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

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms - Criminal law - Sentencing - Whether the Applicant's s. 7 and s. 11(d) Charter rights were violated when the trial judge failed to call upon the Applicant's counsel to address the jury prior to its deliberations on parole eligibility*

**PROCEDURAL HISTORY**

November 11, 1993 Supreme Court of British Columbia (Wong J.)	Conviction: second degree murder
November 19, 1993 Supreme Court of British Columbia (Wong J.)	Sentence: life imprisonment with no eligibility for parole for 18 years
October 26, 1995 Court of Appeal for British Columbia (McEachern C.J.B.C., Goldie, Proudfoot JJ.A.)	Conviction appeal dismissed
April 25, 1996 Supreme Court of Canada (Lamer C.J., Gonthier, Iacobucci JJ.)	Application for leave to appeal conviction dismissed
April 9, 1998 Court of Appeal of British Columbia (Hollinrake, Lambert, Ryan JJ.A.)	Sentence appeal dismissed
September 29, 1998 Supreme Court of Canada	Application for leave to appeal sentence filed

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**GiroCredit Bank Aktiengesellschaft Der Sparkassen**

**v. (26869)**

**Heidrun Hedwig Bader, Anton Hans Bader and  
Tomax Enterprises Ltd. (B.C.)**

**NATURE OF THE CASE**

Procedural law - Civil procedure - Pre-trial procedure - Interlocutory injunctions - *Mareva* injunction and *Anton Piller* order - Failure to make full and frank disclosure - Whether chambers judge erred in fact in finding that the Applicant had failed to make full and frank disclosure in an *ex parte* application for a *Mareva* injunction and an *Anton Piller* order - Whether chambers judge erred in law in dissolving the orders on the basis of material non-disclosure - Whether Court of Appeal erred in dismissing appeal - Whether Court of Appeal erred in staying the action on the basis that British Columbia was a *forum non conveniens* and in failing to consider the *in rem* nature of the Applicant's claim and the legitimate juridical advantage of proceeding in British Columbia

**PROCEDURAL HISTORY**

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March 6, 1996 Supreme Court of British Columbia (Spencer J.)	<i>Mareva</i> injunction and <i>Anton Piller</i> order obtained <i>ex parte</i> set aside
June 25, 1998 Court of Appeal for British Columbia (Hollinrake, Goldie and Finch JJ.A.)	Appeal dismissed and action stayed until further order
August 25, 1998 Court of Appeal for British Columbia (Newbury J.A.)	Stay granted in respect of <i>Anton Piller</i> order and dismissed in respect of <i>Mareva</i> injunction pending application for leave to appeal to Supreme Court of Canada
September 24, 1998 Supreme Court of Canada	Application for leave to appeal filed

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

**Advance Cutting & Coring Ltd. et al.**

**c. (26664)**

**Sa Majesté la Reine**

**et**

**Le procureur général du Québec (Qué.)**

**NATURE DE LA CAUSE**

*Charte canadienne des droits et libertés* - Droit du travail - Relations de travail - Législation - Interprétation - Industrie de la construction - Obligation d'appartenir à une association d'employés - Liberté de non-association - Les articles 28, 30, 32, 39, 119.1(1) et 120 de la *Loi sur les relations de travail, la formation professionnelle et la gestion de la main-d'oeuvre dans l'industrie de la construction*, L.R.Q., chap. R- 20, portent-ils atteinte à l'alinéa 2d) de la *Charte canadienne* - Contestation rejetée en Cour du Québec et en Cour supérieure - Requête du demandeur pour permission d'appel rejetée.

**HISTORIQUE PROCÉDURAL**

Le 14 juin 1995 Cour du Québec (Chambre criminelle et pénale (Bonin, J.C.Q.)	Contestation constitutionnelle rejetée
Le 23 février 1998 Cour supérieure du Québec (Trudel, J.C.S.)	Appel rejeté
Le 31 mars 1998 Cour d'appel du Québec (Brossard, J.C.A.)	Requête pour permission d'appel rejetée

Le 27 mai 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Les Entreprises Raymond Denis inc.**

**c. (26756)**

**Ville de Val-Bélair (Qué.)**

**NATURE DE LA CAUSE**

Droit municipal - Municipalités - Règlement de zonage - Droits acquis - La Cour d'appel pouvait-elle ne pas reconnaître l'autorité de la chose jugée en l'espèce? - La Cour d'appel peut-elle attaquer directement ou indirectement un jugement d'une Cour supérieure qui n'a pas fait l'objet d'un appel? - La Cour d'appel peut-elle substituer son appréciation des faits et de la preuve à celle du juge de première instance? - L'obtention d'un certificat en vertu de l'art. 22 de la *Loi sur la qualité de l'environnement*, L.R.Q. ch. Q-2, est-il un prérequis à la reconnaissance de droits acquis à l'encontre d'un règlement d'urbanisme?

**HISTORIQUE PROCÉDURAL**

Le 23 mai 1991  
Cour supérieure du Québec  
(Larouche j.c.s.)

Requête pour cessation d'un usage illégal présentée en vertu de l'art. 227 de la *Loi sur l'aménagement et l'urbanisme* rejetée

Le 22 mai 1998  
Cour d'appel du Québec  
(Gendreau, Dussault et Delisle jj.c.a.)

Appel accueilli

Le 17 juillet 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Seaspan International Ltd.**

**v. (26868)**

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

**NATURE OF THE CASE**

Statutes - Interpretation - Taxation - Exception to an exemption from tax - Interpretation of the word "vehicle"- Whether the word "vehicle" embraces boats and ships - Reliance upon dictionary definitions published after legislation has been passed to determine whether a word contained in the legislation is ambiguous and to interpret the word - Whether opinions of Revenue Canada expressed in Rulings or in communiqués should have been relied upon to interpret the meaning of the word "vehicle" - Whether a Court may consider Parliamentary debates as proof of legislative intent when interpreting statutes - Whether a provision in taxation legislation that stipulates an exception to an exemption from tax should be construed narrowly or broadly - *Excise Tax Act*, R.S.C., 1985, c. E-15, as am. by R.S.C., 1985 (2nd Supp.), c. 7.

**PROCEDURAL HISTORY**

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September 2, 1993  
Federal Court, Trial Division  
(Joyal J.)

Appeal from Notice of Confirmation of tax assessment  
dismissed

June 25, 1998  
Federal Court of Appeal  
(Marceau, Linden, Robertson JJ.A.)

Appeal dismissed

September 24, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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

**872899 Ontario Inc.**

**v. (26891)**

**Paul Iacovoni and Jacqueline Iacovoni (Ont.)**

**NATURE OF THE CASE**

Property law - Real property - Agreement of purchase and sale - Procedural law - Limitation of actions - prescription - *Limitations Act*, R.S.O. 1990, c. L.15, s. 45(1)(b) - Action statute-barred - Whether an agreement of purchase and sale is a specialty - Whether an agreement of purchase and sale is a contract under seal - Whether the lower courts erred in finding that more evidence was required to find that the agreement of purchase and sale was a contract under seal.

**PROCEDURAL HISTORY**

May 7, 1997  
Ontario Court of Justice (General Division)  
(Pitt J.)

Applicant's action dismissed

July 3, 1998  
Court of Appeal for Ontario  
(McKinlay and Austin JJ.A. and Dunnet J. (*ad hoc*))

Appeal dismissed

September 29, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**913719 Ontario Limited, carrying on business as Adults Only Video**

**v. (26905)**

**The Corporation of the City of Mississauga (Ont.)**

**NATURE OF THE CASE**

Municipal law - By-laws - Validity - Discrimination - Illegality - Vagueness - *Ultra vires* - Bad faith - Absence of statutory authority - Sub-delegation - Section 2(b) of the *Charter* - Municipality enacting by-law to license and regulate adult video stores - *Municipal Act*, R.S.O. 1990, c. M. 45, s. 225 - Whether the Court of Appeal erred in holding that no sub-classification exists - Whether the Court of Appeal erred in finding that there was no discrimination - Whether the Court of Appeal erred in finding that the by-law was not vague - Whether the Court of Appeal erred in finding that there was no improper sub delegation - Whether the Court of Appeal erred in finding that there was no violation of s. 2(b) of the *Charter*.

**PROCEDURAL HISTORY**

June 19, 1996  
Ontario Court of Justice (General Division)  
(Dunn J.)

Applicant's application to quash by-law no. 589-92  
allowed in part

July 21, 1998  
Court of Appeal for Ontario  
(Mordon A.C.J.O., Brooke and Charron JJ.A.)

Applicant's appeal and Respondent's cross-appeal  
dismissed

September 29, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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JANUARY 11, 1999 / LE 11 JANVIER 1999

**KEVIN LATHANGUE -v.- HER MAJESTY THE QUEEN** (Crim.)(B.C.)(26943)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for extension of time is granted and an oral hearing is ordered.

La demande de prorogation de délai est accordée et une audition est ordonnée.

**NATURE OF THE CASE**

Criminal law - Intercepted private communications - Wiretaps - Judicial review - Whether the Court of Appeal erred in holding that the test for the issuance of an authorization to intercept private communications is simply a showing that intercepts will be the most efficacious manner of investigation - Whether the Court of Appeal erred in ruling that the trial judge could not rely on an adverse finding of credibility to hold that the affidavit could not be relied upon and an authorization could not have been granted in circumstances of an unreliable affiant - Whether the Court of Appeal erred in holding that the Crown appeal was an appeal on a question of law.

**PROCEDURAL HISTORY**

October 31, 1996  
Provincial Court of British Columbia  
(Filmer J.)

Acquittal: conspiracy to traffic in a controlled drug; conspiracy to sell a drug in Schedule F of the *Food and Drugs Act*

June 30, 1998  
Court of Appeal of British Columbia  
(Goldie, Rowles and Braidwood JJ.A.)

Appeal allowed; acquittals set aside and new trial ordered

November 6, 1998  
Supreme Court of Canada

Application for leave to appeal and motion for the extension of time filed

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**ROBERT JENKINS, TIFFANY MURIEL LESLIE -v.- HER MAJESTY THE QUEEN** (Crim.)(B.C.)(26899)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for extension of time is granted and an oral hearing is ordered.

La demande de prorogation de délai est accordée et une audition est ordonnée.

**NATURE OF THE CASE**

Criminal law - Intercepted private communications - Wiretaps - Judicial review - Whether the Court of Appeal erred in holding that the test for the issuance of an authorization to intercept private communications is simply a showing that intercepts will be the most efficacious manner of investigation - Whether the Court of Appeal erred in ruling that the trial judge could not rely on an adverse finding of credibility to hold that the affidavit could not be relied upon and an authorization could not have been granted in circumstances of an unreliable affiant - Whether the Court of Appeal erred in holding that the Crown appeal was an appeal on a question of law.

**PROCEDURAL HISTORY**

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October 31, 1996  
Provincial Court of British Columbia  
(Filmer J.)

Applicant Jenkins - Acquittals: conspiracy to traffic in cocaine; trafficking in cocaine; possession of a restricted weapon (2 counts); possession of a prohibited weapon  
Applicant Leslie - Acquittals: possession of a restricted weapon (2 counts); possession of a prohibited weapon

June 30, 1998  
Court of Appeal of British Columbia  
(Goldie, Rowles and Braidwood JJ.A.)

Appeal allowed; acquittals set aside and new trial ordered

October 28, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**JOLENE IRONS -v.- HER MAJESTY THE QUEEN** (Crim.)(B.C.)(26968)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

An oral hearing is ordered.

