

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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Leslie Maunder
Falconer, Macklin

v. (26851)

Her Majesty the Queen (Ont.)
Beverly Brown
Ministry of the A.G. for Ontario

FILING DATE 22.12.1998

Bradley Richard Gibb
Jay Spare
George Bonn Law Office

v. (26962)

Her Majesty the Queen (Sask.)
Richard Quinney
Director of Public Prosecutions

FILING DATE 7.12.1998

Lise Dufour et al.
Marius Ménard
Proulx Ménard Milliard

c. (26986)

Centre hospitalier St-Joseph-de-la-Malbaie (Qué.)
André Joli-Coeur
Joli-Coeur, Lacasse, Lemieux & ass.

DATE DE PRODUCTION 20.11.1998

Jordan Ward et al.
Jordan Ward

v. (26991)

The Government of Saskatchewan (Sask.)
Daniel A. Shapiro, Q.C.
Brayford Shapiro

FILING DATE 11.12.1998

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

Claude Deslauriers
Claude Deslauriers

c. (26993)

Roch Labelle, ès qualité de syndic et al. (Qué.)
Pierre C. Gagnon
Lavery, De Billy

DATE DE PRODUCTION 18.11.1998

The Corporation of the Town of Ajax
Richard J. Charney
Heenan Blaikie

v. (26994)

**National Automobile, Aerospace and
Agricultural Implement Workers Union of
Canada (CAW - Canada) and its Local 222
Charterways Transportation Limited et al. (Ont.)**
Barry D. Chercover
Green & Chercover

FILING DATE 27.11.1998

**Association des entrepreneurs en
intercommunication du Québec et al.**
Yves Turgeon
Byers Casgrain

c. (26995)

**Gilles Gaul, ès qualité de Commissaire de la
construction et al. (Qué.)**

DATE DE PRODUCTION 27.11.1998

Murdoch MacKay et al.
Sidney Green, Q.C.

v. (26997)

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

W.G. McFetridge
Dept. of Justice

FILING DATE 25.11.1998

John Gordon Ferguson

Nigel P. Kent
Clark, Wilson

v. (26998)

**Her Majesty the Queen in right of the Province of
British Columbia (B.C.)**

Richard J. Meyer
Min. of the Attorney General

FILING DATE 30.11.1998

Katherine Isobel McIndoe

Nancy Cameron

v. (26999)

Brendan Charles Cleveland O'Connell (B.C.)

Fred C. Lowther
MacLean Nicol

FILING DATE 27.11.1998

Banque nationale du Canada

Serge Gloutnay
Desjardins Ducharme Stein Monast, s.e.n.c.

c. (27000)

Le sous-ministre du Revenu du Québec (Qué.)

Pierre Séguin
Veillette & Associés

DATE DE PRODUCTION 27.11.1998

Guillaume Kibale
Guillaume Kibale

c. (27001)

**Sa Majesté la Reine du chef de l'Ontario et al.
(Ont.)**

Louise Hurteau
Min. du procureur général de l'Ontario

DATE DE PRODUCTION 30.11.1998

**The Begetikong Anishnabe (also known as the
"Ojibways of Pic River")**

David C. Nahwegahbow
Nahwegahbow, Nadjiwan

v. (27002)

**The Minister of Indian Affairs and Northern
Development, Ron Irwin (F.C.A.)**

Geoffrey S. Lester
Dept. of Justice

FILING DATE 23.11.1998

Le juge Richard Therrien, J.C.Q.

Jean-C. Hébert

c. (27004)

**Le ministre de la Justice et procureur général du
Québec (Qué.)**

Robert Mongeon

DATE DE PRODUCTION 23.11.1998

**La Fraternité des policiers et policières de
Longueuil Inc.**

Serge Gagné
Fédération des policiers du Québec

c. (27005)

Ville de Longueuil et al. (Qué.)

Louis-Philippe Bourgeois
Dunton Rainville senc

DATE DE PRODUCTION 30.11.1998

Pacific National Investments Ltd.

C. Edward Hanman
Cox, Taylor

v. (27006)

**The Corporation of the City of Victoria et al.
(B.C.)**

Guy E. McDannold
Staples, McDannold, Stewart

FILING DATE 1.12.1998

**Fédération des infirmières et infirmiers du Québec
(FIIQ) et als**

Giuseppe Sciortino
Melançon, Marceau, Grenier et Sciortino

c. (27007)

Procureur général du Québec (Qué.)

Jean-François Jobin
Bernard Roy & Assoc.

DATE DE PRODUCTION 4.12.1998

Serge Dionne

Ronald A. Marion
Blackadder, Green, Marion, Halinda and
Wood

v. (27009)

Ethel Kuhlmann (Ont.)

Gerald A. Swaye, Q.C.

FILING DATE 3.12.1998

Albertine et Pierre Bengé et al.

Pierre Bengé

c. (27010)

Hôpital général de Toronto et al. (Ont.)

Eric R. Hoaken
Borden & Elliot

DATE DE PRODUCTION 8.12.1998

Robert Lavigne

Robert Lavigne

v. (27011)

**Human Resources Development (formerly Health
and Welfare Canada) et al. (F.C.A.)**

Raymond Piche
Dept. of Justice

FILING DATE 9.12.1998

Michel Gagné

J.H. Denis Gagnon
Dunton Rainville senc

c. (27012)

Commission municipale du Québec et al. (Qué.)

André Fauteux
Bernard, Roy & Associés

DATE DE PRODUCTION 4.12.1998

Kingsley Lughas

Kingsley Lughas

v. (27014)

**The Manitoba Public Insurance Corporation
(Man.)**

Terry B. Kumka
Manitoba Public Insurance Corporation

FILING DATE 3.12.1998

Tin Wis Resort Ltd.

Jack Woodward
Woodward & Company

v. (27015)

Assessor of Area #05 - Port Alberni (B.C.)

John E.D. Savage
Crease Harman & Company

FILING DATE 7.12.1998

Municipalité de St-Lin et al.

J.H. Denis Gagnon
Dunton Rainville senc

c. (27016)

Procureur général du Québec et al. (Qué.)

Benoît Belleau
Bernard, Roy & Associés

DATE DE PRODUCTION 4.12.1998

Her Majesty the Queen

Clyde R. Bond
A.G. of Canada

v. (27017)

Vera Lynn Dew (Man.)

G. Greg Brodsky, Q.C.
Walsh, Micay and Company

FILING DATE 9.12.1998

Joseph Reed

Joseph Reed

v. (27018)

Her Majesty the Queen (B.C.)

Cal Deedman
Min. of the Attorney General

FILING DATE 20.11.1998

Gemex Developments Corp.

Thomas L. Spraggs
Spraggs & Co. Law Corporation

v. (27019)

Assessor of Area #12 - Coquitlam (B.C.)

John E.D. Savage
Crease, Harman & Company

FILING DATE 23.11.1998

Pegi Horne et al.

Philip H. Horgan

v. (27021)

Bombardier, Inc. et al. (Ont.)

J. Holloway
Baker & McKenzie

FILING DATE 14.12.1998

Le ministère de la santé et des services sociaux

Patrice Claude
Bernard, Roy & Associés

c. (27022)

Centre hospitalier Mont-Sinai et al. (Qué.)

Gilles Poulin
Adessky, Poulin

DATE DE PRODUCTION 14.12.1998

Harbanse Singh Doman

Marvin R.V. Storrow, Q.C.
Blake, Cassels & Graydon

v. (27026)

**The Superintendent of Brokers, now known as the
Executive Director et al. (B.C.)**

Joseph Arvay, Q.C.
Arvay, Finlay

FILING DATE 11.12.1998

Ronald Coughlin

John S. McNeil, Q.C.
Fellowes, McNeil

v. (27027)

William F. Comery et al. (Ont.)

Borden & Elliott

FILING DATE 11.12.1998

Marie-Louis Lessard

Marie-Louis Lessard

c. (27028)

**Société québécoise d'assainissement des eaux
(Qué.)**

Jacques Hurlet
Bélanger Sauv , s.e.n.c.

DATE DE PRODUCTION 15.12.1998

Cudd Pressure Control Inc.

David A. Ward
Davies Ward & Beck

v. (27029)

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

Robert McMechan
Dept. of Justice

FILING DATE 16.12.1998

The Paddon Hughes Development Co. Ltd.

John Bishop Ballem
Ballem MacInnes

v. (27030)

Pancontinental Oil Ltd. et al. (Alta.)

James Rose, Q.C.
Fraser Milner

FILING DATE 17.12.1998

Russell James Bennett

Leonard T. Doust, Q.C.
McCarthy T trault

v. (27031)

**The Superintendent of Brokers, now known as
the Executive Director et al. (B.C.)**

Joseph J. Arvay, Q.C.
Arvay Finlay

FILING DATE 14.12.1998

Astrid Elfreda Flaska

Ian M. Hull
Hull & Hull

v. (27032)

Donald Hindson et al. (Ont.)

Jordan M. Atin

FILING DATE 17.12.1998

Northwood Pulp and Timber Limited

Warren J. A. Mitchell, Q.C.
Thorsteinssons

v. (27033)

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

Roger Taylor
Dept. of Justice

FILING DATE 17.12.1998

Prem Malhotra

Prem Malhotra

v. (27034)

Attorney General of Canada (F.C.A.)(Ont.)

Christopher Parker
Dept. of Justice

FILING DATE 17.12.1998

Errol McHayle

Errol McHayle

v. (27035)

Her Majesty the Queen (Ont.)

Dept. of Justice

FILING DATE 18.12.1998

Dr. Eric Leu et al.

Neil M. Abramson
Tremayne-Lloyd Partners

v. (27037)

Health One Inc. (Ont.)

J. Anthony Caldwell
Fogler, Rubinoff

FILING DATE 21.12.1998

Thomas Wesley Rathwell

David J. Hughes
Barnes, Sammon

v. (27039)

Her Majesty the Queen (Ont.)

Rosella Cornaviera
Min. of the A.G.

FILING DATE 21.12.1998

**Lineal Group Inc., carrying on business under
the name "Samsonite Furniture"**

Bruce C. North, Q.C.
Phillips & Phillips

v. (27040)

The Toronto-Dominion Bank et al. (Ont.)

D. Robb English
Garfinkle, Biderman

FILING DATE 21.12.1998

Muriel Mary Rain

Robert A. Joly

v. (27041)

Her Majesty the Queen (Alta.)

Ken E. Tjosvold
Agent of the A.G.

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Société d'hypothèque Banque Nationale

Serge Gloutnay
Desjardins Ducharme Stein Monast, s.e.n.c.

c. (26988)

Le sous-ministre du Revenu du Québec (Qué.)

Pierre Séguin
Veillette & Associés

DATE DE PRODUCTION 11.12.1998

Elliot C. Wightman et al.

Serge Gaudet
Heenan Blaikie

c. (26989)

Craig Newton Hurford

Brian V. Vardigans
Nova Scotia Legal Aid

v. (27008)

Peter N. Widdrington (Qué.)

Raynold Langlois
Langlois Gaudreau

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Her Majesty the Queen (N.S.)

David Meadows
Dept. of Justice

FILING DATE 4.12.1998

Edmonton Journal, a division of Southam Inc.

Frederick S. Kozak
Reynolds, Mirth, Richards & Farmer

v. (27036)

Attorney General of Alberta (Alta.)

Ken E. Tjosvold
Alberta Justice

FILING DATE 18.12.1998

T.B.-C.

Julius H. Grey
Grey Casgrain

v. (27044)

D.F. et al. (Que.)

Johanne Rhéaume-Lightner
Rhéaume-Lightner & Katz

FILING DATE 23.12.1998

Paul E. Brown

Darrell W. Roberts, Q.C.
Roberts & Griffin

v. (27046)

Alan E. Cole et al. (B.C.)

Richard R. Sugden, Q.C.
Sugden, McFee & Roos

FILING DATE 23.12.1998

DECEMBER 18, 1998 / LE 18 DÉCEMBRE 1998

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

A.K.

c. (26790)

H.S.

- et -

Procureur général du Québec et Procureur général du Canada (Qué.)

NATURE DE LA CAUSE

Droit familial - *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.*)?

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

DECEMBER 21, 1998 / LE 21 DÉCEMBRE 1998

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

A.L.B.

v. (26879)

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

NATURE OF THE CASE

Criminal law - Reverse onus - Whether the Court of Appeal erred by applying a reverse onus to s. 351(1) of the *Criminal Code* (possession of break-in instruments) - Whether the Court of Appeal erred in allowing the Crown to amend the information on appeal.

PROCEDURAL HISTORY

January 13, 1998 Provincial Court of British Columbia (Davis P.C.J.)	Conviction: possession of break-in instruments
August 6, 1998 Court of Appeal for British Columbia (Goldie, Prowse and Huddart JJ.A.)	Appeal dismissed
September 28, 1998 Supreme Court of Canada	Application for leave to appeal filed

Ryan Jacob

v. (26885)

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

NATURE OF THE CASE

Criminal law - Whether the trial judge erred in his charge to the jury on reasonable doubt - Whether the Court of Appeal erred in failing to hold that s. 651(3) of the *Criminal Code* (order of closing addresses) is of no force or effect - Whether the Applicant should have been entitled to challenge potential jurors for racial bias.

PROCEDURAL HISTORY

May 6, 1994 Supreme Court of British Columbia (Meredith J.)	Conviction: second degree murder
October 16, 1997 Court of Appeal of British Columbia (Goldie, Huddart and Proudfoot JJ.A.)	Appeal dismissed
September 29, 1998 Supreme Court of Canada	Application for leave to appeal filed
September 30, 1998	Motion for the extension of time filed

Supreme Court of Canada

William D. Hulme

v. (26915)

The Cadillac Fairview Corporation Limited (Ont.)

NATURE OF THE CASE

Labour law - Master and servant - Constructive dismissal - Whether, on the facts of this case, the Applicant was constructively dismissed - Whether the trial judge made palpable and overriding errors which affected his assessment of the facts on critical issues.

PROCEDURAL HISTORY

December 2, 1993 Ontario Court (General Division) (Montgomery J.)	Applicant's action dismissed
August 12, 1998 Court of Appeal for Ontario (Weiler, Rosenberg and Goudge JJ.A.)	Appeal dismissed
October 13, 1998 Supreme Court of Canada	Application for leave to appeal filed

**Lorrie Tsaoussis, by her Litigation Guardian, The Children's Lawyer,
Carol Metcalf personally, and Angela Tsaoussis, by her
Litigation Guardian, Carol Metcalf**

v. (26945)

Juanita M. Baetz (Ont.)

AND BETWEEN

**Lorrie Tsaoussis, by her
Litigation Guardian, Carol Metcalf**

v. (26945)

Juanita M. Baetz (Ont.)

NATURE OF THE CASE

Torts - Damages - Motor Vehicles - Procedural law - Civil Procedure - Court approved settlement of minor's claim - Whether the Court of Appeal erred regarding the test for setting aside court approved settlement - Whether there are conflicting appellate authorities - Whether the Court of Appeal erred regarding the *parens patriae* doctrine - Whether the Court of Appeal erred regarding the doctrine of reasonable discoverability.

