CONTENTS		TABLE DES MATIÈRES
Applications for leave to appeal filed	678 - 679	Demandes d'autorisation d'appels produites
Applications for leave submitted to Court since last issue	680 - 687	Demandes soumises à la Cour depuis la dernière parution
Oral hearing ordered	-	Audience ordonnée
Oral hearing on applications for leave	-	Audience sur les demandes d'autorisation
Judgments on applications for leave	688 - 699	Jugements rendus sur les demandes d'autorisation
Motions	700 - 705	Requêtes
Notices of appeal filed since last issue	706	Avis d'appel produits depuis la dernière parution
Notices of intervention filed since last issue	707	Avis d'intervention produits depuis la dernière parution
Notices of discontinuance filed since last issue	-	Avis de désistement produits depuis la dernière parution
Appeals heard since last issue and disposition	708 - 712	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	-	Jugements rendus sur les appels en délibéré
Headnotes of recent judgments	-	Sommaires des arrêts récents
Weekly agenda	713	Ordre du jour de la semaine
Summaries of the cases	714 - 725	Résumés des affaires
Cumulative Index - Leave	-	Index cumulatif - Autorisations
Cumulative Index - Appeals	-	Index cumulatif - Appels
Appeals inscribed - Session beginning	-	Pourvois inscrits - Session commençant le
Notices to the Profession and Press Release	-	Avis aux avocats et communiqué de presse
Deadlines: Motions before the Court	726	Délais: Requêtes devant la Cour
Deadlines: Appeals	727	Délais: Appels
Judgments reported in S.C.R.	-	Jugements publiés au R.C.S.

Miroslav Novak

v. (24083)

Marie Novak Pedersen (Alta.)
Neva S. Ramsay
Stewart & McCullough

FILING DATE 30.3.1994

National Hockey League Pension Society et al.
Neil Finkelstein
Blake, Cassels & Graydon

v. (24095)

Andrew Bathgate et al. (Ont.)
Mark Zigler
Koskie & Minsky

FILING DATE 18.4.1994

Rod Jazra
Rod Jazra

c. (24096)

Banque de Montréal (Qué.)
Brigitte Gagnon
Laflamme Rousseau

DATE DE PRODUCTION 14.4.1994

Sucha Singh Nagra
Micheal Crane

v. (24097)

The Secretary of State of Canada (F.C.A.)
A.M. Waters
Dept. of Justice

FILING DATE 18.4.1994

Joseph McCarten et al.
Richard F. McPhee
Shannon Bishop McPhee

v. (24098)

The Government of Prince Edward Island (P.E.I.)
Roger B. Langille, Q.C.
Dept. of Justice

FILING DATE 15.4.1994

International Lottery Distributors Inc. et al.
William R. Murray
Baker, Radcliffe, Murray & Kovnats

v. (24100)

The Government of Manitoba et al. (Man.)
R.D.E. Curpen
Thompson, Dorfman, Sweatman

FILING DATE 12.4.1994

Bridges Brothers Ltd.
Joel P. Hansen

v. (24101)

Her Majesty The Queen in the name of the Minister of National Revenue (F.C.A.)
John C. Tait, Q.C.
Dept. of Justice

FILING DATE 15.4.1994

Her Majesty The Queen
Anthony K. Graburn
Crown Law Office - Criminal

v. (24102)

Douglas Fisher (Ont.)
Sean J. May

FILING DATE 21.4.1994

District of Chilliwack
Robert J. Bauman
Bull, Housser & Tupper

v. (24104)

Jesperson's Brake & Muffler Ltd. et al. (B.C.)
James D. Baker
Baker, Newby & Co.

FILING DATE 21.4.1994

Clifford Burton
Julius H. Grey
Grey Casgrain

c. (24105)

The City of Verdun (Qué.)
Bernard Synnott
Hébert, Denault

DATE DE PRODUCTION 22.4.1994

Gilles Patenaude
Gilles Patenaude

c. (24076)

Ville de Saint Hubert (Qué.)
Dunton, Rainville, Toupin, Perreault

DATE DE PRODUCTION 8.4.1994

APRIL 25, 1994 / LE 25 AVRIL 1994

CORAM: THE CHIEF JUSTICE LAMER AND CORY AND IACOBUCCI JJ. / LE JUGE EN CHEF LAMER ET LES JUGES CORY ET IACOBUCCI

Nasir Ahmed Fiqia

v. (23945)