Une audition est ordonnée.

**NATURE OF THE CASE**

Criminal law - Intercepted private communications - Wiretaps - Judicial review - Whether the Court of Appeal erred in holding that the test for the issuance of an authorization to intercept private communications is simply a showing that intercepts will be the most efficacious manner of investigation - Whether the Court of Appeal erred in ruling that the trial judge could not rely on an adverse finding of credibility to hold that the affidavit could not be relied upon and an authorization could not have been granted in circumstances of an unreliable affiant - Whether the Court of Appeal erred in holding that the Crown appeal was an appeal on a question of law.

**PROCEDURAL HISTORY**

October 31, 1996  
Provincial Court of British Columbia  
(Filmer J.)

Acquittal: conspiracy to traffic in cocaine; trafficking in cocaine; possession of cocaine for the purpose of trafficking (2 counts)

June 30, 1998  
Court of Appeal of British Columbia  
(Goldie, Rowles, and Braidwood JJ.A.)

Appeal allowed; acquittals set aside; new trial ordered

November 25, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**NEIL GRANDMAISON, CHRISTINA KHOURY, VICTOR CAMARA -v.- HER MAJESTY THE QUEEN** (Crim.)(B.C.)(26898)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

An oral hearing is ordered.

Une audition est ordonnée.

**NATURE OF THE CASE**

Criminal law - Intercepted private communications - Wiretaps - Judicial review - Whether the Court of Appeal erred in holding that the test for the issuance of an authorization to intercept private communications is simply a showing that intercepts will be the most efficacious manner of investigation - Whether the Court of Appeal erred in ruling that the trial judge ought not to have relied on an adverse finding of credibility to hold that the affidavit could not be relied upon and an authorization could not have been granted in circumstances of an unreliable affiant - Whether the Court of Appeal erred in holding that the Crown appeal was an appeal on a question of law.

**PROCEDURAL HISTORY**

October 31, 1996

Provincial Court of British Columbia  
(Filmer J.)

Applicant Grandmaison - Acquittals: conspiracy to traffic in cocaine; trafficking in cocaine; conspiracy to traffic in a controlled drug; conspiracy to sell a controlled drug; possession of a controlled drug for the purpose of trafficking; possession of proceeds of crime; possession of a restricted weapon; careless storage of a firearm

Applicant Khoury - Acquittals: conspiracy to traffic in cocaine; trafficking in cocaine; conspiracy to traffic in a controlled drug; possession of a controlled drug for the purpose of trafficking; possession of proceeds of crime; possession of a restricted weapon; careless storage of a firearm

Applicant Camara - Acquittals: conspiracy to traffic in cocaine; trafficking in cocaine; possession of a narcotic for the purposes of trafficking

June 30, 1998

Court of Appeal of British Columbia  
(Goldie, Rowles and Braidwood JJ.A. )

Appeal allowed; acquittals set aside and new trial ordered

October 1, 1998

Supreme Court of Canada

Application for leave to appeal filed

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**ANGELA ARAUJO AND SPENCER LESLIE -v.- HER MAJESTY THE QUEEN** (Crim.)(B.C.)(26904)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

An oral hearing is ordered.

Une audition est ordonnée.

**NATURE OF THE CASE**

Criminal law - Intercepted private communications - Wiretaps - Judicial review - Whether the Court of Appeal erred in holding that the existence of reasonable and probable grounds necessary for granting a wiretap authorization was not affected by a finding that the affiant had knowingly misled the Court on a matter relating to the accuracy of the matters set out in the wiretap affidavit - Whether the Court of Appeal erred in holding that the trial judge ought not to have considered a false explanation offered by the affiant to explain non-disclosure of errors in an affidavit.

**PROCEDURAL HISTORY**

October 31, 1996  
Provincial Court of British Columbia  
(Filmer J.)

Applicant Araujo - Acquittals: conspiracy to traffic in cocaine; trafficking in cocaine; possession of a prohibited weapon (2 counts); possession of proceeds of crime  
Applicant Leslie - Acquittals: conspiracy to traffic in cocaine; trafficking in cocaine; possession of a restricted weapon (2 counts); possession of a prohibited weapon

June 30, 1998  
Court of Appeal for British Columbia  
(Goldie, Rowles and Braidwood J.J.A.)

Appeal from acquittals allowed; acquittals set aside and new trial ordered

September 29, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**JANUARY 21, 1999 / LE 21 JANVIER 1999**

**26776**                    **NOEL FRANCIS CHANTIAM - v. - PACKALL PACKAGING INC. AND THE CANADA LIFE ASSURANCE COMPANY** (Ont.)

CORAM:                The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Commercial law - Insurance - Statutes - Interpretation - Applicant consenting to "key man" policy of life insurance being placed on his life by Respondent former employer - Applicant ceasing to be employed by Respondent - Respondent continuing policy on Applicant's life despite Applicant's objection - Whether any remedy exists for life insured who objects to the policy being held by the insured party after the insurable interest has disappeared - Sections 178 and 179 of the *Insurance Act*, R.S.O. 1990, c. I-8.

**PROCEDURAL HISTORY**

February 13, 1997 Ontario Court (General Division) (Pitt J.)	Order cancelling Respondent's policy of insurance on Applicant's life
April 3, 1998 Court of Appeal for Ontario (Robins, Catzman JJ.A. and Lederman ( <i>ad hoc</i> ))	Appeal allowed
July 17, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**26812**                    **PROVINCIAL COURT JUDGES' ASSOCIATION OF BRITISH COLUMBIA - v. - ATTORNEY GENERAL OF BRITISH COLUMBIA** (B.C.)

CORAM:                The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to cross-appeal and the application for leave to appeal are dismissed.

La demande d'autorisation d'appel-incident et la demande d'autorisation d'appel sont rejetées.

**NATURE OF THE CASE**

Constitutional law - Statutes - Interpretation - Administrative law - Judicial review - Remedies - Labour law - Compensation - *Provincial Court Act*, R.S.B.C. 1979, s. 7.1, as am. S.B.C. 1994, c. 26 - Judicial Compensation Committee appointed pursuant to s. 7.1 of the *Provincial Court Act* made recommendations to improve salaries and benefits of provincial court judges - Recommendations were rejected by Legislative Assembly of British Columbia on basis that they were "unfair and unreasonable" within the meaning of s. 7.1(9)(a) - Applicant's petition for judicial review was dismissed - Appeal was allowed on basis that Legislative Assembly had failed to take a rational approach to the consideration of the recommendations - Matter was referred back to the Legislative Assembly for reconsideration - Legislative Assembly reconsidered matter and confirmed original decision - Whether Court of Appeal had jurisdiction to remit matter to Legislative Assembly - Whether appropriate remedy instead was to declare the recommendations of the Judicial Compensation Committee to have the force of law pursuant to s. 7.1(10) - Whether Court of Appeal erred in finding the

resolution of the Legislative Assembly to be unreasonable - Whether Court of Appeal erred in its application of the "simple rationality" test as defined by this Honourable Court in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3.

**PROCEDURAL HISTORY**

August 19, 1996 Supreme Court of British Columbia (Esson C.J.)	Petition to quash a resolution of the Legislative Assembly rejecting the recommendations of the Judicial Compensation Committee dismissed
May 26, 1998 Court of Appeal for British Columbia (Rowles, Prowse and Hall JJ.A.)	Appeal allowed; matter referred back to the Legislature for reconsideration
August 25, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**26753**      **JOHN RENE PREGENT - v. - HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:      The Chief Justice and McLachlin and Iacobucci JJ.

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

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

**NATURE OF THE CASE**

Criminal law - Whether the Court of Appeal erred in applying an overly narrow test to determine whether the trial judge failed to appreciate the evidence or failed to adequately provide reasons for judgment - Unreasonable verdict - Whether the Court of Appeal erred in failing to consider whether the verdict was unsafe - Whether the trial judge erred in ruling that he had no jurisdiction to allow the Applicant to re-open his defence following the finding of guilt but prior to sentencing.

**PROCEDURAL HISTORY**

June 25, 1996 Ontario Court (General Division) (Poupore J.)	Conviction: sexual assault
January 16, 1998 Court of Appeal for Ontario (Finlayson, Rosenberg and Goudge JJ.A.)	Appeal from conviction dismissed
July 21, 1998 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

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**26765**      **HER MAJESTY THE QUEEN - v. - MOHAMED AMEERULLA KHAN - and between - MOHAMED AMEERULLA KHAN - v. - HER MAJESTY THE QUEEN** (Crim.)(Man.)

CORAM:      The Chief Justice and McLachlin and Iacobucci JJ.

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The application for leave to appeal filed by *Her Majesty the Queen* is dismissed and the application for leave to appeal filed by *Mohamed Ameerulla Khan* is quashed for want of jurisdiction.

La demande d'autorisation d'appel déposée par *Sa Majesté la Reine* est rejetée et celle déposée par *Mohamed Ameerulla Khan* est annulée pour cause d'absence de compétence.

**NATURE OF THE CASE**

Criminal law - Charge to the jury - Whether the Court of Appeal erred in concluding that the trial judge erred in his instruction to the jury on motive - Whether the Court of Appeal erred in concluding that the trial judge erred in his instructions to the jury on the relationship between inference and speculation - Whether the Court of Appeal erred in failing to correct the errors in Crown counsel's address to the jury - Whether the Court of Appeal erred in concluding that the trial judge failed to properly relate the facts to the issues - Appellate review - Whether the majority of the Court of Appeal erred in ordering a new trial as opposed to substituting a verdict of acquittal.

**PROCEDURAL HISTORY**

February 28, 1997  
Court of Queen's Bench (Darichuk J.)

Conviction: first degree murder

June 26, 1998  
Court of Appeal  
(Twaddle [dissenting], Lyon, Monnin JJ.A.)

Appeal allowed; new trial ordered

July 31, 1998  
Supreme Court of Canada

Application for leave to appeal filed by Her Majesty the Queen

September 24, 1998  
Supreme Court of Canada

Application for leave to appeal filed by Mohamed Ameerulla Khan

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**26831**      **REINHARDT LUTZER - v. - ADOLPH SONNENBURG** (Ont.)

CORAM:      The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Commercial Law - Creditor and Debtor - Summary judgment granted in a case in which an alleged creditor claimed money was due under a personal loan - Whether the Court of Appeal erred in law by denying a trial on issues of credibility, authenticity and fraudulent misrepresentation.

**PROCEDURAL HISTORY**

November 5, 1997  
Ontario Court (General Division) (Philp J.)

Damages awarded on motion for summary judgment

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May 26, 1998  
Court of Appeal for Ontario  
(Abella, Moldaver JJ.A. and Cumming J., ad hoc)

Appeal dismissed

August 25, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26806**            **CANADA SQUARE DEVELOPMENT CORPORATION LTD. - v. - MANCHA  
CONSULTANTS LTD., ALAN CHAPPLE AND MICHAEL MANLEY** (Ont.)

CORAM:            The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Commercial law - Contracts - Repudiation - Whether the Applicant had repudiated a joint venture agreement to develop a property by acquiring the property for itself - Whether the trial judge had made a palpable and overriding error - Whether Court of Appeal erred in interfering in findings of fact by trial judge.

**PROCEDURAL HISTORY**

June 6, 1994  
Ontario Court of Justice (General Division)  
(Van Camp J.)

Action dismissed

May 14, 1998  
Court of Appeal for Ontario (McMurtry C.J.O., Laskin and  
Rosenberg JJ.A.)