PROCEDURAL HISTORY

February 26, 1997
Ontario Court of Justice (General Division)
(Leitch J.)

Applicants' motion for an order setting aside the order of Scott J. approving the settlement granted; leave granted to proceed with 1994 action; Respondent's cross-motion for summary judgment dismissed

September 2, 1998
Court of Appeal for Ontario
(Abella, Charron, and Doherty JJ.A.)

Respondent's appeal allowed: Respondent's motion for summary judgment granted, 1994 action dismissed, order of Leitch J. set aside with costs

October 29, 1998
Supreme Court of Canada

Application for leave to appeal filed

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

Neil Knight & PowerRich Corporation

v. (26859)

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

NATURE OF THE CASE

Statutes - Interpretation - Environmental law - Whether the Applicants are entitled to rely on the statutory revision of the French definition of "fertilizer" in s. 2 of the *Fertilizers Act*, R.S.C., 1985, c. F-10 in defence of charges of unlawfully selling fertilizer

PROCEDURAL HISTORY

November 1, 1995
Provincial Court of Manitoba
(Guy J.)

Conviction for unlawfully selling a fertilizer contrary to section 3(c) of the *Fertilizers Act*, R.S.C., 1985, c. F-10

September 18, 1997
Court of Queen's Bench of Manitoba (Carr J.)

Appeal against conviction dismissed

January 26, 1998
Court of Appeal of Manitoba
(Philp J.A., in chambers)

Application for leave to appeal granted

June 26, 1998
Court of Appeal of Manitoba
(Scott C.J., Huband and Monnin JJ.A.)

Appeal against conviction dismissed

September 16, 1998
Supreme Court of Canada

Application for leave to appeal filed

Michael Sean Foote

v. (26895)

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

NATURE OF THE CASE

Charter of Rights and Freedoms - Criminal law - Whether s. 651(3) of the *Criminal Code*, which requires that the Crown address the jury last where an accused has called a witness or witnesses, violates s. 7 of the *Charter of Rights and Freedoms*.

PROCEDURAL HISTORY

February 20, 1996
Supreme Court of British Columbia (Blair J.)

Conviction: second degree murder

April 7, 1998
Court of Appeal for British Columbia
(Macfarlane, Esson and Southin JJ.A.)

Appeal against conviction dismissed

September 29, 1998
Supreme Court of Canada

Application for leave to appeal filed

Wyeth-Ayerst Canada Inc.
(Aparavant Ayerst McKenna & Harrison Ltd.,
Avis de changement de qualité déposé en Cour d'appel du Québec le 17 octobre 1995)
American Home Products Corporation

c. (26739)

Dr. Romano Deghenghi (Qué.)

NATURE DE LA CAUSE

Droit du travail - Employeur et employé - Contrat - Interprétation - Congédiement - Programme d'intéressement des cadres - Clause de non-concurrence - Ordre public - Liberté contractuelle - La Cour d'appel du Québec a-t-elle commis une erreur en concluant que la clause litigieuse du programme d'intéressement des cadres était une clause de non-concurrence contraire à l'ordre public, illégale et de nul effet?

HISTORIQUE PROCÉDURAL

Le 12 août 1987 Cour supérieure du Québec (Kennedy J.C.S.)	Action en dommages pour congédiement illégal rejeté
Le 24 avril 1998 Cour d'appel du Québec (Mailhot, Deschamps et Chamberland, J.J.C.A.)	Appel accueilli
Le 22 juin 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Shannon Sullivan et Maureen Sullivan

c. (26771)

Camp Carowanis Inc. (Qué.)

NATURE DE LA CAUSE

Responsabilité civile - Négligence - Preuve - Enfant de 14 ans devenue quadraplégique à la suite d'un plongeon effectué lors de son entrée dans un lac - La Cour d'appel a-t-elle erré en établissant un nouveau standard en matière de sécurité aquatique? - La Cour d'appel a-t-elle erré en ne corrigeant pas les erreurs manifestes commises par le premier juge dans son appréciation de la preuve? - Portée d'une clause de non-responsabilité contenue dans les formules du Camp - Date à laquelle les intérêts et l'indemnité additionnelle deviennent payables - La mère de l'enfant peut-elle réclamer des dommages moraux?

HISTORIQUE PROCÉDURAL

Le 25 février 1997 Cour supérieure du Québec (Trudeau j.c.s.)	Action en dommages-intérêts rejetée
Le 4 mai 1998 Cour d'appel du Québec (Beauregard, Gendreau et Baudouin j.j.c.a.)	Appel rejeté
Le 31 juillet 1998 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Rene Lin and Ingrid S.M. Lin

v. (26827)

The Toronto-Dominion Bank (Ont.)

NATURE OF THE CASE

Procedural Law - Courts - Civil Procedure - Res Judicata - Banks and Banking - Personal Guarantees of loans - Whether judgments rendered by courts in Taiwan in an action on a promissory note and a personal guarantee rendered matter brought before the courts of Ontario res judicata - Whether courts of Ontario had jurisdiction to conduct trial - Whether the Court of Appeal ignored evidence that the claim would have been defeated in the courts of Taiwan.

PROCEDURAL HISTORY

October 8, 1993 Ontario Court of Justice (General Division) (Leitch J.)	Respondent granted judgment against the Applicants for \$136,876.35
June 9, 1998 Court of Appeal for Ontario (Charron, Rosenberg and Goudge JJ.A.)	Appeal dismissed
September 4, 1998 Supreme Court of Canada	Application for leave to appeal filed

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

Chamkaur Kainth

v. (26832)

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

NATURE OF THE CASE

Taxation - Deduction of rental losses - Whether expenses incurred in renting property were deductible - Whether expenses were incurred with a reasonable expectation of profit - Whether the Federal Court of Appeal erred in dismissing the application for judicial review of the decision of the Tax Court of Canada - *Income Tax Act*, R.S.C. 1952, c. 148, as amended.

PROCEDURAL HISTORY

May 30, 1997 Tax Court of Canada (Rip J.T.C.C.)	Appeals by Applicant from assessments made under the <i>Income Tax Act</i> for the 1991 and 1992 taxation years dismissed; appeals from the assessment for the 1993 and 1994 taxation years allowed in part and assessments referred back to the Minister of National Revenue for reconsideration and reassessment
June 3, 1998 Federal Court of Appeal (Strayer, Robertson and McDonald JJ.A.)	Application by Applicant for judicial review dismissed
September 3, 1998 Supreme Court of Canada	Application for leave to appeal filed

Daniel Equizi

v. (26907)

Algoma Steel Inc. (Ont.)

NATURE OF THE CASE

Procedural law - Civil Procedure - Whether the motions judge erred in striking out the statement of claim for disclosing no reasonable cause of action.

PROCEDURAL HISTORY

April 15, 1996 Ontario Court of Justice (General Division) (Trainer J.)	Order striking out the statement of claim
July 2, 1998 Court of Appeal for Ontario (Morden A.C.J.O. and McKinlay and Abella JJ.A.)	Appeal dismissed with costs; motion dismissed without costs
October 2, 1998 Supreme Court of Canada	Application for leave to appeal filed

Don Bodkin Leasing Limited

v. (26791)

The Toronto-Dominion Bank (Ont.)

NATURE OF THE CASE

Commercial Law - Banks/banking operations - Contracts - Forged cheques and fraudulent payment directions - Verification of account agreement requires examination of monthly bank statement and cancelled cheques to give notice of errors or objections within thirty days - Rules of construction applicable to verification clause - Whether claims for money had and received or claims for negligence covered by clause - Whether conduct of parties altered obligations - Whether verification agreement should have been construed strictly - Whether bank released from liability for independent torts if verification agreement only refers to claims in respect of the items recorded in bank statements - Whether Court of Appeal accorded proper deference to material findings of fact- Whether appellate decisions conflict

PROCEDURAL HISTORY

July 22, 1993 Ontario Court of Justice (General Division) (Ewaschuk J.)	Damages awarded
May 29, 1998 Court of Appeal for Ontario (Krever, Labrosse and Rosenberg JJ.A.)	Appeal dismissed
August 26, 1998 Supreme Court of Canada	Application for leave to appeal filed

September 24, 1998
Supreme Court of Canada

Application for leave to cross-appeal filed

Ural Direk

v. (26836)

Anthony Dixon, Cardinal Car and Truck Rental Inc., 458132 Ontario Limited, carrying on business as Dave Wood Mazda and Dave Wood Mazda Ltd. (Ont.)

NATURE OF THE CASE

Civil Procedure - Evidence - Charter - Use of an interpreter to understand and effectively participate in a trial - Right of a party to sit at the counsel table during the trial to instruct counsel - Whether amendments to a statement of claim were wrongfully prevented - Whether a party was improperly prevented from referring to notes when giving testimony - Whether evidence on the effect of an accident on marital and family relationships was improperly suppressed - *Charter* rights to an interpreter and equal benefits of the law.

PROCEDURAL HISTORY

December 15, 1995
Ontario Court (General Division) (Somers J.)

Damages of \$34,984.00 awarded

July 9, 1998
Court of Appeal for Ontario
(McMurtry C.J.O., Osborne and Abella JJ.A.)

Appeal dismissed

September 3, 1998
Supreme Court of Canada

Application for leave to appeal filed

Douglas A. Woodward

v. (26865)

Stelco Inc. (Ont.)

NATURE OF THE CASE

Commercial law - Contract - Employment - Whether Court of Appeal erred in law in upholding the trial judge's decision that a non-competition covenant contained in a retirement benefits contract was legally enforceable.

PROCEDURAL HISTORY

April 1, 1996
Ontario Court of Justice (General Division)
(Stayshyn J.)

Action dismissed

June 24, 1998
Court of Appeal for Ontario
(Morden A.C.J.O. and Brooke and Charron JJ.A.)

Appeal dismissed with costs

APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST ISSUE

DEMANDES SOUMISES À LA COUR DEPUIS
LA DERNIÈRE PARUTION

September 21, 1998
Supreme Court of Canada

Application for leave to appeal filed

JANUARY 7, 1999 / LE 7 JANVIER 1999

26788 **ERIN DANCER HOLDING CORP., AS TRUSTEE FOR ERIN DANCER HOLDINGS JOINT VENTURE, A CO-TENANCY, KENLEY ESTATES INC. AS TRUSTEE FOR KENLEY ESTATES JOINT VENTURE, A CO-TENANCY, WILDFUR INVESTMENTS INC. AS TRUSTEE FOR BAYVIEW HILL PHASE II CO-TENANCY, A CO-TENANCY, CUPOLA PROPERTIES LTD., A CO-TENANCY, KINGSGLEN DEVELOPMENTS INC. AS TRUSTEE FOR DEVELOPMENTS JOINT VENTURE, A CO-TENANCY, AND AVONGREEN ESTATES INC. AS TRUSTEE FOR AVONGREEN ESTATES JOINT VENTURE, A CO-TENANCY - v. - THE CORPORATION OF THE TOWN OF RICHMOND HILL AND THE CHIEF BUILDING OFFICIAL FOR THE CORPORATION OF THE TOWN OF RICHMOND HILL** (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

Statutes - Interpretation - Interpretation of a repealed by-law provision that allowed partial refunds of building permit fees if actual costs of construction proved to be less than the prescribed values used to assess fees - Whether the words "if the applicant disagrees with such prescribed value" and "prescribed value" referred to only proposed buildings and not completed buildings - Whether the Court of Appeal erred in interpreting the by-law such that builders had to have provided notices of objection to prescribed values when paying their permit fees in order to have retained their rights to reimbursements after construction.

PROCEDURAL HISTORY

March 22, 1996 Application for judicial review granted
Ontario Court (General Division), Divisional Court
McRae, Howden and MacPherson JJ.

May 15, 1998 Appeal allowed, application for judicial review
Court of Appeal for Ontario dismissed, cross-appeal dismissed
Doherty, Weiler and Goudge JJ.A.

August 13, 1998 Application for leave to appeal filed
Supreme Court of Canada

26754 **MICHAEL KHANNA - v. - HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Whether the Court of Appeal erred in holding that evidence with respect to the defence of self defence was inadmissible - Whether the Court of Appeal erred in holding that it was not necessary for the trial judge to have reviewed the defence evidence in his charge to the jury - Whether the Court of Appeal erred in holding that the assault conviction was not unreasonable - Whether the Court of Appeal erred in holding that a stay of proceedings was not warranted.

PROCEDURAL HISTORY

April 30, 1996 Ontario Court (General Division) (Locke J.)	Motion to stay proceedings dismissed
October 29, 1996 Ontario Court (General Division) (Locke J.)	Conviction: assault
May 28, 1998 Court of Appeal for Ontario (Krever, Osborne and Doherty JJ.A.)	Conviction appeal dismissed; sentence appeal allowed; absolute discharge substituted
July 23, 1998 Supreme Court of Canada	Application for leave to appeal filed

26744 **MANAC INC. CORP. - v. - HER MAJESTY THE QUEEN** (F.C.A.)(Que.)

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

Taxation - Statutes - Interpretation - Meaning of “similar properties” under s. 111(5)(a)(ii) of the *Income Tax Act*, R.S.C. 1985, c. 2 (5th Suppl.) - Does the integration of the activities of a manufacturer and one of its suppliers necessarily result, for tax purposes, in a business different from that of the supplier - For the purposes of s. 111(5)(a)(ii), are the particular panels used in the manufacturing of trailers properties “similar” either to the trailers, because of their common functionality, or to the other types of panels manufactured by the Applicant, which are also employed in the manufacturing of trailers - Is s. 111(5)(a)(ii) rendered inoperable where a corporation, which develops and sells panels used strictly in the manufacturing of trailers, is amalgamated with a corporation which develops and sells trailers and continues to carry on precisely the same development activity, but with no internal notional “sale” of the panels - What meaning should be given to the expression “substantially all” the income in s. 111(5)(a)(ii).

PROCEDURAL HISTORY

November 30, 1995 Tax Court of Canada (St-Onge J.T.C.C.)	Appeals from assessments dismissed
May 1, 1998 Federal Court of Appeal (Denault, Décary and Létourneau JJ.A.)	Appeal dismissed
June 30, 1998 Supreme Court of Canada	Application for leave to appeal filed

26792 **STEPHEN MICHAEL STARK - v. - HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

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

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Right to counsel - Whether the Court of Appeal erred in ruling admissible the Applicant's videotaped statement to police - Whether the right to counsel is limited to an initial consultation with duty counsel even where duty counsel also advises a co-accused - Evidence - Fresh evidence - Whether the Court of Appeal erred in denying the Applicant's motion to adduce fresh evidence - Whether the *actus reus* of the offence coincided with the *mens rea* - *R. v. Cooper*, [1993] 1 S.C.R. 146.

PROCEDURAL HISTORY

March 2, 1995 Supreme Court of British Columbia (Lander J.)	Conviction: second degree murder
March 13, 1998 Court of Appeal for British Columbia (Ryan, Braidwood and Hall JJ.A.)	Appeal dismissed
August 17, 1998 Supreme Court of Canada	Application for leave to appeal and motion for the extension of time filed

26622 **NARESH KAUSHAL - v. - HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: Cory, Major and Binnie JJ.