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

NATURE OF THE CASE

Criminal law - Procedural law - Evidence - Defence - Whether the Court of Appeal erred in justifying the admission of prejudicial evidence as relevant to matters which were never in issue at the trial - Whether the Court of Appeal erred in justifying Crown counsel's gravely prejudicial cross-examination of the Applicant on the basis that it went to negate a defence which had never been raised by the Applicant at his trial - Whether the Court of Appeal erred in holding that the trial judge's response to jury question number one was responsive to the question and would have assisted the jury on a point on which they sought guidance - Whether the Court of Appeal erred in holding that the Applicant was not entitled to a new trial when counsel made serious suggestions about the conduct of the Applicant to a defence witness which the Crown did not seek to substantiate on denial by the said witness.

PROCEDURAL HISTORY

March 26, 1992 Court of Queen's Bench of Alberta (Girgulis J.)	Conviction: Sexual assault
December 8, 1993 Court of Appeal of Alberta (Fraser C.J.A., Belzil and McFadyen JJ.A.)	Appeal against conviction dismissed
January 6, 1994 Supreme Court of Canada	Notice of appeal filed (CMS-1)
April 6, 1994 Supreme Court of Canada	Application for leave to appeal filed

Bobsie Hanson

v. (24037)

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

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Extradition - Whether the Courts erred in holding that the decision in *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 787, was still valid and binding on the Minister of Justice and gave him a discretion whether or not to seek assurances pursuant to Art. 6 of the *Treaty of Extradition* regarding the imposition of the death penalty - Whether the Courts erred in holding that the Applicant's rights guaranteed by ss. 7 and 12 of the *Charter* were not infringed by the Minister's decision to sign the warrants of surrender without seeking Art. 6 assurances - Human Rights Committee of the United Nations deciding that Canada violated Art. 7 of the *International Covenant on Civil and Political Rights* in the extradition of Ng, by extraditing him without having sought assurances that he would not be executed, and holding that execution by gas asphyxiation constitutes cruel and inhuman treatment in violation of Art. 7, which form of execution the Applicant faces if convicted and sentenced to death.

PROCEDURAL HISTORY

August 30, 1993 Ontario Court of Justice (General Division) (Moldaver J.)	Application for a writ of *habeas corpus ad subjiciendum* with *certiorari* in aid dismissed
January 20, 1994 Court of Appeal for Ontario (Morden A.C.J.O., Grange and Doherty JJ.A.)	Appeal dismissed
March 18, 1994 Supreme Court of Canada	Application for leave to appeal filed

Tracy Lee Thornbury-Cook

v. (24052)

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

NATURE OF THE CASE

Criminal law - Procedural law - Pre-trial procedure - Statutes - Interpretation -The Applicant, a prostitute, was charged with the second degree murder of one of her clients - Whether the Court of Appeal erred in holding that the use by the Crown of its stand-aside power, disproportionately against women on the jury panel, did not create a reasonable apprehension of partiality or constitute an abuse of the jury selection process - Whether the Court of Appeal erred in holding that the trial judge did not err in her instructions to the jury with respect to s. 34(2) of the *Criminal Code*, R.S.C. 1985, c. C-46, by applying a strictly objective standard to the questions of the Applicant's reasonable apprehension of death or grievous bodily harm and of the reasonableness of her belief that she could not preserve herself other than by causing death or grievous bodily harm.

PROCEDURAL HISTORY

March 22, 1991
Ontario Court (General Division) (German J.)

Conviction: Manslaughter

November 22, 1993
Court of Appeal of Ontario
(Dubin C.J.O., Blair and McKinlay JJ.A.)

Appeal against conviction dismissed

March 23, 1994
Supreme Court of Canada

Application for leave to appeal filed

Employers Insurance of Wausau, a Mutual Company

v. (24054)

Joseph John Burns, Joseph Burns, Roma Burns and Joel Freedman (Ont.)

NATURE OF THE CASE

Torts - Insurance - Evidence - Release in favour of a tortfeasor relating to all claims arising out of a motor vehicle accident - Motion to rectify the release - S.E.F. 42 underinsured endorsement -Does the evidence support the Court of Appeal's decision to rectify the release by providing that the plaintiffs intended to release the tortfeasor and his insurer from liability to the extent of $1,000,000 only and that the plaintiffs intended the claims against the Applicant not to be barred by the execution of the release?