Appeal allowed

August 14, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26861**            **UNION OF NOVA SCOTIA INDIANS, A BODY CORPORATE UNDER THE SOCIETIES ACT, R.S.N.S. 1989, C. 435, ON BEHALF OF ALL REGISTERED INDIANS IN NOVA SCOTIA AND PAUL KENNETH FRANCIS, ON HIS OWN BEHALF AND ON BEHALF OF ALL REGISTERED INDIANS IN NOVA SCOTIA - v. - ATTORNEY GENERAL OF NOVA SCOTIA, REPRESENTING HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA (N.S.)**

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 - Division of powers - Indians - Administrative law - Applicant is a registered Indian - Applicant wishes to purchase tobacco products from Indians in Quebec, transport them to reserves in Nova Scotia and resell them to registered Indians acting as retailers without paying tax under the *Revenue Act*, S.N.S. 1995-96, c.17 - Whether Francis must comply with the licensing requirements imposed by the *Revenue Act* - Whether s.92(2) of the *Constitution Act, 1867* gives the provinces the power to regulate access to the exemption of Indians from taxation through licences, quotas and licensing conditions - Whether adopting a regulatory regime that only applies to Indians and Indian reserves is legislating in respect of Indians and/or Indian reserves contrary to s.91(24) of the *Constitution Act, 1867* - Whether the provincial finance department can impose a mandatory regulatory regime by policy without clear statutory authority from the legislative branch.

**PROCEDURAL HISTORY**

November 27, 1997  
Supreme Court of Nova Scotia  
(Tidman J.)

Application dismissed

July 21, 1998  
Nova Scotia Court of Appeal  
(Bateman, Roscoe and Jones JJ.A.)

Appeal dismissed

September 16, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26661**            **HUMAN LIFE INTERNATIONAL IN CANADA INC. v. THE MINISTER OF NATIONAL REVENUE (F.C.A.)(Ont.)**

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

May 26, 1994 Minister of National Revenue	Applicant's registrations as charitable organization revoked
March 18, 1998 Federal Court of Appeal (Chief Justice, Strayer and Robertson J.A.)	Appeal dismissed
May 15, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**26808**      **VUNTUT GWITCHIN FIRST NATION v. ATTORNEY GENERAL OF CANADA, REPRESENTING THE MINISTER OF INDIAN AND NORTHERN AFFAIRS AND NORTHERN CROSS (YUKON) LTD. (F.C.A.)(Yuk.)**

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

The application for an oral hearing and the application for leave to appeal are dismissed with costs.

La demande d'une audition et la demande d'autorisation d'appel sont rejetées avec dépens.

**NATURE OF THE CASE**

Constitutional Law - Environmental Law - Environmental assessment measures to be applied to a Land Use Permit Application affecting the traditional territory of the Vuntut Gwitchin First Nation in the range of the Porcupine Caribou Herd - Whether discretion of Land Use Engineer responsible for environmental assessment was fettered - Whether documents should have been admitted as evidence - Whether Government of Canada breached the Vuntut Gwitchin First Nation Final Agreement.

**PROCEDURAL HISTORY**

October 29, 1997 Federal Court of Canada, Trial Division (Rouleau J.)	Application for judicial review dismissed
May 6, 1998 Federal Court of Appeal (Denault J.A.)	Motion to introduce fresh evidence dismissed
May 25, 1998 Federal Court of Appeal (Stone, Denault and Decary JJ.A.)	Appeal dismissed
August 18, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**26902**            **THE WELLCOME FOUNDATION AND GLAXO WELLCOME INC. v. APOTEX INC. AND NOVOPHARM INC.** (F.C.A.)(Ont.)

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

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Administrative law - Injunction - Property law - Patents - Patented medicines - Interim stay pending disposition of appeal on merits of permanent injunction issued after a full trial on the merits in which a patent was found to be valid and infringed - Whether the line of cases beginning with *Laboratoire Pentagone* or *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 and *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 applies - Whether the Federal Court of Appeal erred in granting a stay by applying an incorrect legal standard, specifically, that set out in *RJR* and *Metropolitan Stores*.

**PROCEDURAL HISTORY**

March 25, 1998  
Federal Court of Canada (Trial Division)  
(Wetson J.)

Canadian Patent No. 1,238,277 valid; permanent injunction against Respondents and Interpharm Inc.; Respondents and Interpharm Inc. to deliver up inventory of zidovudine; Respondents ordered to pay damages

March 27, 1998  
Federal Court of Canada (Trial Division)  
(Wetson J.)

Motion for interim stay pending determination of Respondents' application to stay March 25, 1998 order pending appeal on merits dismissed on certain conditions

April 3, 1998  
Federal Court of Canada (Trial Division)  
(Wetson J.)

Motion for interim stay of March 25, 1998 order dismissed; application for stay pending appeal to be heard April 20, 1998; parties to expedite hearing of appeal on merits

April 24, 1998  
Federal Court of Canada (Trial Division)  
(Campbell J.)

Application for stay pending appeal on merits dismissed

July 24, 1998  
Federal Court of Appeal  
(Marceau, Linden and Robertson JJ.A.)

Appeal allowed; order of March 25, 1998 stayed pending disposition of appeal on merits; Applicants to return medicine seized from Respondents

September 29, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26677**            **SYLVIE RENAUD c. LA COMMISSION DES AFFAIRES SOCIALES ET LA SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC** (Qué.)

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

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

### **NATURE DE LA CAUSE**

Droit administratif - Contrôle judiciaire - La Commission des affaires sociales a-t-elle commis des erreurs manifestes et déraisonnables en ignorant un élément de preuve essentiel et en ne tenant pas compte de deux autres décisions contradictoires rendues par des instances administratives différentes qui portaient également sur la question de savoir si la demanderesse cohabitait avec feu Michel Bouvier? - La décision de la Commission des affaires sociales portant sur la requête en révision devrait-elle être cassée en raison d'une apparence de partialité?

### **HISTORIQUE PROCÉDURAL**

Le 16 février 1993 Commission des affaires sociales (Gratton-Amyot et Ricard)	Appel à l'encontre de la décision du Bureau de révision de la SAAQ refusant de considérer la demanderesse comme conjointe rejeté
Le 14 février 1996 Commission des affaires sociales (Leblanc et Cohen)	Requête en révision de la décision du 16 février 1993 rejetée
Le 9 janvier 1997 Cour supérieure du Québec (Léger j.c.s.)	Requête en évocation rejetée
Le 6 avril 1998 Cour d'appel du Québec (Mailhot, Deschamps et Chamberland [dissident] jj.c.a.)	Pourvoi rejeté
Le 28 mai 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**26839** FOUZIA SAEED KHAN AND SAEED KHAN v. FARIDA TIMAKIS (Ont.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

### **NATURE OF THE CASE**

Commercial Law - Contracts - Duress - Procedural Law - Appeal - A party to a series of transactions complains to community and community intervenes to resolve those complaints - Whether complaints and intervention brought duress or undue influence on the Applicants and coerced them to enter into agreements against their wills - Whether one Applicant was the agent of the Respondent - Whether procedures before Court of Appeal denied rights of the Applicants.

### **PROCEDURAL HISTORY**

May 7, 1997

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Ontario Court (General Division) (Hockin J.)

Action dismissed, two related but separate actions  
granted in separate judgments

August 10, 1998  
Court of Appeal for Ontario  
(Finlayson, Goudge and Feldman JJ.A.)

Appeals dismissed

October 7, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26866**            **LOUCAS ANDRITSOPOULOS v. THE ATTORNEY GENERAL OF CANADA** (F.C.A.)(B.C.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Statutes- Statutory Instruments - Administrative Law - Judicial Review - Veteran Appeals Board - Former resistance fighter denied a war veterans allowance because of lack of evidence of war time service - Resistance fighter appealed to the War Veterans Appeal Board - War Veterans Appeal Board received confirmation of his war time service but did not hear the appeal before Parliament amended *The War Veterans Allowance Act*, R.S.C. 1985, c. W-3 by passing *The War Veterans Allowance Act*, S.C. 1992, c.24 - Amendments removed resistance fighters from the category of persons eligible for a war veterans allowance - War Veterans Appeal Board applied unamended version of the Act and declared resistance fighter had met service requirements for eligibility for an allowance - Whether unamended or amended version of *War Veterans Allowance Act* should have been applied - Whether War Veterans Appeal Board should have declared eligibility for a war veterans allowance.

**PROCEDURAL HISTORY**

June 9, 1994  
Federal Court of Canada, Trial Division (Reed J.)

Application for judicial review allowed, decision  
quashed

June 24, 1998  
Federal Court of Appeal  
(Marceau, Linden and Robertson JJ.A.)

Appeal dismissed

September 23, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26873**            **EVAGELOS AGIORITIS, ALSO KNOWN AS VON AGIORITIS v. SOPHIA MAROUDIS,**  
**FORMERLY KNOWN AS SOPHIA AGIORITIS** (Sask.)

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

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Family law - Division of property - Spouse earning interest on loans commencing after date of application for division of property - Whether interest earned was marital property subject to division - Whether awarding a one-half share of earned interest from the commencement of loan until date of payment contravened the provisions governing interest rates on judgment debts in the *Interest Act*, R.S.C. 1970, c. I-18.

**PROCEDURAL HISTORY**

April 16, 1996  
Court of Queen's Bench of Saskatchewan  
(Maurice J.)

Award of \$301,869.47 to Respondent

July 7, 1998  
Court of Appeal for Saskatchewan  
(Vancise, Lane and Jackson JJ.A.)

Appeal dismissed, cross-application to vary granted

September 25, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26678**            **ALEX COUTURE INC. c. MUNICIPALITÉ DE LA VILLE DE CHARNY** (Qué.)

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

Les requêtes pour dépôt de documents additionnels sont accordées et la demande d'autorisation d'appel est rejetée avec dépens.

The applications to file additional documents are granted and the application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit municipal - Évaluation foncière - Droit administratif - Compétence - Contrôle judiciaire - Législation - Interprétation de l'art. 65.(1) de la *Loi sur fiscalité municipale*, L.R.Q., chap. F-2.1 (ci-après la "L.F.M.") - Usine d'équarrissage - Système d'épuration de l'air par biofiltration - L'appareil est-il utilisé à des fins de production industrielle? - Application de l'arrêt *Ciment Québec Inc. c. Corporation municipale de Saint-Basile Village Sud*, [1993] 2 R.C.S. 823 - Compétence spécialisée du Bureau de révision de l'évaluation foncière (le "B.R.E.F.") - Norme de contrôle applicable - Application de l'arrêt *Canada (Directeur des enquêtes et recherches) c. Southam Inc.* [1997] 1 R.C.S. 748.

**HISTORIQUE PROCÉDURAL**

Le 13 avril 1995  
Bureau de révision de l'évaluation foncière du Québec  
(Bergeron, président, et Forgues, membre)

Plainte de la demanderesse accueillie

Le 31 janvier 1996  
Cour du Québec (Lavoie J.C.Q.)

Requête de l'intimée en révision judiciaire rejetée



Le 27 mars 1998  
Cour d'appel du Québec (Brossard et Forget, J.J.C.A., et  
Zerbisias, J.C.A. (*Ad hoc*))

Appel de l'intimée accueilli

Le 26 mai 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**26667**      **KHALID SOMRA, RUTH BOWLBY, EXECUTRIX OF THE ESTATE OF ARTHUR T. BOWLBY, HEATHER HUTT, CARLETON TRAVEL SERVICES LTD. AND MARY SHEFFIELD v. 432080 ONTARIO LIMITED, 157349 CANADA LIMITED, OTTAWA ALGONQUIN TRAVEL CORPORATION, JAMES LOUGH, CLAIRE LOUGH AND STEPHEN LOUGH** (Ont.)