The motion 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 trial judge was required to give a limiting instruction to the jury that although they had heard evidence of numerous assaults spanning an eighteen month period, the indictment alleged only a single assault and consequently, they were required to be unanimous in their verdict as to which of the numerous assaults was proven beyond reasonable doubt - Whether "single transaction" rule obviates the need for any limiting instruction - Whether Court of Appeal erred in concluding that the evidence of numerous assaults which occurred over an eighteen month period constituted a "single transaction" - Whether the Court of Appeal erred in concluding that Crown was entitled to adduce evidence of a witness's prior inconsistent statements and prior consistent statements in examination in chief for the purpose of bolstering the credibility of the witness and undermining anticipated cross-examination of defence.

PROCEDURAL HISTORY

September 13, 1996
Ontario Court of Justice (General Division) (Dunn J.)

Conviction: assault

April 3, 1998
Court of Appeal for Ontario
(McMurtry C.J., Robins and Goudge JJ.A.)

Appeal against conviction dismissed

September 9, 1998
Supreme Court of Canada

Application for leave to appeal and for extension of time
filed

26793

TRENGROVE DEVELOPMENTS INC. (94-2663(GST)G), ASTRA-BLOVE BUILDING GROUP INC. (94-2633(GST)G), ASTRA-MAR INVESTMENTS INC. (94-2634(GST)G), ATTERIDGE CONSTRUCTION LTD. (94-2635(GST)G), BAYFIELD BUILDING CORPORATION (94-2637(GST)G), BLAIRWOOD VALLEY HOMES INC. (94-2638(GST)G), BRADWICK DEVELOPMENTS LTD. (94-2639(GST)G), BRYDONVIEW ESTATES INC. (94-2640(GST)G), CLAIRIDGE BUILDING CORPORATION (94-2641(GST)G), CORAL ACRES ESTATES INC. (94-2642(GST)G), DUNDENE FOREST DEVELOPMENTS INC. (94-2643(GST)G), EATONWOOD ESTATES INC. (94-2644(GST)G), ELDERCREST ESTATES INC. (94-2645(GST)G), ERIN DANCER HOLDING CORP. (94-2646(GST)G), FIELDPORT ESTATES INC. (94-2647(GST)G), FLORAL SHIRT INVESTMENTS CORPORATION (94-2648(GST)G), HOME-OAK INVESTMENTS INC. (94-2649(GST)G), HOME SPORT INC. (94-2650(GST)G), KINGSGLEN DEVELOPMENTS INC. (94-2651(GST)G), MARLIN-WATSON HOME CORP. (94-2652(GST)G), PEAKMOUNT DEVELOPMENTS LTD. (94-2659(GST)G), PRINCESTAR HOMES LTD. (94-2660(GST)G), RAVENCLIFF ESTATES INC. (94-2661(GST)G), SHURPHIL HOLDINGS CORP. (94-2662(GST)G), SIMONGATE ESTATES INC. (94-2667(GST)G), SPICTAN HOLDINGS INC. (94-2666(GST)G), SWAN VALLEY DEVELOPMENTS INC. (94-2665(GST)G), TWELVE-JAN INVESTMENTS INC. (94-2670(GST)G), TWO STEP HOLDINGS INC. (94-2669(GST)G), AND UNIDENTON HOLDING CORP. (94-2668(GST)G) - v. - HER MAJESTY THE QUEEN (F.C.A.)(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

Taxation - Statutes - Interpretation - Whether the value of the Goods and Services Tax Rebate or the Federal Sales Tax New Housing Rebate that is assigned by the purchaser of a newly constructed home to the builder constitutes part of the builder's total consideration for the sale of the home and is subject to GST - Whether the Tax Court of Canada erred in law by applying a doctrine of "more rigorous scrutiny of taxpayer activities" on the basis of a purposive analysis of the relevant fiscal legislation - Sections 121, 154 and 254 of the *Excise Tax Act*, R.S.C. 1985, c. E-15, Part IX, as amended.

PROCEDURAL HISTORY

May 22, 1996
Tax Court of Canada (Rip J.T.C.C.)

Applicants' appeals from assessment made under Part IX of the *Excise Tax Act* dismissed

May 21, 1998
Federal Court of Appeal
(Strayer, Linden and Robertson JJ.A.)

Appeal dismissed

August 18, 1998
Supreme Court of Canada

Application for leave to appeal filed

26956 **EDWARD CHARLES RICHARDSON a.k.a. EDWARD CHUM RICHARDSON - v. - JUDITH RICHARDSON a.k.a. JUDITH VELAZQUEZ DE RICHARDSON** (B.C.)

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

Family law - Divorce - Division of property - Maintenance - Family assets - Distribution of family assets - *Family Relations Act*, R.S.B.C. 1996, Chapter 128, Part V - *Divorce Act*, R.S.C. 1985, c. 3 - Whether the lower courts disposed of the case properly?

PROCEDURAL HISTORY

September 12, 1997
Supreme Court of British Columbia (Thackray J.)

Divorce granted; distribution of family assets determined and lump sum maintenance awarded

September 23, 1998
Court of Appeal for British Columbia
(Proudfoot, Finch, Ryan JJ.A.)

Appeal dismissed; Applicant's application to admit fresh evidence dismissed

October 14, 1998
Supreme Court of Canada

Application for leave to appeal filed

26816 **DR. KEITH MONDESIR - v. - MANITOBA ASSOCIATION OF OPTOMETRISTS** (Man.)

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

Administrative law - Investigation into professional misconduct of an optometrist - Reasonable apprehension of bias concerning member of the complaints committee - Whether the existence of a reasonable apprehension of bias at the investigative stage of the administrative process warrants the granting of a prohibition order preventing the complaint from proceeding to a second-stage discipline committee for hearing.

PROCEDURAL HISTORY

January 27, 1997
Court of Queen's Bench of Manitoba
(Schulman J.)

Order prohibiting the Respondent's discipline committee
from proceeding with a hearing of the complaint

July 6, 1998
Court of Appeal of Manitoba
(Philp, Twaddle and Helper JJ.A.)

Appeal allowed and order of prohibition set aside

August 28, 1998
Supreme Court of Canada

Application for leave to appeal filed

26906 **ISABELLE RIJNTJES - v. - WORKERS' COMPENSATION BOARD OF NOVA SCOTIA**
(N.S.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Labour law - Workers' Compensation - Administrative law - Judicial review - Standard of review - Jurisdiction - Statutes - Interpretation - *Workers' Compensation Act*, R.S.N.S. 1989, c. 508 (the former *Act*) - *Workers' Compensation Act*, R.S.N.S. 1994-95, c. 10 (the current *Act*) - Whether the Court of Appeal erred in its interpretation and application of s. 24 of the former *Act* - Whether the Court of Appeal erred by failing to find that s. 24 of the former *Act* limits the jurisdiction of the WCAT - Whether the Court of Appeal erred regarding the standard of review.

PROCEDURAL HISTORY

October 22, 1997
Nova Scotia Workers' Compensation Appeals Tribunal
(Knox, Appeal Commissioner)

Applicant's appeal from a decision of a Hearing Officer
determining that the Applicant's injury was not a
reoccurrence of her compensable injury

July 9, 1998
Nova Scotia Court of Appeal
(Flinn, Hart and Hallett JJ.A.)

Appeal dismissed

September 29, 1998
Supreme Court of Canada

Application for leave to appeal filed

26845 **JOHN R. McCOLL - v. - THE CORPORATION OF THE TOWN OF GRAVENHURST** (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

Administrative law - Judicial review - Applicant dismissed as chief administrative officer and clerk of Respondent town after a hearing - Replacement hired - Hearing declared invalid - Matter remitted to Respondent town for new hearing - New hearing held - Whether a statutory body required to hold a hearing prior to the dismissal of a public officer can lawfully dismiss the individual, hire a replacement, and then hold a hearing to consider whether the individual ought to be re-hired - Whether the minimal standard for bias set out in *Old St. Boniface Residents Association Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170 and *Save Richmond Farmland Society v. Richmond (Township)*, [1990] 3 S.C.R. 1213 is the wrong standard to apply in that it cannot be reconciled with the “high standard of justice” demanded by this Court when the right to continue one’s professional employment is at stake, as set out in *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105 and *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653.

PROCEDURAL HISTORY

October 1, 1993 Ontario Court (Divisional Court) (Hartt, Southey and Smith JJ.)	Application for judicial review by Applicant dismissed
June 15, 1998 Court of Appeal for Ontario (McMurtry C.J.O., Doherty and Goudge JJ.A.)	Appeal dismissed
September 14, 1998 Supreme Court of Canada	Application for leave to appeal filed

26614 **HER MAJESTY THE QUEEN - v. - ELIZABETH ROBERTSON** (Crim.)(Nfld.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Procedure - Sentencing - Whether the Court of Appeal erred in holding that two previous convictions against the Respondent entered on the same day should be counted as one conviction for the purposes of imposing a severer sentence - Coke principle - *R. v. Skolnick*, [1982] 2 S.C.R. 47.

PROCEDURAL HISTORY

June 6, 1995 Provincial Court of Newfoundland (Baker P.C.J.)	Conviction: refusal to provide a breath sample; Sentence: sixty days imprisonment
April 6, 1998 Supreme Court of Newfoundland - Court of Appeal (Gushue C.J.N., O’Neill, Marshall JJ.A.)	Applicant’s appeal dismissed
April 28, 1998 Supreme Court of Canada	Application for leave to appeal filed

26759 **HUSSMANN CANADA INC. - v. - ALFRED LEONETTI and JOHN HALSEY** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Labour law - Master/Servant - Wrongful dismissal - Employment contract - Members of bargaining unit accepting offer of promotion to supervisory positions on strength of employer's assurances that they could return to bargaining if new positions did not "work out" - Employer downsizing Canadian operation - Respondents terminated without opportunity to return to bargaining unit - Employer paying Respondents nine months' salary in lieu of notice - Whether Court of Appeal erred in finding that the promise made by the employer to Respondents was applicable for remaining working lives of Respondents instead of in accordance with principle that terms of employment contract may be terminated by either party on reasonable notice.

PROCEDURAL HISTORY

May 24, 1995
Ontario Court (General Division) (Kent J.)

Respondents' action in damages dismissed

May 8, 1998
Court of Appeal for Ontario
(McMurtry C.J., Doherty and Laskin JJ.A.)

Appeal dismissed and Respondent's cross-appeal allowed

July 10, 1998
Supreme Court of Canada

Application for leave to appeal filed

26931 **J.B.B. - v. - DIRECTOR OF CHILD WELFARE FOR THE PROVINCE OF NEWFOUNDLAND and J.A.B., AN INFANT BY HIS COUNSEL, TIMOTHY J. CHALKER, Q.C.** (Nfld.)

CORAM: Cory, Major and Binnie JJ.

The motion 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

Family law - Children - Evidence - Whether lower courts erred in assessment of credibility of witnesses - Whether Court of Appeal erred in determining child was injured by ingestion of a caustic substance - Whether Supreme Court of Newfoundland permitted under the law to delegate to the Director of Child Welfare the decision to re-integrate J. to the Appellant - Was order of Barry J. "res judicata" - Whether lower courts erred in determining J.B. is a child in need of protection from the Appellant.

PROCEDURAL HISTORY

October 23, 1996
Supreme Court of Newfoundland
(Barry J.)

Order that Respondent J.A.B. is a child in need of protection under subss.2(b)(iv) and (vi) of the *Child Welfare Act*; temporary wardship order issued

July 17, 1998
Court of Appeal of Newfoundland
(Cameron, Green, and Gushue JJ.A.)

Appeal dismissed

October 19, 1998
Supreme Court of Canada

Application for leave to appeal filed

26804 **PHILIP MUISE - v. -WORKERS' COMPENSATION BOARD OF NOVA SCOTIA** (N.S.)

CORAM: Cory, Major and Binnie JJ.

The motion 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

Statutes - Interpretation - Interpretation Act - Labour law - Workers' Compensation - *Workers' Compensation Act*, R.S.N.S. 1989, c. 508 - *Workers' Compensation Act*, S.N.S. 1994-95, c. 10 - Natural justice - Common law presumptions - Non-interference with vested rights - Retroactivity - Retrospectivity - Whether the Court of Appeal erred in its consideration and application of the common law presumptions against retroactivity and retrospectivity and the presumption of non-interference with vested rights - Whether the Court of Appeal erred in its consideration of background information and in the conclusions drawn therefrom, and whether the principles of natural justice have been breached - Whether the Court of Appeal erred in its conclusion regarding the Tribunal erring in a patently unreasonable manner.

PROCEDURAL HISTORY

August 25, 1997
Nova Scotia Workers' Compensation Appeals Tribunal
(Smillie, Appeal Commissioner)

Applicant's appeal seeking payment of temporary total disability benefits allowed

May 12, 1998
Nova Scotia Court of Appeal
(Bateman, Chipman and Roscoe JJ.A.)

Respondent's appeal allowed; matter remitted to the Tribunal for a rehearing

August 10, 1998
Supreme Court of Canada

Application for leave to appeal filed

September 22, 1998
Supreme Court of Canada

Motion for an extension of time to file reply filed

26782 **STEPHEN POSEN, EXECUTOR AND TRUSTEE OF THE LAST WILL TESTAMENT OF GLENN GOULD, DECEASED, AND GLENN GOULD LIMITED - v. -STODDART PUBLISHING CO. LIMITED, THE CANADA TRUST COMPANY, EXECUTOR AND TRUSTEE OF THE LAST WILL AND TESTAMENT OF JOCK CARROLL, DECEASED, and ANGUS CARROLL** (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

Property law - Copyright - Appropriation of personality - Whether a person who consents to allowing his photograph to be taken for the purposes of a magazine article grants to the photographer the right to use the photographs subsequently for any and all purposes for the financial gain of the photographer - Whether the holder of copyright in photographs may use the photographs without regard to the rights of privacy and rights of publicity of the celebrity - Whether and to what extent the appropriation of personality is permitted in the context of the celebrity as the subject of the work - What is the scope of protection afforded to individuals whose image is used by others for commercial gain.

PROCEDURAL HISTORY

September 26, 1996
Ontario Court of Justice (General Division)
(Lederman J.)

Applicants' actions dismissed

May 6, 1998
Court of Appeal for Ontario
(Finlayson, Krever and Weiler JJ.A.)

Appeal dismissed

August 5, 1998
Supreme Court of Canada

Application for leave to appeal filed

26825 **BORIS ORLOV - v. - METRO TORONTO POLICE (O.P.P.), SOLICITOR GENERAL OF CANADA AND U.C.I. AS A PART OF THE SECURITY SYSTEM** (Ont.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Procedural law - Statement of claim struck out - Can Canadian legislation or Supreme Court of Canada stop conspiracy against the Applicant? - Can above mentioned legislation give or provide Applicant judicial protection or freedom for him, because he is now a prisoner in Canada?