PROCEDURAL HISTORY

March 11, 1992 Ontario Court of Justice (General Division) (Dunnet J.)	Motion to rectify a release allowed and action dismissed
January 24, 1994 Ontario Court of Appeal (Morden A.C.J.O., Grange and Austin JJ.A.)	Appeal allowed and cross-appeal dismissed
March 25, 1994 Supreme Court of Canada	Application for leave to appeal filed

CORAM: LA FOREST, SOPINKA AND MAJOR JJ. /
LES JUGES LA FOREST, SOPINKA ET MAJOR

Mark Kreuzer

v. (24067)

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

NATURE OF THE CASE

Criminal law - Police - Defence - Appeals - Whether the authorities can use assault as a method of silencing Holocaust revisionists and convict them while denying the principles of law and the right of self defence - Whether the principles of self defence were improperly denied by the Court of Appeal - Whether the Court of Appeal failed to perceive the significance and importance of demonstration and communication on public property.

PROCEDURAL HISTORY

March 16, 1992 Provincial Court of Alberta (Dinkel P.C.J.)	Conviction: Assault
October 30, 1992 Court of Queen's Bench of Alberta (Montgomery J.)	Summary conviction appeal dismissed
February 24, 1994 Court of Appeal of Alberta (Harradence [dissenting], Hetherington and Foisy JJ.A.)	Appeal dismissed
March 31, 1994 Supreme Court of Canada	Application for leave to appeal filed

Fred Hansen

v. (24043)

Westminer Canada Limited, Westminer Canada Holdings Limited,
James H. Lalor, Peter Maloney, William B. Braithwaite
and Western Mining Corporation Holdings Limited (N.S.)

NATURE OF THE CASE

Torts - Damages - Respondents commencing action in damages in the Supreme Court of Ontario following loss suffered after takeover of mining company which project of a gold mine in Nova Scotia failed - Cavalier Capital Corporation incorporated for the purchase of Cavalier Energy and Applicant, a former director of the Nova Scotia company, providing letter of credit in support of a bank loan for the purchase of Cavalier Energy - Underwriter pulling out following the bringing of the Ontario action and Cavalier not listed as a public company recognized by a Canadian stock exchange - Respondents found guilty of civil conspiracy by the Supreme Court of Nova Scotia, Trial Division - Applicant's claim for damages for losses suffered following the commencement of the Ontario action dismissed by the Supreme Court, Trial

Division - Whether the Court of Appeal erred in failing to award the Applicant damages for his losses associated with Cavalier Capital Corporation.

PROCEDURAL HISTORY

March 23, 1993 Supreme Court of Nova Scotia, Trial Division (Nunn J.)	Respondents guilty of civil conspiracy and ordered to pay general damages and costs; Applicant's claim for Cavalier losses dismissed
January 18, 1994 Court of Appeal for Nova Scotia (Clarke C.J.N.S., Freeman and Roscoe JJ.A.)	Appeal dismissed; Applicant's cross-appeal dismissed
March 21, 1994 Supreme Court of Canada	Application for leave to appeal filed

Nicole Vigeant

c. (24016)

Pierre-André Langlois (Qué.)

NATURE DE LA CAUSE

Procédure - Droit de la famille - Appel - Pensions - Preuve - Pension alimentaire - Demande de pension alimentaire rejetée - Absence de preuve justifiant de faire revivre ou de prolonger la pension alimentaire - Appel rejeté - Absence d'erreur dans le jugement prononcé en première instance justifiant l'intervention de la Cour d'appel.

HISTORIQUE PROCÉDURAL

Le 1er mars 1989 Cour supérieure du Québec (Warren j.c.s.)	Demande de pension alimentaire de la demanderesse rejetée; ordonnance de paiement d'une pension alimentaire pour l'enfant de 520$ par mois ainsi que de certaines autres dépenses
Le 21 décembre 1993 Cour d'appel du Québec (Deschamps, Mailhot et Rothman jj.c.a.)	Appel rejeté
Le 23 février 1994 Cour suprême du Canada	Demande d'autorisation d'appel déposée
Le 18 mars 1994 Cour suprême du Canada	Demande de prorogation de délai déposée

Nicole Vigeant

c. (24017)

Pierre-André Langlois (Qué.)

NATURE DE LA CAUSE

Procédure - Appel - Droit de la famille - Prescription - Requête en modification de mesures accessoires - Pension alimentaire de la demanderesse annulée - Appel rejeté - Demanderesse n'ayant pas fait appel dans les 30 jours prévus à l'article 21 de la *Loi sur le Divorce*.