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

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Commercial law - Sale - Valuation of a business for sale - In an agreement providing for calculation by an accountant jointly chosen, what meaning do the words "final and conclusive" have - Whether an accountant operating under the agreement should have been given the same respect and weight as an arbitrator with a privative clause - Whether an agreement requiring an accountant to follow generally accepted accounting principles on a consistent basis with other years must follow statements prepared contrary to generally accepted accounting principles.

**PROCEDURAL HISTORY**

December 13, 1994  
Ontario Court (General Division)  
(Chadwick J.)

Certain Respondents given judgment against certain Applicants; certain Applicants given judgment against Respondents

October 2, 1997  
Court of Appeal for Ontario  
(McMurtry C.J.O., Robins and McKinley J.J.A.)

Appeal allowed in part

April 1, 1998  
Court of Appeal for Ontario  
(McMurtry C.J.O., Robins and McKinley J.J.A.)

Amendment of award as to costs

May 27, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26724**      **PATRICIA JOAN MARIE HILL v. FLORENCE McMILLAN AND HARRISON MARION AS ADMINISTRATORS OF THE ESTATE OF HECTOR MARION** (Man.)

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

The application for leave to appeal is dismissed.

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La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Property law - Estates - Statutes - Interpretation - Applicant claiming to be child of male intestate and claiming to be entitled to his estate - No presumption of paternity applicable - Subsection 20(6) of *The Family Maintenance Act*, R.S.M. 1980, c. F20 creating a bar to declaration of paternity after the death of the alleged father - Whether bar is applicable to applications under *The Intestate Succession Act*, S.M. 1989-90, c. 43 - Whether statutory bar violates section 15 of the *Canadian Charter of Rights and Freedoms*.

**PROCEDURAL HISTORY**

January 29, 1997 Manitoba Queen's Bench (Keyser J.)	Order for trial of an issue
April 29, 1998 Court of Appeal of Manitoba (Twaddle, Helper and Monnin JJ.A.)	Appeal allowed
June 23, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**26853**            **GINO DUPONT c. SA MAJESTÉ LA REINE** (Crim.)(Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

**NATURE DE LA CAUSE**

Droit criminel - *Charte canadienne des droits et libertés* - Preuve - Privilège - Voir-dire - Pertinence et admissibilité en preuve des propos tenus par le demandeur et recueillis par un psychologue relativement aux meurtres de deux enfants - Psychologue ayant le mandat de suivre l'évolution du traitement hormonal du demandeur - La confession du demandeur à la psychologue était-elle libre et volontaire? - Les confidences faites par le détenu à la psychologue en exercice constituent-elles des communications privilégiées inadmissibles en preuve aux termes de la *Charte des droits et libertés* et de la common law? - La preuve dérivée de la divulgation de la déclaration du détenu à la psychologue est-elle admissible en preuve? - La présentation, en chef, d'une preuve de propension criminelle vicie-t-elle l'équité du procès?

**HISTORIQUE PROCÉDURAL**

Le 31 mai 1995 Cour supérieure du Québec, Chambre criminelle (Trotier j.c.Q.)	Verdict: Coupable de diverses accusations de meurtre, enlèvement, séquestration et attentat à la pudeur en regard de deux jeunes enfants
Le 24 juillet 1998 Cour d'appel du Québec (Brossard, Chamberland et Philippon jj.c.a.)	Appel rejeté

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Le 29 septembre 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**26872**            **VILLE DE SAINT-HUBERT c. RONALD BLANCHET ET CLAUDE LAROCHELLE et LE FONDS D'AIDE AUX RECOURS COLLECTIFS** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Recours collectif - Litispendance - Requête de chacun des intimés pour être autorisé à exercer un recours collectif - Requêtes de la demanderesse en irrecevabilité fondées sur la litispendance rejetées - Requêtes de la demanderesse pour permission d'appel rejetées - Requête pour permission d'appel sur des questions similaires dans le dossier *Yolande Hotte c. Servier Canada Inc.*, C.S., no. 500-06-00001-976, accordée - La Cour d'appel du Québec a-t-elle le pouvoir de corriger la situation créée par le fait que deux juges de la Cour d'appel, siégeant seuls, rendent chacun dans deux (2) causes semblables, voire identiques, un jugement contradictoire et ce, à deux (2) jours d'intervalle?

**HISTORIQUE PROCÉDURAL**

Le 24 mars 1998  
Cour supérieure (Mercure J.C.S.)

Requêtes de la demanderesse en irrecevabilité fondées sur la litispendance rejetées

Le 26 juin 1998  
Cour d'appel du Québec (Mailhot J.C.A.)

Requêtes de la demanderesse pour permission d'appel rejetées

Le 13 août 1998  
Cour d'appel du Québec  
(Otis, Robert et Forget, J.C.A.)

Requête de la demanderesse pour sauvegarde de ses droits et pour permission spéciale d'en appeler rejetée

Le 24 septembre 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**26697**            **DR GÉRARD MONFETTE c. HÔTEL-DIEU DE SAINT-JÉRÔME, LE CONSEIL D'ADMINISTRATION DE L'HÔTEL-DIEU DE SAINT-JÉRÔME, LE CONSEIL DES MÉDECINS, DENTISTES ET PHARMACIENS DE L'HÔTEL-DIEU DE SAINT-JÉRÔME, MARCEL R. GAGNON, GAÉTAN RUEL, DENISE LAFOND, RITA P. FORGET, DR LÉON GANI, NICOLE ALLARD, JEAN-PIERRE FORGET, RACHELLE MIOUSSE, DR ANDRÉ SAINT-DENIS, CLAUDE GUIMONT, GERMAIN BEAUSÉJOUR, LISETTE P. GAUTHIER, VIATEUR THIBODEAU, CLAUDE DUCHARME, NORMAND LAURENCE ET GILLES FORTIER** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit administratif - Contrôle judiciaire - Droit des professions - Médecins et chirurgiens - Processus disciplinaire - Y a-t-il eu en l'espèce manquement aux règles de justice naturelle ou aux règles de l'équité procédurale? - La décision du conseil d'administration intimé est-elle manifestement déraisonnable?

**HISTORIQUE PROCÉDURAL**

Le 16 février 1994  
Cour supérieure du Québec  
(Chaput j.c.s.)

Requête en évocation à l'encontre de la recommandation du comité exécutif du Conseil intimé de suspendre les privilèges hospitaliers du demandeur pendant une semaine et à l'encontre de la décision du conseil d'administration de l'hôpital entérinant cette recommandation rejetée

Le 2 avril 1998  
Cour d'appel du Québec  
(Deschamps, Robert et Biron [*ad hoc*] jj.c.a.)

Pourvoi rejeté

Le 1er juin 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**26783**            **RAMEY AYRE - v. - THE NOVA SCOTIA BARRISTERS' SOCIETY (N.S.)**

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**

*Canadian Charter of Rights and Freedoms* - Administrative law - Judicial review - Jurisdiction - Independence of the judiciary - Discrimination - Denial of natural justice and procedural fairness - Reasonable apprehension of bias - Are s.32(13) of the *Barristers and Solicitors Act*, R.S.N.S. 1989, c. 30, and regulation 43A of the *Nova Scotia Barristers Society Regulations* vague and hence null and void - Has the Applicant's *Charter* rights under ss. 1, 7, 11, 12, and 15(1) been violated.

**PROCEDURAL HISTORY**

April 20, 1995  
Supreme Court of Nova Scotia  
(Cacchione J., in chambers)

Applicant's Application *Inter Partes* dismissed out of the Supreme Court of Nova Scotia

May 25, 1995  
Nova Scotia Court of Appeal  
(Hallett J.A., in chambers)

Application for a stay of the Respondent's proceedings against the Applicant on the formal complaint, dismissed

September 13, 1995  
Nova Scotia Court of Appeal  
(Chipman J.A., in chambers)

Application for a stay of the Respondent's proceedings against the Applicant on the formal complaint, dismissed

June 13, 1997 Formal Hearing Panel of the Nova Scotia Barristers' Society (Giovannetti, Farrell, Cooper, Penfound, Baker)	Applicant found guilty of professional misconduct
December 12, 1997 Formal Hearing Panel of the Nova Scotia Barristers' Society (Giovannetti, Farrell, Cooper, Penfound, Baker)	Applicant suspended for minimum of six months and continuing until Respondent received opinion of medical practitioner that Applicant medically and psychologically fit to practice law; Applicant ordered to attend professional training courses
January 15, 1998 Nova Scotia Court of Appeal (Freeman J.A., in chambers)	Appeal set to be heard May 28, 1998 and disposition order imposing sanctions upon the Applicant stayed until then; application for a publication ban dismissed; appeals consolidated
February 4, 1998 Nova Scotia Court of Appeal (Freeman J.A., in chambers)	Order regarding contents of the Appeal Book
June 8, 1998 Nova Scotia Court of Appeal (Hart, Freeman and Roscoe JJ.A.)	Appeal dismissed
August 21, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**26824**      **GRAHAM MacKENZIE AS EXECUTOR OF THE ESTATES OF ANGUS JOSEPH MacKENZIE AND MARIE MacKENZIE AND IN HIS PERSONAL CAPACITY - v. - CAMERON MacKENZIE** (N.S.)

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**

Property law - Wills - Procedural law - Was the Court of Appeal entitled to reassess the facts or the credibility of witnesses - Did the Court of Appeal err in law with respect to the evidence necessary to establish testamentary capacity - Did the Court of Appeal misinterpret the doctrine of undue influence - Specifically, does the burden of proof of undue influence become more or less onerous depending on the testator's relationship with the alleged perpetrator of the undue influence - Can a Court reinstate a will without considering the effect of relevant statutes on it?

**PROCEDURAL HISTORY**

October 10, 1997  
Supreme Court of Nova Scotia (Anderson J.)

Respondent's action dismissed: proof of will dated May 31, 1992 established in solemn form

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June 2, 1998  
Nova Scotia Court of Appeal  
(Freeman, Roscoe and Bateman JJ.A.)

Appeal allowed; will dated May 31, 1992 withdrawn  
from probate and will dated October 9, 1991 established  
in solemn form and ordered admitted to probate

August 31, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26862**            **GARY NESPOLON - v. - JUSTIN ALFORD, JASON ALFORD, JIM ALFORD, KYLE  
BERARD, DAVE SLOBODNICK, ARTHUR PAVAO, MANUEL PAVAO, MARIA PAVAO and  
ESTATE OF KEVIN ARTHUR SNIDER** (Ont.)

CORAM:            Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Torts - Damages - Negligence - Causation - Foreseeability - Standard of care - Duty of care - Remoteness - Motor vehicle - *McEllistrum v. Etches*, [1956] S.C.R. 787 standard of care of a child - Whether the Court of Appeal erred on the issue of foreseeability - Whether the Court of Appeal erred in its appellate role by overturning findings of fact - Whether the Court of Appeal erred on the issue of remoteness - Whether the Court of Appeal erred in considering whether there were any special considerations to take into account in determining whether a claim for nervous shock is compensable.

**PROCEDURAL HISTORY**

April 18, 1995  
Ontario Court of Justice (General Division)  
(Daudlin J.)