PROCEDURAL HISTORY

March 13, 1997
Ontario Court of Justice (General Division)
(Sheard J.)

Motion by Respondents for an order striking out the Statement of Claimed and dismissing the Applicant's action allowed; Applicant's action dismissed

August 14, 1998
Court of Appeal for Ontario

(Finlayson, Goudge, and Feldman, JJ.A.)

Applicant's appeal dismissed

September 2, 1998
Supreme Court of Canada

Application for leave to appeal filed

26773 **GUARDIAN INSURANCE COMPANY - v. - ONTARIO TREE FRUITS LIMITED** (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

Commercial Law - Insurance - Contracts - Interpretation of an exclusion clause in an insurance contract - Meaning of "seized" in a clause excluding loss or damage to property seized for breach of any law or by order of any public authority.

PROCEDURAL HISTORY

October 27, 1993
Ontario Court (General Division) (Potts J.)

Action for damages dismissed

May 11, 1998
Court of Appeal for Ontario
(McMurtry C.J., Laskin and Rosenberg JJ.A.)

Appeal allowed

August 7, 1998
Supreme Court of Canada

Application for leave to appeal filed

26797 **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTRY OF COMMUNITY AND SOCIAL SERVICES - v. - MICHAEL HUGH MASON, BY HIS LITIGATION GUARDIAN PATRICIA LYNN MASON, PATRICIA LYNN MASON PERSONALLY, ALLAN MITCHELL MASON, ANNE MARIE BRADSTREET and MARY MARGARET MASON** (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

Statutes - Interpretation - *Health Insurance Act*, R.S.O. 1990, c.H.6 - Ontario Health Insurance Plan- Torts - Respondent insured by OHIP injured in facility operated by Crown - Respondents maintaining subrogated claim for services rendered to injured Respondent and paid for by OHIP - Where a right of subrogation exists, can an insurer maintain a claim on behalf of a named insured who cannot assert such a right on its own behalf - Can an insurer maintain a subrogated claim in the name of the insured against a defendant who has already paid the insured for such claim - Is OHIP a real plaintiff in this action and, as such, being the provincial Crown, can it maintain a subrogated action against itself - Can the Court

enforce a claim which is not maintainable at law, because the Court believes that doing so would promote a “desirable objective”?

PROCEDURAL HISTORY

May 30, 1996 Ontario Court of Justice (General Division) (Boland J.)	Declaration that OHIP is entitled in law to advance a subrogated claim against the Applicant through Michael Hugh Mason
May 5, 1998 Court of Appeal for Ontario (Krever, Doherty and Laskin JJ.A.)	Appeal dismissed
July 28, 1998 Supreme Court of Canada	Application for leave to appeal filed

26809 **MID CANADA MILLWORK LTD., AND SANFORD WEISS - v. - DELANO BUILDING PRODUCTS LTD., MICHAEL SHAMRAY, and 3082512 MANITOBA LTD.** (Man.)

CORAM: Cory, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Inexperienced business person sharing confidential information with another business person in an attempt to convince that person to join him as a full partner in acquiring a business opportunity - Not extracting an express promise that the second person will not use the information to secretly acquire the opportunity for himself - Whether first person's resultant vulnerability to having the opportunity secretly acquired by the second person “gratuitously incurred” such that no fiduciary duty prevents the second party from secretly acquiring the opportunity - Can a person acquire enforceable confidentiality rights over information belonging to another party by virtue of lawfully acquiring possession of the information and sharing it in confidence with a third party? - Is it contrary to good conscience in Canada, such that a constructive trust will be imposed as occurred in *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217, for a party to retain the benefit of a business opportunity obtained by lying to a potential joint venture partner?

PROCEDURAL HISTORY

June 3, 1997 Court of Queen's Bench of Manitoba (Krindle J.)	Applicant's action dismissed
May 25, 1998 Court of Appeal of Manitoba (Scott C.J., Helper and Monnin JJ.A.)	Appeal dismissed
August 19, 1998 Supreme Court of Canada	Application for leave to appeal filed

3.12.1998

Before / Devant: CHIEF JUSTICE LAMER

Motion to state a constitutional question

Requête pour énoncer une question constitutionnelle

BY/PAR: Attorney General of Alberta

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

GRANTED / ACCORDÉE Notices of intention to intervene are to be filed no later than January 29, 1999.

(1) For purposes of these questions,

[TRADUCTION] (1) Les définitions qui suivent s'appliquent aux présentes questions.

(a) “*Firearms Act*” means the *Firearms Act*, chapter 39 of the Statutes of Canada, 1995;

a) «*Loi sur les armes à feu*» s’entend de la *Loi sur les armes à feu*, chapitre 39 des Lois du Canada, 1995;

(b) “ordinary firearm” means “firearm” as defined in section 2 of the *Criminal Code* (Canada), as amended by section 138 of the *Firearms Act*, except that it does not include a “prohibited firearm” or a “restricted firearm” as those terms are defined in section 84 of the *Criminal Code* (Canada), as enacted by section 139 of the *Firearms Act*;

b) «arme à feu ordinaire» s’entend de l’«arme à feu» définie à l’art. 2 du *Code criminel* du Canada, modifié par l’art. 138 de la *Loi sur les armes à feu*, à l’exclusion de l’«arme à feu prohibée» et de l’«arme à feu à autorisation restreinte», définies à l’art. 84 du *Code criminel* du Canada édicté par l’art. 139 de la *Loi sur les armes à feu*;

(c) “licensing provisions” means those portions of the *Firearms Act* relating to the mandatory regime of licensing for those persons who own or possess or wish to own or possess an ordinary firearm, including, without limitation, sections 5 to 10, 54, 55, 56, 58, 61, 64, 67, 68, and 70, and the related enforcement provisions of the *Criminal Code* (Canada), as enacted by section 139 of the *Firearms Act*;

c) «dispositions relatives à la délivrance des permis» s’entendent des parties de la *Loi sur les armes à feu* relatives au régime de délivrance des permis obligatoires qui est applicable aux propriétaires ou aux possesseurs d’armes à feu ordinaires ou à ceux qui veulent le devenir, et notamment, des art. 5 à 10, 54, 55, 56, 58, 61, 64, 67, 68 et 70, ainsi que des dispositions d’application connexes du *Code criminel* du Canada édictées par l’art. 139 de la *Loi sur les armes à feu*;

(d) “Registration provisions” means those portions of the *Firearms Act* relating to the mandatory regime or registration for an ordinary firearm, including, without limitation, section 13 to 16, 54, 60, 61, 66, 69, 71, 82 to 94, 112 and 115, and the related enforcement provisions of the *Criminal Code* (Canada), as enacted by section 139 of the *Firearms Act*.

d) «dispositions relatives à l’enregistrement» s’entendent des parties de la *Loi sur les armes à feu* relatives au régime d’enregistrement obligatoire des armes à feu ordinaires, et notamment, des art. 13 à 16, 54, 60, 61, 66, 69, 71, 82 à 94, 112 et 115, ainsi que des dispositions d’application connexes du *Code criminel* du Canada édictées par l’art. 139 de la *Loi sur les armes à feu*;

- | | |
|--|--|
| <p>ii (1) Do the licensing provisions, insofar as they relate to an ordinary firearm, constitute an infringement of the jurisdiction of the Legislature of Alberta with respect to the regulation of property and civil rights pursuant to subsection 92(13) of the <i>Constitution Act, 1867</i>?</p> <p>(2) If the answer to the question posed in subsection (1) is “yes”, are the licensing provisions ultra vires the Parliament of Canada insofar as they regulate the possession or ownership of an ordinary firearm?</p> | <p>ii (1) Dans la mesure où elles se rapportent aux armes à feu ordinaires, les dispositions relatives à la délivrance des permis empiètent-elles sur la compétence en matière de propriété et de droits civils que le par. 92(13) de la <i>Loi constitutionnelle de 1867</i> confère à la législature de l’Alberta?</p> <p>(2) Si la réponse donnée à la question posée au paragraphe (1) est affirmative, les dispositions relatives à la délivrance des permis excèdent-elles la compétence du Parlement du Canada dans la mesure où elles réglementent la possession ou la propriété des armes à feu ordinaires?</p> |
| <p>ii (1) Do the registration provisions, as they relate to an ordinary firearm, constitute an infringement of the jurisdiction of the Legislature of Alberta with respect to the regulation of property and civil rights pursuant to subsection 92(13) of the <i>Constitution Act, 1867</i>?</p> <p>(2) If the answer to the question posed in subsection (1) is “yes” are the registration provisions ultra vires the Parliament of Canada insofar as they require registration of an ordinary firearm?</p> | <p>(3) (1) Les dispositions relatives à l’enregistrement applicables aux armes à feu ordinaires empiètent-elles sur la compétence en matière de propriété et de droits civils que le par. 92(13) de la <i>Loi constitutionnelle de 1867</i> confère à la Législature de l’Alberta?</p> <p>(2) Si la réponse donnée à la question posée au paragraphe (1) est affirmative, les dispositions relatives à l’enregistrement excèdent-elles la compétence du Parlement du Canada dans la mesure où elles exigent l’enregistrement des armes à feu ordinaires?</p> |

14.12.1998

Before / Devant: BINNIE J.

Motion to add parties

George Hines

v. (26506)

Ontario Human Rights Commission (Ont.)

GRANTED / ACCORDÉE

The City of Toronto is to be added as a party respondent to the leave application and to file previously served material in response to the leave application. There are to be no costs of the motion.

Requête en jonction de parties

16.12.1998

Before / Devant: BINNIE 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

Jeannine M. Kapelus

v. (26920)

University of British Columbia et al. (B.C.)

DISMISSED / REJETÉE

The applicant Jeannine M. Kapelus applies under Rule 5 of the Supreme Court Rules for an order extending the time to serve and file an application for leave to appeal the verdict of a British Columbia jury allowing her claim for wrongful dismissal, but for compensation that she considers inadequate. Her appeal to the British Columbia Court of Appeal was dismissed with costs. In support of this application the applicant files the affidavit of Gordon A. Kapelus, her husband, who explains that he inadvertently miscalculated the time prescribed for filing a leave application under s. 58(1)(a) of the *Supreme Court Act*, R.S.C., 1985. The applicant has not filed any material to suggest what points of national importance might be raised in the leave application.

I have read the reasons for decision of the British Columbia Court of Appeal dated June 30, 1998 which conclude that “no reason has been established for us to set aside the jury’s verdict or any part of it”.

While I would ordinarily be inclined to relieve the applicant from a missed deadline brought about by erroneous advice from her legally trained husband, there is no indication in the material that a leave application, if made, would raise any questions that would be capable of being characterized as being of national importance. Moreover, the applicant advises that there are unresolved issues regarding disposition of the trial costs by the trial judge and she wishes to reserve her position on the leave application until such time as she can make a “single submission to this Honourable Court”. She thus asks for an extension of time to 60 days following the final disposition of the issue of trial costs by the courts below.

The disposition of the trial judge may lead to a further appeal on the issue of costs to the British Columbia Court of Appeal. The request for an open-ended order delaying the leave application to a point in time 60 days beyond the happening of a series of uncertain events is not satisfactory.

The appropriate practice would have been for the applicant to file her leave application at the same time as her application for an extension of time within which to seek leave to appeal. (See *Notice to the Profession* dated January 1996.) Adoption of this practice would have given some closure to at least that portion of the dispute already dealt with by the Court of Appeal. It would also give this Court an idea of the merits of the proposed appeal, which is a relevant consideration in extending time. See *Imhoff v. R.* (24543, 29 March 1996).

In the absence of any demonstration that the circumstances of this case are capable of giving rise to issues of national importance, and in light of the applicant’s unwillingness to commit herself to any calendar date by which the leave application would be made, the motion to extend time will be dismissed but, in the circumstances, without costs.

16.12.1998

Before / Devant: BINNIE J.

Motion for directions

Demande pour obtenir des directives

Shell Canada Ltd.

v. (26596)

Her Majesty the Queen (Alta.)

GRANTED / ACCORDÉE

The appellant Shell Canada seeks a ruling that the respondent, having failed to seek leave to cross-appeal under Rule 29 of the *Rules of the Supreme Court of Canada* (the “Rules”), is precluded from attacking the finding of the Court of Appeal that the “gain” realized in a New Zealand - United States currency transaction entered into by the appellant is a capital gain.

This appeal concerns the proper tax treatment of a sophisticated financing transaction, known as a “weak currency financing scheme”, undertaken by the appellant. In 1988, the appellant required about \$100 million (U.S.) for general corporate purposes. The market rate for a direct borrowing of U.S. dollars was 9.1%. Instead of borrowing U.S. dollars directly, however, the appellant entered into two agreements. The first agreement (the “Borrowing Contract”), involved the appellant borrowing \$150 million (N.Z.) at an interest rate of 15.4% per annum (which was found to be the market rate for borrowing New Zealand dollars). The second agreement (the “Purchasing Contract”), involved the appellant using the New Zealand funds to purchase \$100 million U.S. dollars at the market price.

In order to fulfill the appellant’s requirement for New Zealand dollars, the Purchasing Contract provided for the appellant to purchase enough New Zealand dollars to satisfy the interest payments under the Borrowing Contract and for the appellant to purchase \$150 million (N.Z.) for \$79 million (U.S.) on the date when the principle came due under the Borrowing Contract. The difference in the cost of the \$150 million (N.Z.) at the time the Borrowing Contract was entered (\$100 million (U.S.)) and at the time the principle was to be repaid (\$79 million (N.Z.)) resulted in a \$21 million (U.S.) “gain” to the appellant.

In computing its tax liability, the appellant deducted the 15.4% interest it had paid under the Borrowing Contract and characterized the \$21 million (U.S.) gain as a capital gain.

The respondent reassessed the appellant by allowing only the cost of directly borrowing U.S. dollars (9.1%) as an interest expense and characterized the “gain” as income.

The appellant appealed to the Tax Court where the court found in favour of the appellant and allowed the full 15.4% to be deducted as an expense. The Tax Court also characterized the gain as a capital gain.

The Court of Appeal reversed the Tax Court’s finding with respect to the interest deduction applying an “economic substance over form” doctrine which essentially dictated that the Borrowing Contract and Purchasing Contract be considered together. This in turn led the Court of Appeal to a determination that the 15.4% interest rate expense claimed failed to comply with three of the requirements that must be satisfied for a claimed expense to qualify as “interest” under the *Income Tax Act*: it was not interest, it was not used for the purpose of earning income and it was not reasonable. Therefore, the Court of Appeal disallowed any interest expense claimed above 9.1% - the direct cost of borrowing U.S. dollars. It is on that issue that the appellant sought and obtained leave to appeal in this Court.

The Court of Appeal did, however, agree with the Tax Court that the gain of \$21 million (U.S.) should be considered a capital gain. The respondent has indicated that it intends to keep that issue alive on the appeal to this Court. The appellant disputes the respondent’s right to do so.