HISTORIQUE PROCÉDURAL

Le 4 septembre 1987 Cour supérieure du Québec (Zerbisias j.c.s.)	Requête en modification de mesures accessoires de la demanderesse accueillie en partie; Requête en ordonnance modificatrice de l'intimé accueillie en partie
Le 21 décembre 1993 Cour d'appel du Québec (Deschamps, Mailhot et Rothman jj.c.a.)	Appel rejeté
Le 23 février 1994 Cour suprême du Canada	Demande d'autorisation d'appel déposée
Le 18 mars 1994 Cour suprême du Canada	Demande de prorogation de délai déposée

CORAM: L'HEUREUX-DUBÉ, GONTHIER AND McLACHLIN JJ. /
LES JUGES L'HEUREUX-DUBÉ, GONTHIER ET McLACHLIN

Richard Dubois

c. (23993)

Raymond, Chabot, Fafard, Gagnon Inc.,
en sa qualité de liquidateur provisoire de
Les Coopérants, Société mutuelle d'assurance vie/
Coopérants, Mutual Life Insurance Society (Qué.)

NATURE DE LA CAUSE

Droit commercial - Droit des biens - Code civil - Liquidation - Contrats - Créancier et débiteur -Copropriétaires indivis d'immeubles - Stipulations dans deux contrats signés par la débitrice - Contrats conclus avant une ordonnance de liquidation - Validité initiale des conventions d'indivision - Statut du liquidateur - L'opposabilité des conventions d'indivision - Clauses de défaut et de vente obligatoire.

HISTORIQUE PROCÉDURAL

Le 30 septembre 1992 Cour supérieure du Québec (Trudel j.c.s.)	Requête pour directives concernant des "contrats d'indivision" rejetée
Le 13 décembre 1993 Cour d'appel du Québec (Beauregard, Mailhot et Proulx jj.c.a)	Appel accueilli
Le 9 février 1994 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Raymonde Gaulin

c. (23793)

Centre des services sociaux de la Gaspésie et des Îles-de-la-Madeleine (Qué.)

NATURE DE LA CAUSE

Procédures - Code civil - Procédure civile - Actions - Jugements et ordonnances - Exception déclinatoire - Donation d'immeuble sous réserve d'hypothèques judiciaires - La Cour d'appel du Québec a-t-elle commis une erreur en rejetant la requête pour permission spéciale d'appeler?

HISTORIQUE PROCÉDURAL

Le 22 mars 1993 Cour supérieure du Québec (Pelletier, J.C.S.)	Requête de l'intimé en irrecevabilité accueillie
Le 7 juin 1993 Cour d'appel du Québec (Bisson J.C.Q., Rousseau-Houle et Delisle, JJ.C.A.)	Requête de l'intimé en rejet d'appel accueillie
Le 7 septembre 1993 Cour d'appel du Québec (Nichols, Chouinard et Rousseau-Houle, JJ.C.A.)	Requête de la demanderesse pour permission spéciale d'en appeler rejetée
Le 1er novembre 1993 Cour suprême du Canada	Demande d'autorisation d'appel (incomplète) déposée

Steinberg Inc. et Paul Bertrand, *es qualité* de coordonnateur

c. (24064)

Cavendish Shopping Center Co. Ltd.

et

Hudon et Deaudelin Ltd., Banque Toronto-Dominion, Caplan-Duval Gift Shops Inc., 168573 Canada Inc. (Qué.)

NATURE DE LA CAUSE

Code civil - Contrats - Interprétation - Législation - *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, ch. C-36 - La Cour d'appel a-t-elle appliqué erronément les règles d'interprétation des contrats compte tenu de l'ensemble des dispositions de l'entente du 25 septembre 1992 et compte tenu du but et de l'objet même de cette convention? - La Cour d'appel a-t-elle erré en concluant qu'une compagnie débitrice et le coordonnateur désigné comme officier de la Cour pouvaient être liés par des obligations qui ne sont pas énoncées clairement dans une convention conclue en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*?