Applicant's action for damages allowed as against the  
following Respondents: Justin Alford, Jim Alford, Kyle  
Berard, Estate of Kevin Arthur Snider

June 24, 1998  
Ontario Court of Appeal  
(Abella and McKinlay JJ.A., Brooke J.A.(dissenting))

Respondents' appeals allowed; Applicant's cross-appeal  
dismissed

September 16, 1998  
Supreme Court of Canada

Application for leave to appeal filed

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**26709**            **ELLIS-DON LIMITED - v. - THE ONTARIO LABOUR RELATIONS BOARD AND  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894** (Ont.)

CORAM:            Cory, Major and Binnie JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

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Administrative law - Judicial review - Natural justice - Panel of an administrative tribunal hears grievance and drafts decision but then engages in discussions with full membership of the tribunal that lead to significant changes to the decision - Tribunal refuses to disclose what was discussed by the full membership and refuses documentary disclosure - Whether tribunal discussed questions of fact or discussed questions of policy - Whether tribunal interfered with panel's fact-finding process - Onus of proving interference - Whether the change in the panel's decision was evidence of interference - Whether an adverse inference should have been drawn from the refusal to disclose - Whether any presumption of regularity in the tribunal's process was displaced by the refusal to disclose.

### **PROCEDURAL HISTORY**

December 20, 1995 Ontario Court, Divisional Court (Saunders, Dunnet, Adams JJ.)	Application for judicial review dismissed
April 17, 1998 Court of Appeal for Ontario (Weiler, Moldaver JJ.A., Morden A.C.J.)	Appeal dismissed
June 12, 1998 Supreme Court of Canada	Application for leave to appeal filed

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**26790**            **A.K. - c. - H.S.** (Qué.)

CORAM:        Les juges Cory, Iacobucci et Bastarache

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

The application for leave to appeal is dismissed with costs.

### **NATURE DE LA CAUSE**

Droit familiale - *Code civil* - Droit constitutionnel - Droit international - Interprétation - Divorce - Compétence - Jugement étranger - Reconnaissance et exécution - Jugement de divorce prononcé en Algérie - Préalablement au prononcé du jugement de divorce mais postérieurement à l'action intentée par le demandeur en Algérie, l'intimée intente au Québec des procédures en séparation de corps et en divorce - Rejet par la Cour supérieure du Québec de la requête du demandeur pour obtenir la reconnaissance du jugement de divorce rendu en Algérie - La Cour supérieure conclut que c'est le tribunal canadien qui a juridiction car le demandeur n'a pas résidé en Algérie durant l'année précédant l'introduction de la demande en divorce, déclare inapplicable en matière de divorce l'article 3167 *C.c.Q.*, et conclut que le jugement étranger est incompatible avec l'ordre public tel qu'il est entendu dans les relations internationales (art. 3155, al. 5 *C.c.Q.*) - La Cour d'appel considérant que le moyen fondé sur l'art. 3155, al. 4 *C.c.Q.* doit être retenu et que le juge de première instance a eu raison de rejeter en définitive la requête en reconnaissance du jugement étranger, sans statuer sur le moyen fondé sur l'inapplicabilité en matière de divorce de l'article 3167 *C.c.Q.*, rejette l'appel du demandeur - L'article 3167 *C.c.Q.* est-il constitutionnellement valide et applicable et dans l'affirmative, la Cour d'appel auraient-elles dû reconnaître la compétence du tribunal algérien, état dont les deux parties possèdent la nationalité, pour statuer sur la demande en divorce du demandeur (art. 3155, al. 1 *C.c.Q.*)? - La Cour supérieure a-t-elle été saisie du litige avant le tribunal algérien au sens de l'article 3155, al. 4 *C.c.Q.*? - Les effets du jugement du tribunal algérien sont-ils manifestement incompatibles avec l'ordre public, tel qu'entendu dans les relations internationales (art. 3155, al. 5 *C.c.Q.*)?

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**HISTORIQUE PROCÉDURAL**

Le 28 février 1997  
Cour supérieure du Québec  
(Bénard J.C.S.)

Demande de reconnaissance d'un jugement de divorce étranger rejetée; article 3167 *C.c.Q.* en matière de divorce déclaré inapplicable

Le 6 mai 1998  
Cour d'appel du Québec  
(Michaud, J.C.Q., Mailhot et Forget JJ.C.A.)

Appel rejeté

Le 5 août 1998  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**26447**      **BENNY ABDENBI BARROUK c. BRENDA J. CROWTHER, SYNCRUDE CANADA ET DARREN J. GIBBS, ET LEURS DEUX ASSURANCES: LA COMPAGNIE D'ASSURANCE GUARDIAN DU CANADA POLICE NO. 88-29847 ET LIBERTY MUTUAL INSURANCE GROUP POLICE A.C. 2.271681054007023** (C.A.F.)(Alb.)

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

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

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

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

CORAM:      Cory, Major and Binnie JJ.

The application for reconsideration is dismissed.

La demande de réexamen est rejetée.

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**JANUARY 18, 1999 / LE 18 JANVIER 1999**

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

**Motion for directions**

Her Majesty the Queen in Right of Ontario

v. (26422)

Nesbitt, Burns Inc. et al (Ont.)

GONTHIER J. (orally): We are all of the view that the case is moot as there remains no live controversy between the parties, the principal action giving rise to the third party claim having been settled. We are also of the view that the appeal does not warrant the favourable exercise of our discretion to hear it pursuant to the criteria set forth in *Borowski v. Canada*, [1989] 1 S.C.R. 342.

**Demande pour obtenir des directives**

Leah Price and Robert Houston, Q.C. for the motion

Clare Burns for Nesbitt, Burns

No one appearing for the intervener Attorney General of British Columbia as they take no position with respect to this application.

LE JUGE GONTHIER (oralement): Nous sommes tous d'avis que l'affaire est théorique puisqu'il ne subsiste aucun litige réel entre les parties, l'action principale à l'origine de la procédure de mise en cause ayant été réglée. Nous sommes également d'avis que l'appel ne justifie pas l'exercice favorable de notre pouvoir discrétionnaire d'entendre l'affaire en application des critères énoncés dans *Borowski c. Canada*, [1989] 1 R.C.S. 342.

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4.1.1999

Before / Devant: THE REGISTRAR

**Motion to extend the time to serve and file the book of authorities of an intervener**

**Requête en prorogation du délai imparti pour signifier et déposer le cahier de doctrine et de jurisprudence d'un intervenant**

BY/PAR: Attorney General of Alberta

IN/DANS: Her Majesty the Queen in Right of  
Canada et al

v. (26174)

Angelo Del Zotto et al. (Ont.)

**GRANTED / ACCORDÉE** Time extended to December 15, 1998, *nunc pro tunc*.

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4.1.1999

Before / Devant: CORY J.

**Motion to adduce new evidence**

**Requête visant à produire de nouveaux éléments de preuve**

S.A. Louis Dreyfus & Cie

v. (26843)

Holding Tusculum B.V. (Que.)

**GRANTED / ACCORDÉE**

The applicant seeks to file additional evidence which was not available when the application for leave to appeal was filed. The material consists of a memo of the 13 Nov. 1998 from Philippe Cavalerie to Jacky Musnier and a letter of the 7 Dec. 1998 from the French Consul General in Quebec City to the Director of International Negotiations of the Québec Department of International Relations. These documents express the position of the Government of France that service of legal proceedings by telecopier on a French citizen is not permissible. The position is based upon an interpretation of the Hague Convention which it is said is generally accepted by the international community. The position of the Government of France appears to be contrary to that taken by the Court of Appeal of Quebec.

The applicant states that the documents are not submitted as proof of their contents but solely to illustrate the international importance of the issue raised on the application for leave to appeal.

The respondent very properly refers to the decision in *Ballard Estate v. Ballard Estate*. There a similar application was brought to file further material for the purpose of demonstrating the importance of the issue and I dismissed the application. However in that application the material was primarily an attack on the decision of the Court of Appeal and raised the same arguments which had been presented to the courts below. Further it was observed that the decision was not to be taken as holding that affidavit material will never be helpful to the Court on a leave application.

In my view, the material sought to be filed on this application comes within the exception referred to in *Ballard Estates v. Ballard Estates*. Here an issue which may be of international significance is raised. It may be of some assistance to the panel considering the leave application to know the Government of France was sufficiently concerned about the issue to have its Consul General in Quebec City write to the Government of Quebec.

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In the circumstances presented in this application the application to file further material is granted. The respondent may if it wishes, examine Mr. Dominique Boché regarding the contents of the new material.

The costs of this application are reserved to the panel considering the application for leave to appeal.

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4.1.1999

Before / Devant: THE REGISTRAR

**Motion to extend the time to serve and file the appellant's factum**

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

Her Majesty the Queen

v. (26755)

Elaine Trombley (Ont.)

**GRANTED / ACCORDÉE** Time extended to December 23, 1998.

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5.1.1999

Before / Devant: BASTARACHE J.

**Motion for additional time to present oral argument**

**Requête en prorogation du temps accordé pour la plaidoirie**

L.C. et al

v. (26358)

Brian Joseph Mills (Alta.)

**GRANTED / ACCORDÉE** The motion on behalf of the appellant Attorney General of Alberta for an order permitting them to present a forty-five (45) minute oral argument at the hearing of the appeal is granted.

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5.1.1999

Before / Devant: McLACHLIN J.

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

Kristen French, et al

v. (26529)

The Attorney General of Ontario (Ont.)

**Requête en prorogation du délai de signification et de dépôt de la demande d'autorisation**

**GRANTED / ACCORDÉE** Time extended to January 29, 1999.

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6.1.1999

Before / Devant: BASTARACHE J.

**Motion for extension of time and leave to intervene**

**Requête en prorogation de délai et en autorisation d'intervenir**

BY/PAR: The Attorney General of British Columbia

IN/DANS: Deposit Insurance Corporation of Ontario et al

v. (26422)

Nesbitt, Burns Inc. et al (Ont.)

**GRANTED / ACCORDÉE** The factum is limited to 20 pages to be filed on or before January 12, 1999 and to present oral argument limited to 15 minutes.

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6.1.1999

Before / Devant: BASTARACHE J.

**Motion to file a reply factum on appeal**

**Requête pour le dépôt d'un mémoire en réplique lors de l'appel**

Her Majesty the Queen

v. (26570)

John Biniaris (B.C.)

**GRANTED / ACCORDÉE** The motion for an order permitting the appellant to file a reply factum of 20 pages in length within 3 weeks of this Order is granted.

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6.1.1999

Before / Devant: THE REGISTRAR

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

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

Her Majesty the Queen

v. (26570)

John Biniaris (B.C.)

**GRANTED / ACCORDÉE** Time extended to December 16, 1998, *nunc pro tunc*.

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6.1.99

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Before / Devant: THE REGISTRAR

**Motion to extend the time to serve and file the factum and book of authorities of an intervener**

**Requête en prorogation du délai imparti pour signifier et déposer le mémoire et le cahier de doctrine et de jurisprudence d'un intervenant**

BY/PAR: Attorney General of Manitoba

IN/DANS: L.C. et al

v. (26358)

Brian Joseph Mills (Alta.)

**GRANTED / ACCORDÉE** Time to serve and file the factum extended to December 16, 1998, *nunc pro tunc* and to December 21, 1998 for the book of authorities.

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6.1.1999

Before / Devant: THE REGISTRAR

**Motion to extend the time to serve and file the factum of an intervener**

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

BY/PAR: Canadian Civil Liberties Association

IN/DANS: L.C. et al

v. (26358)

Brian Joseph Mills (Alta.)