Rule 29 provides as follows:

29. (1) A respondent who seeks to set aside or vary the whole or any part of the disposition of the judgment appealed from shall apply for leave to cross-appeal within 30 clear days after the service of the application for leave, in the case of an appeal for which leave is required, or 30 clear days after the service of the notice of appeal, in all other cases.

...

- (3) A respondent who seeks to uphold the judgment on a ground or grounds not raised in the reasons for the judgment appealed from may do so in the respondent's factum without applying for leave to cross-appeal, and the appellant may serve and file a factum in reply in accordance with Rule 41. (emphasis added)

The gist of the Rule is that where a respondent wishes to vary the judgment appealed from, that respondent must apply for leave to cross-appeal that part of the judgment. Where, however, the respondent seeks to uphold the judgment of the lower court on a ground not raised in the reasons of the judgment appealed from, no leave to cross-appeal is required. *R. v. Keegstra*, [1995] 2 S.C.R. 381 at 400.

The respondent's argument on the capital gain issue would not, if accepted, uphold the judgment of the Court of Appeal. According to that judgment, the appellant may claim an interest expense of 9.1% per annum on the principal amount borrowed under the Borrowing Contract in the computation of its taxable income. The respondent says that if the appeal against that ruling succeeds, the respondent ought to be free to argue that the tax burden thus reduced should nevertheless be restored in whole or in part by recharacterizing the gain on the Borrowing Contract as income rather than capital.

In my view, the respondent would be required to obtain leave to cross appeal before raising this issue at the hearing of the appeal.

In the first place the judgment of the Federal Court of Appeal dated February 18, 1998 refers the matter back to the Minister "to be reassessed in accordance with Reasons for judgment herein". The Minister's authority is thus closely circumscribed by the reasons as well as the outcome of the appeal to that court.

Secondly, there is no reason to believe (and the respondent has not offered any proof) that the net effect of reclassifying the \$21 million gain as income would be the same as the net effect on the appellant's tax burden of the reasons for judgment of the Court of Appeal. If the tax burden calculated under the respondent's alternative argument differs from the tax burden calculated under the Court of Appeal's judgment, then recharacterizing the gain as income rather than capital would not uphold even the outcome, much less the reasons for judgment of the Federal Court of Appeal.

Accordingly, if the respondent wishes to keep the capital gains issue alive in this Court, she cannot do so without leave. The proper procedure would be to now serve and provide the Court with the proposed leave application with respect to the cross-appeal, accompanied by an application for an extension of time within which to file same, as set out in the *Notice to the Profession* dated January, 1996. The leave panel may then determine whether it is appropriate to have all aspects of the "weak currency financing scheme" before the Court on the main appeal.

18.12.1998

Before / Devant: THE REGISTRAR

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

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

Société d'hypothèque Banque Nationale

c. (26988)

Le sous-ministre du Revenu du Québec (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 11 février 1999.

21.12.1998

Before / Devant: BASTARACHE J.

Motion to extend the time in which to serve and file the book of authorities of an intervener and motion for additional time to present oral argument

Requête en prorogation du délai imparti pour signifier et produire le cahier de jurisprudence et de doctrine d'un intervenant et requête en prorogation du temps accordé pour la plaidoirie

BY/PAR: A.G. of Quebec / P.G. du Québec

IN/DANS: Her Majesty the Queen et al.

v. (26174)

Angelo Del Zotto et al. (Ont.)

GRANTED / ACCORDÉE

La requête de l'intervenant le procureur général du Québec pour obtenir une ordonnance prorogeant le délai pour signifier et produire son cahier de jurisprudence et de doctrine au 10 décembre 1998 et pour obtenir une ordonnance l'autorisant à présenter des plaidoiries totalisant 30 minutes plutôt que 15 minutes est accordée.

22.12.1998

Before / Devant: LE JUGE IACOBUCCI

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

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

Commission scolaire de Rivière-du-Loup

c. (27003)

Syndicat de l'enseignement du Grand-Portage (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 1 février 1999.

23.12.1998

Before / Devant: LE JUGE BASTARACHE

Requête visant à produire de nouveaux éléments de preuve

Motion for permission to file new evidence

Maurice Boucher

c. (26969)

Yves Galarneau et al. (Qué.)

DISMISSED / REJETÉE

La demande relative au dépôt d'une nouvelle preuve est rejetée. Une prorogation de délai de 60 jours pour produire la demande de permission d'en appeler de la décision de la Cour d'appel est accordée.

23.12.1998

Before / Devant: BASTARACHE 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

Shiu Dular

v. (26992)

Minister of Citizenship and Immigration (Man.)

GRANTED / ACCORDÉE Time extended to January 25, 1999.

30.12.1998

Before / Devant: THE DEPUTY REGISTRAR

Motion to extend the time in which to serve and file the factum and record of the appellants Robert Lovelace et al.

Requête en prorogation du délai imparti pour signifier et déposer le mémoire et le dossier des appelants Robert Lovelace et al.

Robert Lovelace et al.

v. (26165)

Her Majesty the Queen in right of Ontario et al. (Ont.)

GRANTED / ACCORDÉE Time extended to January 13, 1999.

30.12.1998

Before / Devant: THE DEPUTY REGISTRAR

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

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

Thornhill Aggregates Ltd. et al.

v. (26818)

Corporation of the District of Maple Ridge (B.C.)

GRANTED / ACCORDÉE Time extended to December 18, 1998.

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

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

14.12.1998

Christopher Ronald Arrance

v. (26802)

Her Majesty the Queen (B.C.)

15.12.1998

**The Public School Boards' Association of Alberta
et al.**

v. (26701)

**Her Majesty the Queen in right of Alberta et al.
(Alta.)**

17.12.1998

Vincent Scalera

v. (26695)

**M.J. Oppenheim in his quality as Attorney in
Canada for the Non-Marine Underwriters,
members of Lloyd's of London (B.C.)**

DECEMBER 24, 1998 / LE 24 DÉCEMBRE 1998

HER MAJESTY THE QUEEN - v.- SHAWN CARL CAMPBELL - and between - HER MAJESTY THE QUEEN - v.- IVICA EKMECIC - and between - HER MAJESTY THE QUEEN - v.- PERCY DWIGHT WICKMAN - and - THE ALBERTA PROVINCIAL JUDGES' ASSOCIATION - and - THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF QUEBEC, THE ATTORNEY GENERAL OF MANITOBA, THE ATTORNEY GENERAL OF PRINCE EDWARD ISLAND, THE ATTORNEY GENERAL FOR SASKATCHEWAN, THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES, THE CONFÉRENCE DES JUGES DU QUÉBEC, THE SASKATCHEWAN PROVINCIAL COURT JUDGES ASSOCIATION, THE CANADIAN BAR ASSOCIATION AND THE CANADIAN JUDGES CONFERENCE (Alta.) (24831)

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

BY THE COURT:

The Alberta Provincial Judges' Association ("Association") has submitted a motion for directions relating to our decision in *Provincial Court Judges (No. 1)*, [1997] 3 S.C.R. 3. In that case, the Court provided for, *inter alia*, a period of time ending on September 18, 1998 during which in effect judicial salary commissions in Canada were to be established. The Association's motion for directions was submitted in accordance with the Court's decision in *Provincial Court Judges (No. 2)*, [1998] 1 S.C.R. 3, and the extension granted on September 15, 1998, [1998] 2 S.C.R. 443, the principal effect of which was to extend the transition period to the earlier of a further two months and the day Bill C-37 receives Royal Assent. Briefly stated, the motion for directions of the Association requests the Court to rule in principle on whether its findings in *Provincial Court Judges (No. 1)* require the Province of Alberta to pay the reasonable expenses of the Alberta judiciary incurred in participating in the commission process or in any proceedings which call upon the Province of Alberta to justify its decision not to accept one or more of the recommendations of the judicial salary commission.

Upon reading the submissions and supporting material of the parties and interveners, the Court is of the opinion that the motion for directions should be dismissed without costs in that it does not arise from the implementation of the judgment of the Court in *Provincial Court Judges (No. 1)* or in *Provincial Court Judges (No. 2)*. In this respect, see the views expressed by Roberts J. in *Newfoundland Assn. of Provincial Court Judges v. Newfoundland* (1998), 160 D.L.R. (4th) 337 (Nfld. S.C.), at p. 372.

As was stated by the Chief Justice in *Provincial Court Judges (No. 1)*, *supra*, at para. 173:

Although s. 11(d) does not require it, the commission's objectivity can be promoted by ensuring that it is fully informed before deliberating and making its recommendations. This can be best achieved by requiring that the commission receive and consider submissions from the judiciary, the executive, and the legislature. In Ontario, for example, the Provincial Judges' Remuneration Commission is bound to consider submissions from the provincial judges' association and the government (*Courts of Justice Act*, Schedule, para. 20). Moreover, I recommend (but do not require) that the objectivity of the commission be ensured by including in the enabling legislation or regulations a list of relevant factors to guide the commission's deliberations.

Although not constitutionally requiring the participation of judges or judges' association in the commission process (or litigation relating thereto), it is worth repeating that the Court in *Provincial Court Judges (No. 1)* decided that judicial compensation commissions were to be independent, effective and objective as described therein. Furthermore, Lamer C.J. at para. 287 stated:

Under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature. However, that does not preclude chief justices or judges, or bodies representing judges, from expressing concerns or making representations to governments regarding judicial remuneration.

The composition and the procedure established for hearings before the independent, effective and objective commissions may vary widely. So will the approach to the payment of the representational costs of the judges. In some instances the resolution of the payment of representational costs will be achieved by agreement. Often the commission will have to determine the issue subject to an appeal to the court. In those circumstances the position adopted in the reasons of Roberts J. in *Newfoundland Assn. of Provincial Court Judges, supra*, may be appropriate, a matter upon which we need not comment in this motion. Suffice it to say, whatever may be the approach to the payment of costs it should be fair, equitable and reasonable.

[TRADUCTION]

PAR LA COUR:

L'Alberta Provincial Judges' Association (l'«Association») a présenté une requête sollicitant des directives relativement à notre décision dans l'*Affaire des juges des cours provinciales (n° 1)*, [1997] 3 R.C.S. 3. Dans cette affaire, la Cour a, entre autres mesures, fixé une période, prenant fin le 18 septembre 1998, ayant pour but de permettre dans les faits l'établissement de commissions de rémunération des juges au Canada. L'Association a présenté sa requête sollicitant des directives conformément à la décision de notre Cour dans l'*Affaire des juges des cours provinciales (n° 2)*, [1998] 1 R.C.S. 3, et à la prorogation de délai accordée le 15 septembre 1998, [1998] 2 R.C.S. 443, prorogation dont l'effet principal a été de prolonger la période de transition de deux mois supplémentaires ou jusqu'à la date de la sanction royale du projet de loi C-37 si cet événement survenait avant. En résumé, dans sa requête, l'Association demande à la Cour de statuer en principe sur la question de savoir si, suivant les conclusions qu'elle a prononcées dans l'*Affaire des juges des cours provinciales (n° 1)*, la province d'Alberta est tenue de payer les frais raisonnables engagés par les juges de l'Alberta pour participer aux travaux de la commission ou à toute procédure judiciaire au cours de laquelle la province d'Alberta est appelée à justifier son refus d'accepter une ou plusieurs des recommandations de la commission de rémunération des juges.

Après avoir lu les observations des parties et des intervenants ainsi que les documents présentés au soutien de celles-ci, la Cour est d'avis que la requête sollicitant des directives doit être rejetée, sans dépens, parce qu'elle ne découle pas de la mise en oeuvre des arrêts de notre Cour *Affaire des juges des cours provinciales (n° 1)* ou *Affaire des juges des cours provinciales (n° 2)*. À cet égard, voir les vues exprimées par le juge Roberts dans *Newfoundland Assn. of Provincial Court Judges v. Newfoundland* (1998), 160 D.L.R. (4th) 337 (C.S.T.-N.), à la p. 372.

Comme a dit le Juge en chef dans l'*Affaire des juges des cours provinciales (n° 1)*, précitée, au par. 173:

Même si l'al. 11*d*) ne l'exige pas, l'objectivité de la commission peut être favorisée si l'on fait en sorte qu'elle soit bien informée avant de délibérer et de faire des recommandations. La meilleure façon d'y arriver est d'exiger que la commission reçoive et étudie les observations de la magistrature, de l'exécutif et de l'assemblée législative. En Ontario, par exemple, la Commission de rémunération des juges provinciaux est tenue de prendre en considération les observations de l'association des juges provinciaux et du gouvernement (*Loi sur les tribunaux judiciaires*, Annexe, art. 20). De plus, je recommande (sans en faire une obligation) que l'on assure l'objectivité de la commission en intégrant dans la loi ou le règlement la constituant une liste de facteurs pertinents afin de la guider dans ses délibérations.

Bien qu'elle n'ait pas déclaré que la Constitution exigeait la participation des juges ou associations de juges aux travaux des commissions (ou aux litiges s'y rapportant), il convient de rappeler que, dans l'*Affaire des juges des cours provinciales (n° 1)*, notre Cour a statué que les commissions de rémunération devaient être des organismes

indépendants, efficaces et objectifs, de la manière décrite dans cette décision. De plus, le juge en chef Lamer a déclaré ceci, au par. 287:

Il n'est en aucune circonstance permis aux juges d'engager avec l'exécutif ou des représentants de la législature des négociations concernant leur rémunération. Toutefois, cela n'empêche pas les juges, les juges en chef ou les organisations représentant les juges de faire part au gouvernement concerné de leurs préoccupations concernant le caractère adéquat de la rémunération des juges, ni de présenter des observations à cet égard.

Il est possible que la composition des commissions indépendantes, efficaces et objectives lors des audiences et la procédure suivie à ces occasions varient considérablement. Il en sera de même des solutions retenues à l'égard du paiement des frais engagés par les juges pour s'y faire représenter. Dans certains cas, cette question sera résolue par voie d'accord. Souvent, la commission devra trancher la question, sous réserve d'appel en justice. Dans de tels cas, la position adoptée dans les motifs du juge Roberts dans *Newfoundland Assn. of Provincial Court Judges*, précité, pourrait convenir, point que nous n'avons pas besoin de commenter dans le cadre de la présente requête. Qu'il suffise de dire que, quelle que soit la solution retenue quant au paiement des frais en question, elle devrait être juste, équitable et raisonnable.

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning January 18, 1999.

ORDRE DU JOUR pour la semaine commençant le 18 janvier 1999.

<u>Date of Hearing/ Date d'audition</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
1999/01/18	Motions - Requêtes
1999/01/19	L.C. et al. v. Brian Joseph Mills et al. (Crim.)(Alta.)(26358)
1999/01/20	Her Majesty the Queen in right of Canada et al. v. Angelo Del Zotto et al. (Crim.)(F.C.A.)(26174)
1999/01/21	Donald G. Zink v. Graybec Immobilier Inc. et al. (Que.)(26314)
1999/01/22	Her Majesty the Queen in right of Ontario v. Nesbitt, Burns Inc. et al. (Ont.)(26422)

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.

26358 L.C. and The Attorney General of Alberta v. Brian Joseph Mills

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*.