HISTORIQUE PROCÉDURAL

Le 30 mars 1993 Cour supérieure du Québec (Denis J.C.S.)	Requête de l'intimée Cavendish en nullité de l'avis de désaveu rejetée
Le 18 mai 1993 Cour d'appel du Québec (Fish J.C.A.)	Requête de l'intimée Cavendish pour permission d'appel accordée
Le 31 janvier 1994 Cour d'appel du Québec (Rothman, Mailhot et Deschamps, JJ.C.A.)	Appel de l'intimée Cavendish accueilli
Le 31 mars 1994 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Canassurance, compagnie d'assurance-vie inc.

c. (24090)

Notaire André Bourassa et Notaire Hubert Gravel (Qué.)

NATURE DE LA CAUSE

Droit commercial - Prêt - Privilèges de constructeur - Droit des professions - Responsabilité des notaires - Créance hypothécaire - Action sur compte et privilège d'un entrepreneur en construction contre un promoteur immobilier - Intervention agressive de la demanderesse, créancière hypothécaire, au litige pour faire reconnaître une concession de rang consentie par l'entrepreneur - Appel en garantie de la demanderesse pour mettre en cause les intimés qui agissaient comme ses mandataires - Les intimés ont-ils protégé adéquatement les droits de la demanderesse en se départissant de certaines sommes contrairement aux instructions reçues et en faisant des déboursés sans avoir constaté que les documents de concession de priorité d'hypothèque avaient été raturés, exposant alors la demanderesse à ne pas détenir une hypothèque de premier rang?

HISTORIQUE PROCÉDURAL

Le 13 juillet 1992 Cour supérieure du Québec (Arsenault j.c.s.)	Demande pour mise en cause des intimés rejetée
Le 28 janvier 1994 Cour d'appel du Québec (Beauregard, Rousseau-Houle et Deschamps jj.c.a.)	Appel rejeté
Le 29 mars 1994 Cour suprême du Canada	Demande d'autorisation d'appel déposée

APRIL 28, 1994 / LE 28 AVRIL 1994

23749 **HER MAJESTY THE QUEEN v. DAVID GORDON BARRETT** (Crim.)(Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Procedural law - Evidence - Applicant convicted on ten counts of robbery - *Voir dire* held with respect to oral and written statements made by the Respondent to investigating officers - Appeal from conviction on the ground that there were no reasons for the ruling on the *voir dire* allowed - Whether the Court of Appeal erred in requiring the trial judge to provide reasons for findings of fact made on disputed and contradicted evidence - Whether the failure to provide reasons on the *voir dire* constituted a miscarriage of justice.

23787 **RANDY JORGENSEN AND 913719 ONTARIO LIMITED v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Evidence - Obscenity - Pornography - Interpretation of s. 163 of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in holding that the trial judge had not erred in her interpretation of the *mens rea* requirement of the offence under s. 163(2) of the *Criminal Code* -Whether the Court of Appeal erred in holding that the trial judge had not erred in failing to find that reliance by the Applicants on the Ontario Film Review Board approval of the videotapes negated any element that the Applicants acted "knowingly" as required by the offence charged under s. 163(2) of the *Criminal Code*. - Whether the Court of Appeal erred in holding that the trial judge had not erred in failing to find that the Ontario Film Review Board approval amounted to a "lawful justification or excuse", the absence of which is required by the offence charged under s. 163(2) of the *Criminal Code* - Application of *R. v. Butler*, [1992] 1 S.C.R. 452.

23913 **HER MAJESTY THE QUEEN v. ALLAN PETER HAWKINS, RANDY JORGENSEN, ROMAN RONISH AND GEORGE RONISH** (Crim.)(Ont.)

CORAM: The Chief Justice and Cory 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 - Evidence - Obscenity - Application of s. 163 of the *Criminal Code*, R.S.C. 1985, c. C-46 - Application of *R. v. Butler*, [1992] 1 S.C.R. 452 - Whether all material depicting adults engaged in sexually explicit consensual acts which are degrading or dehumanizing constitute obscenity - Whether material must also create substantial risk of harm to society - Whether the Applicant proved risk of harm beyond reasonable doubt - Whether depiction of sex outside context of emotional involvement not perceived by most members of community as substantially harmful.

23909 **GORDON TEMPELAAR v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Offences - Sentencing - Whether the Court of Appeal for Ontario erred in holding that when faced with a verdict of guilt, the factual basis for which is ambiguous, the trial judge is entitled to arrive at his own conclusions for the purpose of sentencing - Whether the ruling of the Court of Appeal is contrary to s. 7 of the *Charter* which imputes the right to presumption of innocence to the sentencing process - Application of *R. v. Tuckey* (1985), 20 C.C.C. (3d) 501 (Ont. C.A.).