**GRANTED / ACCORDÉE** Time extended to December 16, 1998, *nunc pro tunc*.

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11.1.1999

Before / Devant: THE DEPUTY REGISTRAR

**Motion to extend the time to serve and file the book of authorities of an intervener**

**Requête en prorogation du délai imparti pour signifier et déposer le cahier de doctrine et de jurisprudence d'un intervenant**

BY/PAR: Amnesty International

IN/DANS: Minister of Justice

v. (26129)

Glen Sebastian Burns et al (B.C.)

**GRANTED / ACCORDÉE** Time extended to December 8, 1998, *nunc pro tunc*.

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12.1.1999

Before / Devant: GONTHIER J.

**Motion for leave to intervene**

**Requête en autorisation d'intervention**

BY/PAR: Attorney General of Ontario

IN/DANS: Her Majesty the Queen

v. (26535)

Richard Floyd Oickle (N.S.)

**GRANTED / ACCORDÉE** The applicant, the Attorney General of Ontario, 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.

Pursuant to Rule 18(6) the intervener shall pay the respondent any additional disbursements occasioned to the respondent by the intervention.

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12.1.1999

Before / Devant: GONTHIER J.

**Motion for reconsideration of the motion for a stay**

**Requête visant à obtenir un nouvel examen de la demande de suspension**

Batchewana Indian Band et al

v. (25708)

John Corbiere et al (Ont.)

**DISMISSED / REJETÉE** By motion addressed to the Registrar and deferred to the undersigned as judge sitting in chambers, the respondents, John Corbière, et al., apply for a reconsideration of the orders issued herein by the undersigned on November 24, 1998.

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Upon consideration of the material submitted, I find the matters raised therein do not disclose grounds for reconsideration and in particular to depart from the reasons supporting the exercise of discretion in granting a stay of the judgment under appeal of the Federal Court of Appeal dated November 20, 1996 until judgment is rendered in the present appeal. The grounds raised do not evidence a misapprehension by the undersigned of the matters at issue. Notably the material does not address the public interest of the Batchewana Indian Band and its members in the stability of its electoral process.

The motion for reconsideration is accordingly dismissed. No order is made as to costs.

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12.1.1999

Before / Devant: GONTHIER J.

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

**Requête en prorogation du délai pour déposer la demande d'autorisation d'appel**

John Virgus Fulford

v. (26981)

Her Majesty the Queen (B.C.)

**GRANTED / ACCORDÉE** Time extended to November 17, 1998.

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13.1.1999

Before / Devant: THE DEPUTY REGISTRAR

**Motion to extend the time in which to serve and file a response and a reply**

**Requête en prorogation du délai imparti pour signifier et déposer une réponse et une réplique**

Abbott Laboratories, Limited and Abbott Laboratories

v. (27051)

Nu-Pharm Inc. et al (Ont.)

**GRANTED / ACCORDÉE** Time to serve and file the response extended to January 8, 1999, and the reply to January 25, 1999.

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14.1.1999

Before / Devant: BASTARACHE J.

**Motion for extension of time and leave to intervene**

**Requête en prorogation de délai et en autorisation d'intervenir**

BY/PAR: L'Association des juristes  
d'expression française du Manitoba

IN/DANS: Jean-Victor Beaulac

v. (26416)

Her Majesty the Queen (B.C.)

**GRANTED / ACCORDÉE** La requête de l'Association des juristes d'expression française du Manitoba pour obtenir une prorogation du délai et l'autorisant d'intervenir, de produire un mémoire de 20 pages et de présenter une plaidoirie de 15 minutes est accordée. Le mémoire devra être déposé avant le 12 février 1999.

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14.1.1999

Before / Devant: THE DEPUTY REGISTRAR

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

**Requête en prorogation du délai de signification de la réponse de l'intimé**

Gilbert L. Gaudet

v. (26921)

Wayne Barrett et al (N.S.)

**GRANTED / ACCORDÉE** Time extended to January 5, 1999.

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15.1.1999

Before / Devant: MAJOR J.

**Motion for extension of time and leave to intervene**

**Requête en prorogation de délai et en autorisation d'intervenir**

BY/PAR: Canadian Civil Liberties Association

IN/DANS: United Foods and Commercial  
Workers International Union, Local  
1288P

v. (26203)

Allsco Building Products Ltd. et al  
(N.B.)

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**GRANTED / ACCORDÉE** The applicant, Canadian Civil Liberties Association, shall be entitled to serve and file a factum not to exceed 20 pages by January 25, 1999, and to present oral argument not to exceed 15 minutes.

Any party adverse in interest to the intervener may file a reply to the filed intervention by February 10, 1999.

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15.1.1999

Before / Devant: MAJOR J.

**Motion for extension of time and leave to intervene**

**Requête en prorogation de délai et en autorisation d'intervenir**

BY/PAR: Pepsi-Cola Canada Beverages (West) Ltd.

IN/DANS: United Food and Commercial Workers International Union, Local 1288P

v. (26203)

Allsco Building Products Ltd. et al (N.B.)

**GRANTED / ACCORDÉE** The applicant, Pepsi-Cola Canada Beverages (West) Ltd., shall be entitled to serve and file a factum not to exceed 20 pages by January 25, 1999 and to present oral argument not to exceed 15 minutes.

Any party adverse in interest to the intervener may file a reply to the filed intervention by February 10, 1999.

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15.1.1999

Before / Devant: MAJOR J.

**Motion for extension of time and leave to intervene**

**Requête en prorogation de délai et en autorisation d'intervenir**

BY/PAR: Pepsi-Cola Canada Beverages (West) Ltd.

IN/DANS: United Food and Commercial Workers, Local 1518

v. (26209)

K Mart Canada Ltd. et al (B.C.)

**GRANTED / ACCORDÉE** The applicant, Pepsi-Cola Canada Beverages (West) Ltd., shall be entitled to serve and file a factum not to exceed 20 pages by January 25, 1999 and to present oral argument not to exceed 15 minutes.

Any party adverse in interest to the intervener may file a reply to the filed intervention by February 10, 1999.

15.1.1999

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Before / Devant: MAJOR J.

**Motion for extension of time and leave to intervene****Requête en prorogation de délai et en autorisation d'intervenir**

BY/PAR: Canadian Civil Liberties Association

IN/DANS: United Food and Commercial  
Workers, Local 1518

v. (26209)

K Mart Canada Ltd. et al (B.C.)

**GRANTED / ACCORDÉE** The applicant, Canadian Civil Liberties Association, shall be entitled to serve and file a factum not to exceed 20 pages by January 25, 1999 and to present oral argument not to exceed 15 minutes.

Any party adverse in interest to the intervener may file a reply to the filed intervention by February 10, 1999.

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**NOTICE OF APPEAL FILED SINCE  
LAST ISSUE**

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

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21.12.1998

**Kelly Neil Arthurs**

**v. (26800)**

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

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13.1.1999

**City of Nanaimo**

**v. (26786)**

**Rascal Trucking Ltd. (B.C.)**

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15.12.1998

**Anita Endean**

**v. (26679)**

**Her Majesty the Queen in Right of the Province of  
British Columbia et al (B.C.)**

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14.12.1998

**Placements Armand Laflamme Inc.**

**c. (26659)**

**Jules Roy et al (Qué.)**

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18.12.1998

**B59 443 132 Master Corporal Brown, G.C.**

**v. (26990)**

**Her Majesty the Queen (Court Martial Appeal  
Court)**

**AS OF RIGHT**

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NOTICE OF DISCONTINUANCE FILED SINCE  
LAST ISSUE

AVIS DE DÉSISTEMENT DÉPOSÉS DEPUIS  
LA DERNIÈRE PARUTION

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**NOTICE OF DISCONTINUANCE  
FILED SINCE LAST ISSUE**

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

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14.1.1999

**Marcel Lalonde**

**v. (26261)**

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

(appeal)

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**APPEALS HEARD SINCE LAST ISSUE  
AND DISPOSITION**

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

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19.1.1999

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

**L.C. et al**

**v. (26358)**

**Brian Joseph Mills (Crim.)(Alta.)**

Mary A. Marshall and Teresa L. Meadows for the appellant L.C.

James A. Bowron for the appellant Attorney General of Alberta

Dennis Edney and Robert Shaigec for the respondent

Graham M. Garton, Q.C. and Donna Valgardson for the intervener Attorney General of Canada

Susan Chapman and Christine Bartlett-Hughes for the intervener Attorney General for Ontario

Daniel Grégoire and Jacques Gauvin pour l'intervenant Procureur général du Québec

Denise C. Smith for the intervener Attorney General of Nova Scotia

Marva J. Smith, Q.C. for the intervener Attorney General of Manitoba

W.J. Scott Bell for the intervener Attorney General of British Columbia

No one appearing for the intervener Attorney General of P.E.I. - written submission only (Catherine C. Flanagan)

Graeme G. Mitchell, Q.C. for the intervener Attorney General for Saskatchewan

Anne S. Derrick and Peggy Kobly for the Intervener L.E.A.F.

Bruce F. Hughson and Claire M. Klassen for the intervener Child and Adolescent Services Association

Dale Gibson and Ritu Khullar for the intervener Sexual Assault Centre of Edmonton

Aleck H. Trawick, Q.C. and Emi Bossio for the intervener Canadian Mental Health Association

Sheilah Martin, Q.C. for the intervener Alberta Ass. of Sexual Assault Centres

David M. Porter and Danielle T. Miller for the intervener Criminal Lawyers Association (Ontario)

David M. Paciocco for the intervener Canadian Council  
of Criminal Defence Lawyers

Guy Cournoyer pour l'intervenante Ass. Québécoise des  
avocats et avocates

Patricia D.S. Jackson and Sherri A. Pinsler for the  
intervener Canadian Civil Liberties Association

Brian A. Crane, Q.C. for the intervener Canadian  
Psychiatric Association

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

*Canadian Charter of Rights and Freedoms* - Criminal law - Right to a fair trial - Right to make full answer and defence - Right to privacy - When determining whether there has been a breach of the rights of the accused to a fair trial and to make full answer and defence pursuant to ss. 7 and 11(d) of the *Charter*, what is the required approach to recognizing and accommodating all of the *Charter* rights impacted by ss. 278.1 to 278.91 of the *Criminal Code*, specifically (a) the right to privacy protected by both ss. 7 and 8 of the *Charter*, (b) the right to security of the person protected by s. 7 of the *Charter* and (c) the right to equality before and under the law pursuant to ss. 15 and 28 of the *Charter* including the right to be free from discrimination on the basis of gender or physical and mental disability - Whether ss. 278.1 to 278.91 of the *Criminal Code* infringe s. 7 or s. 11(d) of the *Charter* - If so, is the legislation saved by s. 1 of the *Charter*.

**Nature de la cause:**

*Charte canadienne des droits et libertés* – Droit criminel – Droit à un procès équitable – Droit à une défense pleine et entière – Droit à la vie privée – Lorsque l'on décide s'il y a eu violation des droits de l'accusé à un procès équitable et à une défense pleine et entière conformément aux art. 7 et 11d) de la *Charte*, quelle est la démarche requise pour reconnaître et respecter tous les droits garantis par la *Charte*, qui sont touchés par les art. 278.1 à 278.91 du *Code criminel*, en particulier a) le droit à la vie privée garanti par les art. 7 et 8 de la *Charte*, b) le droit à la sécurité de sa personne garanti par l'art. 7 de la *Charte* et c) le droit à l'égalité devant la loi conformément aux art. 15 et 28 de la *Charte*, et notamment le droit de ne pas subir de discrimination fondée sur le sexe ou les déficiences physiques et mentales? – Les articles 278.1 à 278.91 du *Code criminel* violent-t-il l'art. 7 ou l'art. 11d) de la *Charte*? – Le cas échéant, ces dispositions sont-elles sauvegardées par l'article premier de la *Charte*?