The Appellant L.C. is the 13 year-old complainant in sexual assault charges against the Respondent Mills. The Respondent Mills sought to have the complainant's therapeutic records disclosed. Several of the records were ordered disclosed prior to the coming into force of ss. 278.1 to 278.91 of the *Criminal Code* in *Bill C-46* on May 12, 1997. On May 16, 1997, Belzil J. informed the parties that the sections had come into force. On June 23, 1997, Belzil J. directed that ss. 278.1 to 278.91 would govern further disclosure applications. The Respondent brought a motion to have *Bill C-46* declared unconstitutional. The motion was granted.

Origin of the case: Alberta

File No.: 26358

Judgment of the Court of Queen's Bench: October 31, 1997

Counsel: Mary A. Marshall & Teresa L. Meadows for the Appellant L.C.
James A. Brown for the Appellant Attorney General
Dennis Edney for the Respondent

26358 L.C. et le Procureur général d'Alberta c. Brian Joseph Mills

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-ils 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*?

L'appelant L.C. est le plaignant âgé de 13 ans dans des accusations d'agression sexuelle contre l'intimé Mills. L'intimé Mills a cherché à obtenir la divulgation des dossiers thérapeutiques du plaignant. La divulgation de plusieurs des dossiers a été ordonnée avant l'entrée en vigueur des articles 278.1 à 278.91 du *Code criminel* dans le *Projet de loi C-46* le 12 mai 1997. Le 16 mai 1997, le juge Belzil a avisé les parties que les articles étaient entrés en vigueur. Le 23 juin 1997, le juge Belzil a indiqué que les articles 278.1 à 278.91 régiraient toutes nouvelles demandes de divulgation. L'intimé a présenté une requête pour que le *Projet de loi C-46* soit déclaré inconstitutionnel. La requête a été accueillie.

Origine :	Alberta
N° du greffe :	26358
Jugement de la Cour du Banc de la Reine :	Le 31 octobre 1997
Avocats :	Mary A. Marshall et Teresa L. Meadows pour l'appelant L.C. James A. Brown pour l'appelant Procureur général Dennis Edney pour l'intimé

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*

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*?

The Respondent, Del Zotto, came under suspicion of tax evasion following an audit in 1985 by the Audit Branch of Revenue Canada. In 1986, an investigation was commenced into Del Zotto's financial affairs by the Special Investigations Branch of Revenue Canada, which led to the initiation in 1992 of an inquiry into Del Zotto's financial affairs for the years 1979 to 1985, convened under s. 231.4 of the *Income Tax Act*. The Respondent Noble was served with a subpoena *duces tecum*. The Respondent Del Zotto was not subpoenaed.

At the opening of the Inquiry, the Respondents argued for and received an adjournment pending the outcome of an application brought by them to the Federal Court (Trial Division) to stay the Inquiry. Rothstein J. dismissed the action. On appeal, the Federal Court of Appeal allowed the appeal and declared that s. 231.4 of the *Income Tax Act* and subpoenas issued under it were of no force or effect under s. 52(1) of the *Constitution Act, 1982*.

Origin of the case:	Federal Court of Appeal
File No.:	26174
Judgment of the Court of Appeal:	June 10, 1997
Counsel:	Morris Rosenberg for the Appellants Edward L. Greenspan Q.C. and David Stratas for the Respondent Del Zotto Alan D. Gold and Mahmud Jamal for the Respondent Noble

26174 *Sa Majesté la Reine du chef du Canada, le ministre du Revenu national et John Edward Thompson c. Angelo Del Zotto et Herbert B. Noble*

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*?

L'intimé, Del Zotto, a été soupçonné d'évasion fiscale à la suite d'une vérification faite en 1985 par la Direction de la vérification de Revenu Canada. En 1986, la Direction des enquêtes spéciales a entrepris une enquête sur les affaires financières de Del Zotto qui a mené en 1992 à une enquête tenue en vertu de l'art. 231.4 de la *Loi de l'impôt sur le revenu* dans les affaires financières de Del Zotto pour les années 1979 à 1985. L'intimé Noble s'est vu signifier un *subpoena duces tecum*. L'intimé Del Zotto n'a pas reçu d'assignation.

À l'ouverture de l'enquête, les intimés ont sollicité et obtenu un ajournement jusqu'à ce qu'il soit statué sur une demande qu'ils avaient présentée en Cour fédérale (Section de première instance) pour faire arrêter l'enquête. Le juge Rothstein a rejeté l'action. La Cour d'appel fédérale a accueilli l'appel et déclaré l'art. 231.4 de la *Loi de l'impôt sur le revenu* et les assignations délivrées en vertu de ses dispositions respectivement inopérant et invalides eu égard au par. 52(1) de la *Loi constitutionnelle de 1982*.

Origine:	Cour d'appel fédérale
N° du greffe:	26174
Arrêt de la Cour d'appel:	Le 10 juin 1997
Avocats:	Morris Rosenberg pour les appelants Edward L. Greenspan, c.r., et David Stratas pour l'intimé Del Zotto Alan D. Gold et Mahmud Jamal pour l'intimé Noble

26314 *Dr. Donald G. Zink v. Graybec Immobilier Inc., Naidot & Co., Hare & Co., Eager & Co., Petro-Canada and Shell Canada Limited, Sulconam Inc. and Marsulex Inc.*

Commercial law - Contracts - Contract interpretation - Did the right of first refusal clause in articles of continuance permit the Appellant to acquire some but not all of the shares which the majority shareholders wished to sell to a third party? - Scope of appellate court review - Principle of good faith in the execution of contracts.

Sulconam Inc. is a Montreal based company in the business of extracting sulphur from the oil refining process in the refineries of Shell and Petro Canada. The Appellant held slightly less than 20% of the shares of Sulconam and the Respondents Graybec Immobilier Inc., Naidot & Co., Hare & Co., Eager & Co., Petro-Canada and Shell Canada Limited held the balance of the shares. Evidence indicated that there was disagreement between the Appellant and the Respondents as to the value of Sulconam and its shares, and over control. The Respondents entered into an agreement with Marsulex Inc. whereby the latter offered to buy all of the Respondents' shares of Sulconam, but no less than all the shares owned by the holders of at least 80% of the issued and outstanding shares of the corporation. The agreement stipulated that the offer would be void if a shareholder of Sulconam purported to exercise his right of first refusal to purchase the shares. The right of first refusal was contained as Article 4B in the Articles of Continuance of Sulconam.

The Appellant purported to exercise his rights under clause 4B to buy the number of shares of the Respondents to bring his shareholdings up to 67% of issued and outstanding shares. He offered to buy 100% of the shares offered by Petro-Canada and Shell, but only a part of the shares offered for sale by the remaining Respondents. When the Respondents took the view that the Appellant was not entitled to exercise the right of first refusal in respect of only part of the shares they were willing to sell, the Appellant brought an application for an interlocutory and permanent injunction preventing the Respondents from selling their shares to Marsulex, and an application for a declaration that he had properly exercised his right of first refusal.

The Quebec Superior Court held that the Appellant was not entitled to exercise his right of first refusal over only a part of the shares offered for sale and dismissed the application for an interlocutory and permanent injunction and the application for declaratory relief. When an application by the Appellant for an "ordonnance de sauvegarde" was dismissed, transactions closed resulting in Marsulex holding 64.79% of the shares of Sulconam, and the Appellant holding the balance. The Court of Appeal dismissed the appeal.

Origin of the case:	Quebec
File No.:	26314
Judgment of the Court of Appeal:	October 3, 1997
Counsel:	Colin K. Irving and Douglas C. Mitchell for the Appellant Jean G. Bertrand for the Respondents Graybec Immobilier Inc. et al Richard J. Rusk for the Respondent Marsulex Inc. Joel Goldberg for the Respondent Sulconam Inc.

26314 *D' Donald G. Zink c. Graybec Immobilier Inc., Naidot & Co., Hare & Co., Eager & Co., Petro-Canada et Shell Canada Limitée, Sulconam Inc. et Marsulex Inc.*

Droit commercial - Contrats - Interprétation des contrats - La clause accordant un droit de premier refus stipulée dans des statuts de prorogation permettait-elle à l'appelant d'acquérir une partie seulement des actions que les actionnaires majoritaires désiraient vendre à un tiers? - Étendue de l'examen par la cour d'appel - Principe de la bonne foi dans l'exécution des contrats.

Sulconam Inc. est une société qui a son siège à Montréal et qui oeuvre dans la récupération du soufre à partir du processus de raffinage du pétrole dans les raffineries de Shell et de Petro-Canada. L'appelant détenait un peu moins de 20 p. 100 des actions de Sulconam, et les intimées Graybec Immobilier Inc., Naidot & Co., Hare & Co., Eager & Co., Petro-Canada et Shell Canada Limitée détenaient le reste des actions. La preuve a révélé l'existence d'un désaccord entre l'appelant et les intimées quant à la valeur de Sulconam et de ses actions, et quant au contrôle. Les intimées et Marsulex Inc. ont conclu une entente par laquelle cette dernière offrait d'acheter toutes les actions que chaque intimée possédait dans Sulconam de manière à ce que Marsulex devienne propriétaire d'au moins 80% des actions du capital-actions de la société. L'entente stipulait que l'offre serait nulle si un actionnaire de Sulconam prétendait exercer son droit de premier refus dans le but de se porter acquéreur des actions. Le droit de premier refus était stipulé dans la clause 4B des statuts de prorogation de Sulconam.

L'appelant a prétendu exercer les droits que lui accordait la clause 4B dans le but d'acquérir le nombre voulu d'actions des intimées pour porter sa part à 67 p. 100 des actions du capital-actions. Il a offert d'acheter toutes les actions offertes par Petro-Canada et Shell, mais seulement une partie des actions offertes par les autres intimées. Après que les intimées eurent adopté le point de vue que l'appelant n'avait pas le droit d'exercer son droit de premier refus à l'égard d'une partie seulement des actions qu'elles désiraient vendre, l'appelant a présenté une demande d'injonction interlocutoire et permanente afin d'empêcher les intimées de vendre leurs actions à Marsulex, et une demande de jugement déclaratoire portant qu'il avait correctement exercé son droit de premier refus.

La Cour supérieure du Québec a statué que l'appelant n'avait pas le droit d'exercer son droit de premier refus à l'égard d'une partie seulement des actions offertes en vente et a rejeté la demande d'injonction interlocutoire et permanente et la demande de jugement déclaratoire. Après le rejet d'une demande d'ordonnance de sauvegarde présentée par l'appelant, les opérations ont été effectuées et Marsulex est devenue titulaire de 64,79 p. 100 des actions de Sulconam, les autres actions étant détenues par l'appelant. La Cour d'appel a rejeté l'appel.

Origine : Québec

N° du greffe : 26314

Arrêt de la Cour d'appel : Le 3 octobre 1997

Avocats : Colin K. Irving et Douglas C. Mitchell pour l'appelant
Jean G. Bertrand pour les intimées Graybec Immobilier Inc. et autres
Richard J. Rusk pour l'intimée Marsulex Inc.
Joël Goldberg pour l'intimée Sulconam Inc.

26422 Her Majesty the Queen in Right of Ontario v. Nesbitt, Burns Inc., Walter Zanewycz and Gregory Pilot

Statutes - Interpretation - Torts - Damages - Contribution and indemnity - Whether a third party can claim under the *Negligence Act* in circumstances where the third party cannot be directly sued by the plaintiff - Would barring third party claims by a defendant in the circumstances of this case result in an “unjust enrichment” - Would barring third party claims accord with the policy and purpose of the *Act* - Do the immunity provisions of the *Act* apply where the facts giving rise to the claim arose before the provisions came into force, but no action was commenced until afterwards?

Ukrainian (Fort William) Credit Union Limited, in liquidation sued its financial advisor Nesbitt Burns Inc., Nesbitt employee Walter Zanewycz, and Nesbitt’s retail branch manager in Thunder Bay Gregory Pilot, alleging that investments made by the Respondents on its behalf, were negligently undertaken and unsuitable for the plaintiff because of their risk. The plaintiff claimed that its financial collapse in June 1994 was caused by the unlawful and inappropriate transactions that the Respondents undertook on its behalf between 1992 and 1994.

Before March 1, 1995, credit unions such as the plaintiff were regulated under the provisions of the *Credit Unions and Caisses Populaires Act*. The Ontario Share Deposit Insurance Corporation (the “OSDIC”) was responsible for regulating credit unions under that statute, and the act contained no provision limiting a party’s right to sue the regulator. That legislation was repealed and replaced by the *Credit Unions and Caisses Populaires Act*, (the “*Act*”), which came into force March 1, 1995. The OSDIC was continued as the Deposit Insurance Corporation of Ontario (both hereinafter referred to as the “DICO”), and section 253(1) of the *Act* precluded bringing any “action or other proceeding for damages” against the DICO for any act or omission done in good faith by that entity.

The plaintiff did not commence its action until December 1995 and did not name its regulator, the DICO, as a defendant in its action for damages. The Respondents delivered a joint statement of defence and commenced a third party proceeding against the DICO, claiming contribution, indemnity or other relief against it under section 5 of the *Negligence Act*, in the event that judgment was made against the Respondents in the plaintiff’s action. The Respondents also issued a third party claim against Her Majesty the Queen in Right of Ontario, claiming contribution and indemnity in relation to alleged acts and omissions of the Director. The DICO brought a motion under Rule 21 of the *Rules of Civil Procedure* for an order striking out or dismissing the Respondents’ third party claim against the DICO on the basis that it was barred by section 253(1) of the *Act*. Counsel for the Appellant Crown and for the Respondents agreed that the Appellant Crown would be bound by the results of the DICO’s motion and any appeals therefrom, but the Appellant Crown did not participate in the motion or in its appeal before the Court of Appeal for Ontario.

The Ontario Court (General Division) found that section 253(1) of the *Act* barred any claim in damages against the DICO unless a lack of good faith was alleged and proven. Farley J. dismissed the Respondents’ third party claim against the DICO but granted leave to the Respondents to amend their pleadings to allege lack of good faith on the part of the DICO, on the basis that they must have a legitimate foundation for such an allegation. The Court of Appeal for Ontario allowed the appeal.

Origin of the case:	Ontario
File No.:	26422
Judgment of the Court of Appeal:	October 24, 1997
Counsel:	Leah Price for the Appellant Sheila Block for the Respondents

26422 Sa Majesté la Reine du chef de l'Ontario c. Nesbitt, Burns Inc., Walter Zanewycz et Gregory Pilot

Législation - Interprétation - Responsabilité délictuelle - Dommages - Contribution et indemnisation - Une tierce partie peut-elle poursuivre en vertu de la *Loi sur le partage de la responsabilité* dans les cas où elle ne peut être directement poursuivie par le demandeur? - Le fait d'interdire à un défendeur d'intenter une action en garantie en l'espèce résulterait-il en un «enrichissement sans cause»? - Le fait d'interdire les actions en garantie serait-il conforme à l'esprit de la *Loi*? - Les dispositions de la *Loi* qui confèrent l'immunité s'appliquent-elles dans les cas où les faits ayant donné naissance à la demande ont eu lieu avant leur entrée en vigueur, mais où l'action a été intentée seulement par la suite?

La Ukrainian (Fort William) Credit Union Limited, qui est en liquidation, a poursuivi son conseiller financier Nesbitt Burns, Walter Zanewycz, qui est au service de cette dernière, ainsi que le directeur de la succursale de Nesbitt à Thunder Bay, Gregory Pilot, alléguant que les placements effectués par les défendeurs en son nom l'ont été de façon négligente et qu'ils n'étaient pas appropriés pour la demanderesse en raison de leur caractère spéculatif. La demanderesse a prétendu que son effondrement financier, en juin 1994, avait été causé par les opérations illégales et inappropriées effectuées par les défendeurs en son nom entre 1992 et 1994.

Avant le 1^{er} mars 1995, les *credit unions* comme la demanderesse étaient régies par les dispositions de la *Loi sur les caisses populaires et les credit unions*. La Société ontarienne d'assurance des actions et dépôts (la «SOAAD») était chargée de réglementer les *credit unions* en vertu de cette loi, et la loi ne contenait aucune disposition limitant le droit d'une partie de poursuivre l'organisme de réglementation. Cette loi a été abrogée et remplacée par la *Loi sur les caisses populaires et les credit unions* (la «*Loi*»), qui est entrée en vigueur le 1^{er} mars 1995. La SOAAD est devenue la Société ontarienne d'assurance-dépôts (toutes deux ci-après appelées: la «SOAD»), et l'article 253(1) de la *Loi* empêchait l'institution des «actions ou autres instances en dommages-intérêts» contre la SOAD pour tout acte ou omission de bonne foi.

La demanderesse n'a intenté son action en dommages-intérêts qu'en décembre 1995, et l'organisme de réglementation concerné, la SOAD, n'y figurait pas comme défenderesse. Les défendeurs ont déposé une défense conjointe et institué une action en garantie contre la SOAD, lui réclamant une contribution, une indemnisation ou toute autre réparation exigible en vertu de l'article 5 de la *Loi sur le partage de la responsabilité* dans l'éventualité où jugement serait rendu contre eux dans le cadre de l'action de la demanderesse. Les défendeurs ont également intenté une action en garantie contre Sa Majesté la Reine du chef de l'Ontario, lui réclamant une contribution et une indemnisation relativement aux actes et omissions allégués du directeur. S'appuyant sur l'article 21 des *Règles de procédure civile*, la SOAD a présenté une requête visant l'obtention d'une ordonnance de radiation ou de rejet de l'action en garantie des défendeurs au motif que l'article 253(1) de la *Loi* l'interdisait. L'avocat de l'appelante, soit Sa Majesté, ainsi que l'avocat des défendeurs ont convenu que l'appelante serait liée par l'issue de la requête présentée par la SOAD, y compris le résultat des appels dont elle pourrait faire l'objet, mais l'appelante n'est pas intervenue dans la requête ni dans l'appel formé contre celle-ci auprès de la Cour d'appel de l'Ontario.

La Cour de l'Ontario (Division générale) a conclu que l'article 253(1) de la *Loi* interdisait tout recours en dommages-intérêts contre la SOAD, sauf dans les cas où la mauvaise foi était alléguée et prouvée. Le juge Farley a rejeté l'action en garantie des défendeurs contre la SOAD mais a accordé à ces derniers l'autorisation de modifier leurs actes de procédures pour alléguer la mauvaise foi de la part de la SOAD, dans la mesure où une telle allégation s'appuyait sur un fondement légitime. La Cour d'appel de l'Ontario a accueilli l'appel.

Origine:	Ontario
N° du greffe:	26422
Arrêt de la Cour d'appel:	Le 24 octobre 1997
Avocats:	Leah Price pour l'appelante Sheila Block pour les intimés

**CUMULATIVE INDEX -
APPLICATIONS FOR LEAVE TO
APPEAL**

**INDEX CUMULATIF - REQUÊTES
EN AUTORISATION DE POURVOI**

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

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

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<i>Blackburn-Moreault c. Moreault</i> (Qué.), 25776, *A	281(97)
<i>Bluebird Footwear Inc. c. General Motors Acceptance Corporation</i> <i>of Canada</i> (Qué.), 24386, *A	1764(94)
<i>Board of Police Commissioners of the City of Regina v. Regina Police</i> <i>Association</i> (Sask.), 26871, *A	1597(98)
<i>Brown v. Cole</i> (B.C.), 27046, *A	8(99)
<i>Brignolio v. Desmarais</i> (Ont.), 25403, *A	1202(96)
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<i>Certain Underwriters at Lloyd's v. Shama Textiles Inc.</i> (Que.), 26799, *A	1344(98)
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<i>Chantiam v. Packall Packaging Inc.</i> (Ont.), 26776, *B	1868(98)
<i>Chisan v. 478370 Alberta Inc.</i> (Alta.), 26888, *A	1657(98)
<i>Clearview Dairy Farm (1989) Inc. V. British Columbia Milk Marketing Board</i> (B.C.), 26975, *A	1931(98)
<i>Comité de discipline de la sûreté du Québec c. Bouchard</i> (Qué.), 26957, *A	1794(98)
<i>Commonwealth Insurance Co. c. Hôtel le Chanteclerc (1985) Inc.</i> (Qué.), 26721, *A	1127(98)
<i>Communauté urbaine de Montréal c. Ville de Westmount</i> (Qué.), 26938, *A	1725(98)
<i>Communauté urbaine de Québec c. Galeries de la Capitale Inc.</i> (Qué.), 26863, *A	1550(98)
<i>Comsa (Stefan Hadrian) v. The Queen</i> (Crim.)(Alta.), 26850, *A	1500(98)
<i>Coopérative Fédérée du Québec c. Banque de commerce canadienne impériale</i> (Qué.), 26926, *A	1725(98)
<i>Coronation Insurance Co. c. Bouchard</i> (Qué.), 26842, *A	1349(98)
<i>Coronation Insurance Co. c. Gagnon</i> (Qué.), 26840, *A	1349(98)
<i>Coronation Insurance Co. c. Pelletier</i> (Qué.), 26841, *A	1349(98)
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<i>Coughlin v. Comery</i> (Ont.), 27027, *A	5(99)
<i>Credit Lyonnais Canada v. National Bank of Canada</i> (Ont.), 26942, *A	1751(98)
<i>Cridge v. Pierce</i> (B.C.), 26838, *A	1349(98)
<i>Cruise Canada Inc. c. Clermont</i> (Qué.), 26730, *A	1210(98)
<i>Cruz v. The Queen</i> (B.C.), 26901, *A	1723(98)

<i>Cudd Pressure Control Inc. v. The Queen</i> (F.C.A.)(Ont.), 27029, *A	6(99)	
<i>Daum v. Schroeder</i> (Sask.), 26004, *A	1095(97)	
<i>Davies v. The Queen</i> (Yuk.), 26870, *A	1551(98)	
<i>Deslauriers c. Labelle</i> (Qué.), 26993, *A	1(99)	
<i>Dickhoff v. The Queen</i> (Sask.), 26878, *A	1931(98)	
<i>Dionne v. Kuhlmann</i> (Ont.), 27009, *A	3(99)	
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<i>Doman v. Superintendent of Brokers</i> (B.C.), 27026, *A	5(99)	
<i>Don Bodkin Leasing Ltd. v. Toronto-Dominion Bank</i> (Ont.), 26791, *B	16(99)	
<i>Donohue v. Attorney General of Canada</i> (F.C.A.)(B.C.), 26867, *A	1551(98)	
<i>Dufour c. Centre hospitalier St-Joseph-de-la-Malbaie</i> (Qué.), 26986, *A	1(99)	
<i>Dupont c. La Reine</i> (Crim.)(Qué.), 26853, *B	1973(98)	
<i>E.I. Dupont de Nemours and Co. v. United Tire & Rubber Co.</i> (Ont.), 25545, *A	2143(96)	
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<i>Erin Dancer Holding Corp. v. Corporation of the Town of Richmond Hill</i> (Ont.), 26788, *02 7.1.99	1875(98)	19(99)
<i>F.M. c. P.B.</i> (Qué.), 26813, *B	1937(98)	
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<i>Foote v. The Queen</i> (Crim.)(B.C.), 26895, *B	13(99)	
<i>Fraternité des policiers et policières de Longueuil Inc. c. Ville de Longueuil</i> (Qué.), 27005, *A	3(99)	
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<i>Friedmann Equity Developments Inc. v. Adatia</i> (Ont.), 26971, *A	1865(98)	
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<i>Guardian Insurance Co. v. Ontario Tree Fruits Ltd.</i> (Ont.), 26773, *02	1872(98)	29(99)

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<i>Hill v. McMillan</i> (Man.), 26724, *B	1939(98)	
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<i>Horne v. Bombardier Inc.</i> (Ont.), 27021, *A	5(99)	
<i>Horrod v. Wang</i> (B.C.), 26768, *A	1214(98)	
<i>Hulme v. Cadillac Fairview Corporation Ltd.</i> (Ont.), 26915, *B	11(99)	
<i>Human Life International in Canada Inc. v. Minister of National Revenue</i> (F.C.A.)(Ont.), 26661, *B	1374(98)	
<i>Hussmann Canada Inc. v. Leonetti</i> (Ont.), 26759, *01	1879(98)	26(99)
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<i>Jenkins v. The Queen</i> (Crim.)(B.C.), 26899, *B	1934(98)	
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<i>Joshi c. La Reine</i> (Qué.), 26953, *A	1865(98)	
<i>Kainth v. The Queen</i> (F.C.A.) (Ont.), 26832, *B	15(99)	
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<i>Kamloops Indian Band v. Canadian National Railway Co.</i> (F.C.A.)(B.C.), 26882, *A	1552(98)	
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<i>Kubanowski v. Primerica Life Insurance Co. of Canada</i> (Sask.), 26952, *A	1751(98)	
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<i>Laboratoires Abbott ltée c. Bourque</i> (Qué.), 26803, *A	1345(98)	
<i>Lacquaniti v. Devine</i> (Ont.), 25078, *A	4(96)	
<i>Lapointe v. The Queen</i> (Crim.)(Alta.), 26578, *B	1134(98)	
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<i>Leu v. Health One Inc.</i> (Ont.), 27037, *A	7(99)	
<i>Lin v. Toronto-Dominion Bank</i> (Ont.), 26827, *B	14(99)	
<i>Lineal Group Inc. v. Toronto-Dominion Bank</i> (Ont.), 27040, *A	7(99)	
<i>Lindsay v. Worker's Compensation Board</i> (Sask.), 26954, *A	1865(98)	
<i>Little Sisters Book and Art Emporium v. Minister of Justice</i> (B.C.), 26858, *A	1550(98)	
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<i>Lughas v. Manitoba Public Insurance Corporation</i> (Man.), 27014, *A	4(99)	
<i>Lutzer v. Sonnenburg</i> (Ont.), 26831, *B	1972(98)	
<i>M.V. v. The Queen</i> (Crim.)(Ont.), 26527, *C	1276(98)	

<i>MacKenzie v. MacKenzie</i> (N.S.), 26824, *B	1976(98)	
<i>MacKay v. R. in right of the Province of Manitoba</i> (Man.), 26997, *A	2(99)	
<i>Malhotra v. Attorney General of Canada</i> (F.C.A.)(Ont.), 27034, *A	7(99)	
<i>Manac Inc. Corp. v. The Queen</i> (F.C.A.)(Que.), 26744, *02 7.1.99	1874(98)	20(99)
<i>Marchand (René) c. Chaudière de la</i> (Qué.), 26880, *A	1552(98)	
<i>Martin (Dale) v. Rural Municipality of St. Andrews</i> (Man.), 26946, *A	1751(98)	
<i>Martin (Robert E.) v. Goldfarb</i> (Ont.), 26916, *A	1749(98)	
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<i>McCaughey v. Fitzsimmons</i> (Ont.), 26972, *A	1865(98)	
<i>McCull v. Corporation of the Town of Gravenhurst</i> (Ont.), 26845, *02 7.1.99	1943(98)	25(99)
<i>McHayle v. The Queen</i> (Ont.), 27035, *A	7(99)	
<i>McIndoe v. O'Connell</i> (B.C.), 26999, *A	2(99)	
<i>McMaster v. The Queen</i> (Crim.)(Alta.), 24569, *A	328(95)	
<i>McMaster v. The Queen</i> (Ont.), 26851, *A	1(99)	
<i>Merck Frosst Canada Inc. v. Minister of Health</i> (F.C.A.), 26903, *A	1723(98)	
<i>Mid Canada Millwork Ltd. v. Delano Building Products Ltd.</i> (Man.), 26809, *02 7.1.99	1765(98)	31(99)
<i>Ministère de la santé et des services sociaux c. Centre hospitalier Mont-Sinai</i> (Qué.), 27022, *A	5(99)	
<i>Mondesir v. Manitoba Association of Optometrists</i> (Man.), 26816, *02	1942(98)	23(99)
<i>Monfette c. Hôtel-Dieu de Saint-Jérôme</i> (Qué.), 26697, *B	1974(98)	
<i>Muise v. Workers' Compensation Board of Nova Scotia</i> (N.S.), 26804, *01	1880(98)	27(99)
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<i>National Bank of Canada v. Gagliano</i> (F.C.A.)(Ont.), 26848, *A	1459(98)	
<i>Nelson (Doris Merrill) v. The Queen</i> (F.C.A.)(Crim.)(B.C.), 26684, *A	1209(98)	
<i>Nespolon v. Alford</i> (Ont.), 26862, *B	1977(98)	
<i>Newman v. The Queen</i> (B.C.), 26951, *A	1931(98)	
<i>Niderost v. The Queen</i> (B.C.), 26960, *A	1794(98)	
<i>Noël c. Société d'énergie de la Baie James (SEGJ)</i> (Qué.), 26914, *A	1725(98)	
<i>Northwood Pulp and Timber Ltd. v. The Queen</i> (F.C.A.), 27033, *A	6(99)	
<i>Noskey v. The Queen</i> (Alta.), 26022, *A	1121(97)	
<i>Ontario Secondary School Teachers' Federation, District 9 v. Barton</i> (Ont.), 26911, *A	1750(98)	
<i>Orlov v. Metro Toronto Police (O.P.P.)</i> (Ont.), 26825, *01 7.1.99	1871(98)	29(99)
<i>Pacific National Investments Ltd. v. Corporation of the City of Victoria</i> (B.C.), 27006, *A	3(99)	
<i>Paddon Hughes Development Co. v. Pancontinental Oil Ltd.</i> (Alta.), 27030, *A	6(99)	
<i>Pearl v. Gentra Canada Investments Inc.</i> (Que), 26807, *A	1345(98)	
<i>Pinsonneault c. La Reine</i> (Qué.), 26795, *A	1343(98)	
<i>Posen v. Stoddart Publishing Co.</i> (Ont.), 26782, *02 7.1.99	1870(98)	28(99)
<i>Pregent v. The Queen</i> (Crim.)(Ont.), 26753, *B	1971(98)	
<i>Pringle v. London City Police Services Board</i> (Ont.), 26935, *A	1725(98)	
<i>Procureur général du Québec c. Cross</i> (Qué.), 26944, *A	1751(98)	
<i>Provincial Court Judges' Association of British Columbia v. Attorney General of British Columbia</i> (B.C.), 26812, *B	1936(98)	
<i>Pushpanathan v. Minister of Citizenship and Immigration</i> (F.C.A.)(Ont.), 25173, *C	210(98)	
<i>R. v. Dew</i> (Man.), 27017, *A	4(99)	
<i>R. v. Khan</i> (Crim.)(Man.), 26765, *B	1971(98)	