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20.1.1999

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

**Her Majesty the Queen in Right of Canada, et al**

**v. (26174)**

**Angelo Del Zotto, et al (Crim.)(Ont.)**

Yvan S. Bloom, Q.C. and Gordon S. Campbell for the appellants

Edward L. Greenspan, Q.C. and David Stratas for the respondent Angelo Del Zotto

Alan D. Gold and Mahmud Jamal for the respondent Herbert B. Noble

Michel Y. Hélie for the intervener Attorney General for Ontario

Monique Rousseau and Gilles Laporte pour l'intervenant Procureur général du Québec

Robert C. Maybank and Christine L. Enns for the intervener Attorney General of Alberta

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

*Canadian Charter of Rights and Freedoms* - Criminal law - Taxation - Search and seizure - Whether s. 231.4 of the *Income Tax Act*, R.S.C. 1952, c. 148 as amended restrict rights guaranteed by ss. 7 and 8 of the *Canadian Charter of Rights and Freedoms* - If so, can these restriction be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

**Nature de la cause:**

*Charte canadienne des droits et libertés* — Droit criminel — Droit fiscal — Fouille, perquisition et saisie — L'article 231.4 de la *Loi de l'impôt sur le revenu*, S.R.C. 1952, ch. 148, et modifications, empiète-t-il sur les droits garantis par les art. 7 et 8 de la *Charte canadienne des droits et libertés*? — Le cas échéant, cet empiètement est-il justifiable dans le cadre d'une société libre et démocratique aux termes de l'article premier de la *Charte canadienne des droits et libertés*?

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**JANUARY 21, 1999 / LE 21 JANVIER 1999**

**26174**            **HER MAJESTY THE QUEEN IN RIGHT OF CANADA, THE MINISTER OF NATIONAL REVENUE AND JOHN EDWARD THOMPSON - v. - ANGELO DEL ZOTTO AND HERBERT B. NOBLE - and - ATTORNEY GENERAL FOR ONTARIO, ATTORNEY GENERAL OF QUEBEC AND ATTORNEY GENERAL OF ALBERTA** (Crim.)(F.C.A.)

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

BY THE COURT: --

The appeal is allowed with costs throughout for the reasons given by Justice Strayer of the Federal Court of Appeal. The judgment of the Court of Appeal is set aside and the trial judgment is restored. The constitutional questions are answered as follows:

1. Does s. 231.4 of the *Income Tax Act*, R.S.C. 1952, c. 148 as amended restrict rights guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*?

The answer is no.

2. If so, can these restrictions be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms*?

Given the answer to the first question, the second question does not arise.

3. Does s. 231.4 of the *Income Tax Act*, R.S.C. 1952, c. 148 as amended restrict the right guaranteed by s. 8 of the *Canadian Charter of Rights and Freedoms*?

The answer is no.

4. If so, can these restrictions be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Given the answer to the third question, the fourth question does not arise.

PAR LA COUR:

Le pourvoi est accueilli avec dépens dans toutes les cours pour les raisons exposées par le juge Strayer de la Cour d'appel fédérale. L'arrêt de la Cour d'appel est annulé et le jugement de première instance est rétabli. Les questions constitutionnelles reçoivent les réponses suivantes:

1. L'article 231.4 de la *Loi de l'impôt sur le revenu*, S.R.C. 1952, ch. 148 et ses modifications, restreint-il des droits garantis par l'art. 7 de la *Charte canadienne des droits et libertés*?

La réponse est négative.

2. Dans l'affirmative, la justification des restrictions en cause peut-elle se démontrer dans le cadre d'une société libre et démocratique, au sens de l'article premier de la *Charte canadienne des droits et libertés*?

Compte tenu de la réponse donnée à la première question, la deuxième question ne se pose pas.



3. L'article 231.4 de la *Loi de l'impôt sur le revenu*, S.R.C. 1952, ch. 148 et ses modifications, restreint-il le droit garanti par l'art. 8 de la *Charte canadienne des droits et libertés*?

La réponse est négative.

4. Dans l'affirmative, la justification des restrictions en cause peut-elle se démontrer dans le cadre d'une société libre et démocratique, au sens de l'article premier de la *Charte canadienne des droits et libertés*?

Compte tenu de la réponse donnée à la troisième question, la quatrième question ne se pose pas.

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JANUARY 19, 1999 / LE 19 JANVIER 1999

**CANADIAN EGG MARKETING AGENCY - v. - PINEVIEW POULTRY PRODUCTS LTD. and FRANK RICHARDSON operating as NORTHERN POULTRY - and - THE COMMISSIONER OF THE NORTHWEST TERRITORIES as represented by THE ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES, THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL OF QUEBEC, THE ATTORNEY GENERAL OF BRITISH COLUMBIA, THE ATTORNEY GENERAL FOR ALBERTA, COUNCIL OF CANADIANS, SIERRA LEGAL DEFENCE FUND SOCIETY, and THE ALBERTA BARLEY COMMISSION (N.W.T.) (25192)**

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

The application for rehearing is dismissed with costs.

La demande d'une nouvelle audition est rejetée avec dépens.

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JANUARY 20, 1999 / LE 20 JANVIER 1999

**EDWIN PEARSON - c. - SA MAJESTÉ LA REINE (Crim.)(Qué.)(24107)**

CORAM: Le Juge en chef et les juges L'Heureux-Dubé, Gonthier,  
Cory, McLachlin, Iacobucci, Major, Bastarache et Binnie

La demande d'une nouvelle audition est rejetée.

The application for rehearing is dismissed.

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## WEEKLY AGENDA

## ORDRE DU JOUR DE LA SEMAINE

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AGENDA for the week beginning January 25, 1999.

ORDRE DU JOUR pour la semaine commençant le 25 janvier 1999.

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<u>Date of Hearing/ Date d'audition</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
1999/01/25	Ville de Chambly c. Fernand Gagnon (Qué.)(26195)
1999/01/26	M & D Farm Limited et al. v. Manitoba Agricultural Credit Corporation (Man.)(26215)
1999/01/29	Sa Majesté la Reine c. Benoît Grégoire (Crim.)(Qué.)(26226)

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### NOTE:

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

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

**26195** *Ville de Chambly v. Fernand Gagnon et al.*

Labour Law — Municipal law — Statutes — Interpretation — Contract — Non-renewal of the five-year fixed term contract of the chief of police of the appellant municipality — Whether there is a “dismissal” within the meaning of section 79 of the *Police Act*, R.S.Q., c. P-13 — Interpretation of the phrase “whatever be the terms of his engagement”

By resolution adopted on June 20, 1989, the municipal council of the appellant City of Chambly authorized the engagement of the respondent Fernand Gagnon as chief of the City police force for a period of five years. On July 1st, 1989, the parties signed an agreement confirming this engagement for a period of five years.

By resolution adopted on May 3, 1994, the appellant municipal council noted that the respondent’s contract was to expire on June 30, 1994, and recommended that it not be renewed.

In accordance with section 98.1 of the *Police Act*, R.S.Q., c. P-13, the respondent, who considered he had been dismissed, appealed from that decision to three judges of the Court of Québec. The appellant filed a motion for the dismissal of the action before the Court of Québec, in which it stated that it did not dismiss the chief of police and that the Court, whose jurisdiction in cases of dismissal is based on section 79 of the *Police Act*, had no jurisdiction to make a determination. The Court of Québec dismissed the appellant’s motion for dismissal and found that the respondent’s dismissal was unjust. It quashed the May 3, 1994 resolution and ordered the reinstatement of the respondent as well as the payment of his salary from the date of the resolution and an indemnity of \$20,000 pursuant to the Act.

The appellant appealed to the Superior Court and applied for a review of the decision dismissing its motion for dismissal of the action. The Superior Court concluded that the appellant had not dismissed the respondent and that in affirming the contrary, the judges had assumed a jurisdiction which they do not have. The Superior Court considered that it was required to exercise its superintending and reforming power. It allowed the appellant’s motion.

The respondent appealed to the Court of Appeal. The Court allowed his appeal, quashed the judgment of the Superior Court and dismissed the application for judicial review. It concluded that section 79 of the *Police Act*, *supra*, is remedial and, more specifically, that the purpose of the phrase “whatever be the terms of his engagement” was to protect the chief of police and to safeguard him or her from political interference by elected officials. The Court found in favour of a liberal interpretation of the provision and of the word dismissal.

Origin of the case:	Quebec
File No.:	26195
Judgment of the Court of Appeal:	June 26, 1997
Counsel:	Jean-Jacques Rainville for the Appellant Hughes La Rue for the Respondent

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**26195** *Ville de Chambly c. Fernand Gagnon et al.*

Droit du travail - Droit municipal - Législation - Interprétation - Contrat - Non-renouvellement d'un contrat à durée déterminée de cinq ans du directeur de police de la municipalité appelante - Y a-t-il " destitution " au sens de l'article 79 de la *Loi de police*, L.R.Q., chap. P-13? - Interprétation de l'expression "quelles que soient les modalités de son engagement"?

Par résolution adoptée le 20 juin 1989, le conseil municipal de l'appelante Ville de Chambly autorise l'engagement de l'intimé Fernand Gagnon à titre de directeur du service de police de la Ville pour une période de cinq ans. Le 1<sup>er</sup> juillet 1989, les parties signent une entente qui confirme cet engagement pour une période de cinq ans.

Par résolution adoptée le 3 mai 1994, le conseil municipal de l'appelante note que le contrat de l'intimé prend fin le 30 juin 1994 et recommande qu'il ne soit pas renouvelé.

Conformément à l'article 98.1 de la *Loi de police*, L.R.Q., chap. P-13, l'intimé, qui s'estime destitué, interjette appel de la décision de l'appelante devant trois juges de la Cour du Québec. Devant la Cour du Québec, l'appelante dépose une requête en irrecevabilité dans laquelle elle affirme qu'elle n'a pas destitué le directeur de police et que la Cour, qui tire sa compétence de l'article 79 de la *Loi de police* pour se prononcer en cas de destitution, est sans compétence pour trancher le litige. La Cour du Québec rejette le moyen d'irrecevabilité de l'appelante et conclut que la destitution est injustifiée. Elle casse la résolution du 3 mai 1994, ordonne la réintégration de l'intimé, le paiement de son salaire depuis la date de la résolution et le paiement d'une indemnité de 20 000\$ que la loi autorise.

L'appelante s'adresse à la Cour supérieure et demande la révision de la décision rejetant son moyen d'irrecevabilité. La Cour supérieure conclut que l'appelante n'a pas destitué l'intimé et que les juges, en affirmant le contraire, se sont arrogé une compétence qu'ils n'ont pas. La Cour supérieure estime devoir exercer son pouvoir de surveillance et de contrôle. Elle accueille la requête de l'appelante.

L'intimé s'adresse à la Cour d'appel. Celle-ci accueille son appel, casse le jugement de la Cour supérieure et rejette la requête en révision judiciaire. Elle conclut que l'article 79 de la *Loi de police*, précitée, est remédiateur et, plus particulièrement, que l'expression "quelles que soient les modalités de son engagement" vise à protéger le directeur de police et à le mettre à l'abri de l'ingérence politique des élus. La Cour conclut à une interprétation large de la disposition et du terme destitution.