<i>R. c. Lévesque</i> (Qué.), 26939, *A	1750(98)	
<i>R. v. Martel Building Ltd.</i> (F.C.A.)(Ont.), 26893, *A	1598(98)	
<i>R. v. Middleton</i> (Ont.), 26860, *A	1550(98)	
<i>R. v. Robertson</i> (Crim.)(Nfld.), 26614, *01	1878(98)	25(99)
<i>R. v. Ruzic</i> (Ont.), 26930, *A	1725(98)	
<i>R. in right of the Province of Ontario v. Mason</i> (Ont.), 26797, *02	1872(98)	30(99)
<i>Rain v. The Queen</i> (Alta.), 27041, *A	7(99)	
<i>Rathwell v. The Queen</i> (Ont.), 27039, *A	7(99)	
<i>Reed v. The Queen</i> (B.C.), 27018, *A	5(99)	
<i>Renaud c. Commission des affaires sociales</i> (Qué.), 26677, *B	1877(98)	
<i>Richard c. La Reine</i> (Qué.), 26934, *A	1725(98)	
<i>Richardson v. Richardson</i> (B.C.), 26956, *02 7.1.99	1941(98)	23(99)
<i>Richer (Sylvio) c. La Reine</i> (Crim.)(Qué.), 26769, *A	1347(98)	
<i>Richer (Sylvio) c. La Reine</i> (Crim.)(Qué.), 26852, *A	1500(98)	
<i>Richter & Associés Inc. c. Wightman</i> (Qué.), 26735, *A	1210(98)	
<i>Rijntjes v. Workers' Compensation Board of Nova Scotia</i> (N.S.), 26906, *01 7.1.99	1942(98)	24(99)
<i>Riopel c. La Reine</i> (Qué.), 26787, *A	1342(98)	
<i>Rocky Mountain Ecosystem Coalition v. Joint Review Panel</i> (F.C.A.)(Alta.), 25618, *A	1958(96)	
<i>Rodrigue (Réal) c. Procureur général du Québec</i> (Qué.), 26884, *A	1657(98)	
<i>Rounds v. The Queen in right of Canada</i> (F.C.A.)(Ont.), 26775, *A	1214(98)	
<i>Royal Bank of Canada v. Director of Investigation and Research</i> (Ont.), 26315	5(98)	232(98)

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

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

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

c) The order granted on March 19, 1997 by Farley J. in Ontario Court (General Division) Commercial List File Nos. B55/95B, B55/95F and B55/95M.

<i>Russell v. The Queen</i> (Alta.), 26699, *A	1750(98)	
<i>S.A. Louis Dreyfus & Cie c. Holding Tusculum B.V.</i> (Qué.), 26843, *A	1350(98)	
<i>Sam Lévy & Associés Inc. c. Canpro Investments Inc.</i> (Qué.), 26875, *A	1597(98)	
<i>Sam Lévy & Associés Inc. c. Canpro Investments Inc.</i> (Qué.), 26908, *A	1724(98)	
<i>Samra (Kuldip Singh) v. The Queen</i> (Ont.), 26976, *A	1931(98)	
<i>Sawicki v. The Queen</i> (Ont.), 26031, *A	1325(97)	
<i>Schmalfuss v. Feldman</i> (Ont.), 26927, *A	1794(98)	
<i>Seaspan International Ltd. The Queen</i> (F.C.A.)(B.C.), 26868, *A	1551(98)	
<i>Services des espaces verts Ltée/Chemlawn c. Ville de Hudson</i> (Qué.), 26937, *A	1725(98)	
<i>Sheppard v. Commissioner for Federal Judicial Affairs</i> (F.C.A.)(Ont.), 26949, *A	1751(98)	
<i>Shulman v. United States of America</i> (Ont.), 26912, *A	1749(98)	

<i>Simanek v. Train</i> (Ont.), 26248, *A	1867(97)	
<i>Snake v. The Queen</i> (Crim.)(Ont.), 25459, *A	1(97)	
<i>Société d'hypothèque Banque Nationale c. Sous-ministre du Revenu du Québec</i> (Qué.), 26988, *A	7(99)	
<i>Société Rodaber Ltée c. Banque nationale du Canada</i> (Qué.), 26909, *A	1724(98)	
<i>Somra v. 432080 Ontario Ltd.</i> (Ont.), 26667, *B	1939(98)	
<i>Spanevello v. The Queen</i> (B.C.), 26959, *A	1865(98)	
<i>Spence c. Commission des droits de la personne et des droits de la jeunesse</i> (Qué.), 26823, *A	1348(98)	
<i>Sreih c. La Reine</i> (Qué.), 26762, *A	1350(98)	
<i>Stark v. The Queen</i> (Crim.)(B.C.), 26792, *01 7.1.99	1873(98)	21(99)
<i>Stenzler v. Ontario College of Pharmacists</i> (Ont.), 26820, *A	1347(98)	
<i>Stonjlovic v. The Queen</i> (Alta.), 26876, *A	1794(98)	
<i>Stuart v. Ernst & Young</i> (B.C.), 25964, *B	659(98)	
<i>Succession of Clifford Burton v. City of Verdun</i> (Que.), 26955, *A	1865(98)	
<i>Sullivan c. Camp Carowanis Inc.</i> (Qué.), 26771, *B	14(99)	
<i>Sutherland v. The Queen in right of Canada</i> (F.C.A.)(Ont.), 26056, *B	1967(97)	
<i>Syndicat des enseignantes et enseignants de la banlieue de Québec c. Commission scolaire des navigateurs</i> (Qué.), 26961, *A	1970(98)	
<i>T.B.-C. c. D.F.</i> (Qué.), 27044, *A	8(99)	
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<i>Therrien c. Ministre de la Justice</i> (Qué.), 27004, *A	3(99)	
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<i>Tremblay (Sonia) c. Procureur général du Québec</i> (Qué.), 26883, *A	1657(98)	
<i>Trengrove Developments Inc. (94-2663(GST)G) v. The Queen</i> (F.C.A.)(Ont.), 26793, *02 7.1.99	1941(98)	22(99)
<i>Tsaoussis v. Baetz</i> (Ont.), 26945, *B	11(99)	
<i>Union of Nova Scotia Indians v. Attorney General of Nova Scotia</i> (N.S.), 26861, *A	1550(98)	
<i>Varma (Aditya Narayan) v. Forsyth</i> (Ont.), 26750, *A	1212(98)	
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<i>Ville de Saint-Hubert c. S.S.Q. Société d'assurance générale</i> (Qué.), 26738, *A	1211(98)	
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Cet index comprend les pourvois en délibéré au début de 1999 et tous ceux entendus en 1999 jusqu'à maintenant.

*01 dismissed/rejeté

*02 dismissed with costs/rejeté avec dépens

*03 allowed/accueilli

*04 allowed with costs/accueilli avec dépens

*05 discontinuance/désistement

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<i>Baker v. Minister of Citizenship and Immigration</i> (F.C.A.)(Ont.), 25823	1742(98)	
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<i>Bracklow v. Bracklow</i> (B.C.), 26178	1744(98)	
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APPEALS INSCRIBED FOR
HEARING AT THE SESSION OF
THE SUPREME COURT OF
CANADA, BEGINNING
MONDAY, JANUARY 18, 1999

APPELS INSCRITS POUR
AUDITION À LA SESSION DE LA
COUR SUPRÊME DU CANADA
COMMENÇANT LE LUNDI
18 JANVIER 1999

SUPREME COURT OF CANADA - COUR SUPRÊME DU CANADA

Session commencing Monday, January 18, 1999 ♦♦♦ Session commençant le lundi 18 janvier 1999

	Style of Cause / Intitulé de la cause	File / Dossier	Counsel / Procureur	Agent / Correspondant
1	Minister of Justice v. Glen Sebastian Burns, et al. (B.C.) (Criminal) (By Leave)	26129	Attorney General of Canada Bolton, Muldoon Oliver & Company	Attorney General of Canada Gowling, Strathy & Henderson
2	Her Majesty the Queen in Right of Canada, et al. v. Angelo Del Zotto, et al. (FC) (Criminal) (By Leave)	26174	Attorney General of Canada Greenspan & Associates Gold & Fuerst	Attorney General of Canada Osler, Hoskin & Harcourt
3	M & D Farm Limited, et al. v. Manitoba Agricultural Credit Corporation (Man.) (Civil) (By Leave)	26215	Taylor, McCaffrey D'Arcy & Deacon	Gowling, Strathy & Henderson Lang, Michener
4	United Food and Commercial Workers International Union, Local 1288P v. Allsco Building Products Ltd., a body corporate, et al. (N.B.) (Civil) (By Leave)	26203	Brown MacGillivray, Stanley Clark & Company	Nelligan, Power Lang, Michener
5	British Columbia Government and Service Employee's Union v. Government of British Columbia as represented by Public Service Employee Relations Commission (B.C.) (Civil) (By Leave)	26274	British Columbia Government and Service Employee's Union Heenan Blaikie	Nelligan, Power Gowling, Strathy & Henderson

	Style of Cause / Intitulé de la cause	File / Dossier	Counsel / Procureur	Agent / Correspondant
6	United Food and Commercial Workers, Local 1518 v. KMart Canada Ltd., et al. (B.C.) (Civil) (By Leave)	26209	Baigent & Jackson Arvay, Finlay Ladner, Downs	Nelligan, Power Scott & Ayles Osler, Hoskin & Harcourt
7	Donald G. Zink v. Graybec Immobilier Inc., et al. (Que.) (Civil) (By Leave)	26314	Colin, Irwin & Associates Ogilvy, Renault Heenan, Blaikie Stikeman, Elliott	Gowling, Strathy & Henderson Ogilvy, Renault Stikeman, Elliott
8	Sa Majesté la Reine c. Benoît Grégoire (QC) (Criminelle) (Autorisation)	26226	Procureur général du Québec Malo & Associés	Noël & Associés Letellier & Associés
9	Theodore Clifford Best v. Marlene Shirley Best (Ont.) (Civil) (By Leave)	26345	Barnes, Sammon Tierney, Stauffer	
10	L.C., et al. v. Brian Joseph Mills, et al. (Alta.) (Criminal) (By Leave)	26358	Cook, Duke, Cox Attorney General of Alberta Edney, Hattersley & Dolphin	Gowling, Strathy & Henderson Gowling, Strathy & Henderson Heather E. Perkins-McVey
11	Her Majesty the Queen v. John Biniaris (B.C.) (Criminal) (As of Right)	26570	Attorney General of British Columbia Wilson & Buck	Burke-Robertson Gowling, Strathy & Henderson

	Style of Cause / Intitulé de la cause	File / Dossier	Counsel / Procureur	Agent / Correspondant
12	Her Majesty the Queen v. R.W.S. (Man.) (Criminal) (As of Right)	26757	Attorney General of Manitoba Walsh, McKay & Company	Gowling, Strathy & Henderson Burke-Robertson
13	Aaron Joseph Molodowic v. Her Majesty the Queen (Man.) (Criminal) (As of Right)	26645	Walsh, Micay & Company. Attorney General of Manitoba	Burke-Robertson Gowling, Strathy & Henderson
14	Ville de Chambly c. Fernand Gagnon (QC) (Civile) (Autorisation)	26195	Dunton, Rainville, Toupin, Perrault Des Rivières, Vermette	Noël & Associés Lang, Michener
15	Sa Majesté la Reine c. Daniel Jolivet (QC) (Criminelle) (De plein droit)	26646	Procureur général du Québec Alain Brassard	Noël & Associés Bergeron, Gaudreau
16	Patricia Carolyn Hickey v. Walter Donald Hickey (Man.) (Civil) (By Leave)	26430	Monk, Goodwin MacKinnon & Phillips	Osler, Hoskin & Harcourt
17	Jean Victor Beaulac v. Her Majesty the Queen (B.C.) (Criminal) (By Leave)	26416	Wilson, Buck Attorney General of British Columbia	Gowling, Strathy & Henderson Burke-Robertson

	Style of Cause / Intitulé de la cause	File / Dossier	Counsel / Procureur	Agent / Correspondant
18	Her Majesty the Queen v. Nesbitt, Burns Inc., et al. (Ont.) (Civil) (By Leave)	26422	Beard, Winter Tory, Tory, DesLauriers & Binnington	Burke-Robertson Lang, Michener
19	Glenn Norman Davis v. Her Majesty the Queen (Nfld.) (Criminal) (As of Right)	26441	Robin Reid Attorney General of Newfoundland	Lang, Michener Burke-Robertson
20	Kok Leong Liew v. Her Majesty the Queen (Alta .) (Criminal) (As of Right)	26676	Tarrabain & Company Attorney General of Canada	Gowling, Strathy & Henderson Attorney General of Canada
21	Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd.	26415	McEwen, Schmitt & Company Owen, Bird	McCarthy, Tétrault Lang, Michener
22	N.H., et al v. H.M., et al (B.C.) (Civil) (By Leave)	26555	Grey, Casgrain & Associates James G. Martin Derrick, A. Daniels	Gowling, Strathy & Henderson Gowling, Strathy & Henderson
23	Pierre Poliquin de la firme Samson Bélair/Deloitte Touche Inc. syndic à la faillite des débiteurs c. Colette Perron-Malenfant	26451	Brochet, Dussault & Associés Gervais et Lozeau	Letellier & Associés Beaudry, Bertrand

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

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

Motion day : **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

DEADLINES: APPEALS

DÉLAIS: APPELS

The Spring Session of the Supreme Court of Canada will commence April 19, 1999.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 1998 -

OCTOBER - OCTOBRE						
S	M	T	W	T	F	S
D	L	M	M	J	V	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	M	T	W	T	F	S
D	L	M	M	J	V	S
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8	9	10	H 11	12	13	14
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22	23	24	25	26	27	28
29	30					

DECEMBER - DECEMBRE						
S	M	T	W	T	F	S
D	L	M	M	J	V	S
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20	21	22	23	24	H 25	26
27	H 28	29	30	31		

- 1999 -

JANUARY - JANVIER						
S	M	T	W	T	F	S
D	L	M	M	J	V	S
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31						

FEBRUARY - FÉVRIER						
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28						

MARCH - MARS						
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APRIL - AVRIL						
S	M	T	W	T	F	S
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30	31					

JUNE - JUIN						
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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

4 holidays during sitting days / jours fériés durant les sessions