Origine:	Québec
N° du greffe:	26195
Arrêt de la Cour d'appel:	Le 26 juin 1997
Avocats:	Jean-Jacques Rainville pour l'appelante Hughes La Rue pour l'intimé

**26215 *M & D Farm Limited, Marcel Robert Desrochers and Darlene Erma Desrochers v. The Manitoba Agricultural Credit Corporation***

Property law - Mortgages - Remedies - Foreclosure - *Farm Debt Review Act*, R.S. 1985, c.25 (2nd Supp.) - Appellants obtaining a stay of proceedings pursuant to *Farm Debt Review Act* - Respondent subsequently obtaining order pursuant to *Family Farm Protection Act*, C.C.S.M., c. 15 for leave to commence proceedings under mortgage - Upon exhaustion of stay, Respondent becoming registered owner of farmlands - Court ruling that leave order and subsequent proceedings a nullity - Farmlands revested in Appellants - Court of Appeal reversing the order and revesting lands in Respondent - Statutes - Interpretation - Legal effect of stay issued under s. 23 of the *Farm Debt Review Act*.

The Respondent held a mortgage against farmland owned by the Appellants which was in arrears. In December of 1993, the Respondent served the Appellants with notice of their application for leave to commence proceedings to enforce the mortgage. The motion was returnable on January 17, 1994 and the order requested was granted. The Appellants did not appear, and the Respondent did not advise the Court that the Appellants had obtained a thirty day stay pursuant to the *Farm Debt Review Act* on January 4, 1994. When the stay and subsequent extensions to the stay were exhausted in May of 1994, the Respondent took steps to realize upon its security.

In August, 1996, the Respondent became the registered owner of the subject land, but the Appellants continued to occupy the land. The Respondent moved for an order for possession, but before that motion proceeded, the Appellants moved to have the January 17, 1994 order and subsequent proceedings declared a nullity. The order was granted, and title to the lands revested in the Appellants, subject to the encumbrances. On appeal, that decision was overturned.

Origin of the case:	Manitoba
File No.:	26215
Judgment of the Court of Appeal:	July 10, 1997
Counsel:	John A. Myers and Ken G. Mandzuik for the Appellant B. Patrick Metcalfe and Robert J. Graham for the Respondent

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**26215** *M & D Farm Limited, Marcel Robert Desrochers et Darlene Erma Desrochers c. Société du crédit agricole du Manitoba*

Droit des biens — Hypothèques — Recours — Forclusion — *Loi sur l'examen de l'endettement agricole*, L.R.C. (1985) (2<sup>e</sup> suppl.), ch. 25 — Les appelants ont obtenu une suspension des recours en vertu de la *Loi sur l'examen de l'endettement agricole* — L'intimée a obtenu par la suite une ordonnance en vertu de la *Loi sur la protection des exploitations agricoles familiales*, C.P.L.M., ch. 15, l'autorisant à engager des procédures en vertu de l'hypothèque — Au terme de la suspension, l'intimée est devenue le propriétaire inscrit des terres agricoles — Décision de la cour selon laquelle l'ordonnance d'autorisation et les procédures ultérieures sont nulles — Les terres agricoles sont réattribuées aux appelants — La Cour d'appel a infirmé l'ordonnance et réattribué les terres agricoles à l'intimée — Lois — Interprétation — Effet juridique de la suspension décernée en vertu de l'art. 23 de la *Loi sur l'examen de l'endettement agricole*.

L'intimée détenait une hypothèque sur une terre agricole possédée par les appelants, qui étaient en défaut de paiement. En décembre 1993, l'intimée a signifié aux appelants un avis de sa demande d'autorisation d'engager des procédures d'exécution de l'hypothèque. La requête était présentable le 17 janvier 1994 et l'ordonnance demandée a été accordée. Les appelants n'ont pas comparu et l'intimée n'a pas informé la cour que les appelants avaient obtenu, le 4 janvier 1994, une suspension de trente jours en vertu de la *Loi sur l'examen de l'endettement agricole*. Lorsque la suspension et les prorogations de la suspension accordées subséquentement sont venues à terme en mai 1994, l'intimée a pris des mesures pour réaliser sa garantie.

En août 1996, l'intimée est devenue le propriétaire inscrit de la terre en cause, mais les appelants ont continué d'occuper la terre. L'intimée a cherché à obtenir par requête une ordonnance de mise en possession, mais avant que cette requête soit entendue, les appelants ont déposée une requête en déclaration de nullité de l'ordonnance décernée le 17 janvier 1994 et des procédures en découlant. L'ordonnance a été décernée, et le titre dans la terre réattribué aux appelants, sous réserve des charges. En appel, cette décision a été infirmée.

Origine:	Manitoba
N° du greffe:	26215
Jugement de la Cour d'appel:	Le 10 juillet 1997
Avocats:	John A. Myers et Ken G. Mandzuik pour les appelants B. Patrick Metcalfe et Robert J. Graham pour l'intimée.

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**26226 Her Majesty the Queen v. Benoit Grégoire**

Criminal Law - Evidence - Statutes - Interpretation - Use of a protected statement - Whether the Quebec Court of Appeal erred in law when it unanimously decided that the Trial Judge had erred in law in interpreting paragraph 672.21(3)(f) of the *Criminal Code* as allowing him to use the Respondent's protected statement against him.

The Respondent was accused of 22 counts related to the commission of various acts of a sexual nature against his young cousin between 1983 and 1990. Informed of his constitutional rights at the police station, he made an incriminating statement, which was written down, in which he admitted the sexual assaults complained of and explained in detail how they occurred. The Respondent was subsequently charged. At the beginning of the proceedings, the judge of the Quebec Court of Appeal directed psychiatrist J. Wolwertz to assess whether the Respondent was fit to stand trial and his capacity for criminal responsibility. The Respondent consented to this order. When confronted with the statement he made to police, the Respondent admitted to Dr. Wolwertz during this assessment that the sexual assaults did in fact take place. The psychiatrist noted this admission in his report. The psychiatrist's report was negative.

At trial, the prosecution sought to have the Respondent's extra-judicial statement admitted as evidence. During a *voir dire*, the prosecution introduced the testimony of police officers who recounted the facts surrounding the taking of the statement. Psychiatrist Lafleur testified for the defence as to the limited ability of the Respondent to understand and communicate in an anxiety-provoking situation. The trial judge concluded that the extra-judicial statement was inadmissible in light of the Respondent's mental deficiency and his doubts about the Respondent's ability to understand the true consequences of his remarks at the time his statement was taken. The trial judge excluded the Respondent's testimony, saying that he was "not very impressed" by his testimony and noting Dr. Wolwertz's psychiatric report stated that the Respondent admitted his guilt to the psychiatrist during an interview. The judge found that the Respondent had invented two scenarios. He found the Respondent guilty. The Court of Appeal allowed the Respondent's appeal and ordered that a new trial be held. In his appeal, the Respondent raises the following question:

1. Did the Court of Appeal err in law when it unanimously decided that the trial judge had erred in law in interpreting paragraph 672.21(3)(f) of the *Criminal Code* as allowing him to use the Respondent's protected statement against him?

Origin of the case:	Quebec Court of Appeal
File No.:	26226
Judgment of the Court of Appeal:	June 27, 1997
Counsel:	Caroline Vallières and Maurice Galarneau for the Appellant Robert Malo for the Respondent

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**26226 Sa Majesté la Reine c. Benoit Grégoire**

Droit criminel - Preuve - Législation - Interprétation - Usage d'une déclaration protégée - La Cour d'appel du Québec a-t-elle erré en droit en décidant à l'unanimité que le juge de première instance a commis une erreur de droit en interprétant l'alinéa 672.21(3)f du *Code criminel* lui permettant d'utiliser contre l'intimé sa déclaration protégée?

L'intimé a été accusé de 22 chefs d'accusation lui reprochant la perpétration de divers actes à caractère sexuel sur son jeune cousin entre 1983 et 1990. Informé de ses droits constitutionnels au poste de police, il a fourni une déclaration incriminante, prise par écrit, dans laquelle il a admis et expliqué en détails le déroulement des agressions sexuelles reprochées. L'intimé a été subséquemment inculpé. Au début des procédures, le juge de la Cour du Québec a mandaté le psychiatre J. Wolwertz afin que ce dernier puisse évaluer l'aptitude de l'intimé à subir son procès et sa capacité d'encourir une responsabilité criminelle. L'intimé a consenti à cette ordonnance. Dans le cadre de cette évaluation, l'intimé a avoué au Dr. Wolwertz, lorsqu'il est confronté à la déclaration faite aux policiers, que les agressions sexuelles ont vraiment eu lieu. Le psychiatre inscrit cette admission dans son rapport. Le rapport du psychiatre était négatif.

Au procès la poursuite a tenté d'introduire en preuve la déclaration extrajudiciaire de l'intimé. Dans le cadre d'un *voir-dire*, la poursuite a produit les témoignages des policiers qui ont relaté les circonstances factuelles entourant la prise de la déclaration. La défense a fait témoigner le psychiatre Lafleur qui a fait état de la capacité limitée de l'intimé de comprendre et de communiquer dans une situation anxieuse. Le juge du procès a conclu à l'inadmissibilité de la déclaration extrajudiciaire vu la faiblesse d'esprit de l'intimé et le doute qu'il entretenait sur sa capacité de comprendre les véritables conséquences de ses propos au moment de la prise de la déclaration. Le juge du procès a écarté le témoignage de l'intimé se disant 'peu épaté' par son témoignage et ayant constaté que le rapport psychiatrique du Dr. Wolwertz faisait état du fait que l'intimé aurait admis sa culpabilité au psychiatre lors d'une entrevue. Le juge a conclu que l'intimé avait inventé deux scénarios. Il a trouvé l'intimé coupable. La Cour d'appel a accueilli le pourvoi de l'intimé et a ordonné la tenue d'un nouveau procès. L'intimé soulève la question suivante dans son appel:

1. La Cour d'appel a-t-elle erré en droit en décidant à l'unanimité que le juge de première instance a commis une erreur de droit en interprétant l'art. 672.21(3)f du *Code criminel* comme lui permettant d'utiliser contre l'intimé sa déclaration protégée?

Origine: Cour d'appel du Québec

No du greffe: 26226

Arrêt de la Cour d'appel: Le 27 juin 1997

Avocats: Caroline Vallières et Maurice Galarneau, procureurs de l'appelante  
Robert Malo, procureur de l'intimée

**DEADLINES: MOTIONS****DÉLAIS: REQUÊTES**

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**BEFORE THE COURT:**

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

**Motion day : January 18, 1999**

Service : December 28, 1998  
Filing : January 04, 1999  
Respondent : January 11, 1999

**Motion day : February 01, 1999**

Service : January 11, 1999  
Filing : January 18, 1999  
Respondent : January 25, 1999

**Motion day : March 01, 1999**

Service : February 08, 1999  
Filing : February 15, 1999  
Respondent : February 22, 1999

**DÉVANT 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 : 18 janvier 1999**

Signification : 28 décembre 1998  
Dépôt : 04 janvier 1999  
Intimé : 11 janvier 1999

**Audience du : 01 février 1999**

Signification : 11 janvier 1999  
Dépôt : 18 janvier 1999  
Intimé : 25 janvier 1999

**Audience du : 01 mars 1999**

Signification : 08 février 1999  
Dépôt : 15 février 1999  
Intimé : 22 février 1999

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## 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.

Veillez 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:



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