23898 ERNEST A. HAWRISH v. HER MAJESTY THE QUEEN (Crim.)(Sask.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Procedural law - Appeal - Offenses - Applicant acting as solicitor for a venture capital corporation that sought equity capital to invest in a restaurant of which he was part owner - Whether the Court of Appeal erred in its definition of the *actus reus* of the theft by conversion and defined it in a manner unknown to the law - Whether the Court of Appeal erred in affirming the conviction for theft by conversion on a basis which was not advanced by the Respondent at trial or in the Court of Appeal - Whether the Court of Appeal erred in its determination that the conviction on the second count of fraud was not unreasonable.

23950 WILLIAM HUTTER v. HER MAJESTY THE QUEEN (Crim.)(Ont.)

CORAM: The Chief Justice and Cory 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 - *Canadian Charter of Rights and Freedoms* - Procedural law - Pre-trial procedure -Appeals - Evidence - Applicant's application for a stay of proceedings on the ground that the Respondent's failure to make full disclosure of all relevant facts in his possession relating to the character of the Applicant violated ss. 7 and 11(*d*) of the *Charter* dismissed - Whether the Court of Appeal erred by engaging in the wholesale weighing of evidence in reviewing the impact a disclosure violation might have had on the outcome of the case - Whether the Court of Appeal erred in concluding that the Applicant's right to make full answer and defence was not impaired, even though the Respondent had breached the Applicant's constitutional right to full disclosure.

23943 DERIK CHRISTOPHER LORD v. HER MAJESTY THE QUEEN (Crim.)(B.C.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Trial - Evidence -Whether the Court of Appeal erred in finding that the acts done or declarations made in furtherance of a conspiracy, when the charge was not one of conspiracy but of first degree murder, were admissible in evidence - Whether the application of the conspirators' exception to the general exclusion of hearsay evidence to offenses other than conspiracy is inconsistent with s. 7 of the *Charter* - Whether the Court of Appeal erred in usurping the function of the jury in finding that the Applicant was probably a member of the alleged conspiracy - Whether the Court of Appeal erred in holding that the misdirection of the trial judge in his instruction to the jury in relation to the "conspirators' exception to the hearsay rule" did not amount to a substantial wrong or miscarriage of justice - Whether the Court of Appeal erred in holding that the trial judge's charge to the jury on the issue of reasonable doubt was a proper instruction.

23887 CONSOLIDATED ENFIELD CORPORATION v. MICHAEL F. BLAIR (Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Commercial law - Procedural law - Company law - Costs - Standard of conduct required of chairmen of public corporation meetings - Whether chairmen are required to act quasi-judicially -Interpretation of the directors' and officers' indemnity provision in the business corporations statutes - Whether the fact that a chairman received legal advice in respect of a decision and followed such advice is determinative of his or her entitlement to an indemnity against costs arising from litigation over that decision - Standard of conduct required of a chairman during litigation concerning his or her ruling.

23936 THE WORKERS' COMPENSATION BOARD v. HUSKY OIL OPERATIONS LTD. AND HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN, AS REPRESENTED BY THE MINISTER OF HUMAN RESOURCES, LABOUR AND EMPLOYMENT, HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN, AS REPRESENTED BY THE MINISTER OF FINANCE, BANK OF MONTREAL, ERIC ZIMMERMAN, GARTH PRICE, TREVOR BROWN, ARTHUR GINGRAS, KELLY HOUSTON, DARCY KUZIO, HANS BOHLE, CHARLES PSHEBENICKI, TERRY SAPERGIA SBW-WRIGHT CONSTRUCTION INC., CAMPBELL WEST (1991) LTD., FULLER AUSTIN INSULATION INC., UNITED INDUSTRIAL EQUIPMENT RENTALS LTD., ATCO ENTERPRISES LTD., AND DELOITTE & TOUCHE INC., AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF METAL FABRICATING & CONSTRUCTION LTD. AND ATTORNEY GENERAL OF SASKATCHEWAN (Sask.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Constitutional law - Commercial law - Bankruptcy - Workers' compensation - Constitutional law - Division of powers - Applicability of s. 133 of *The Workers' Compensation Act* of Saskatchewan in bankruptcy situation.

23940 HER MAJESTY THE QUEEN v. CROWN FOREST INDUSTRIES LTD. (F.C.A.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Taxation - Application of *Canada-United States Income Tax Convention* - To what extent have Canada's powers to tax non-resident persons on their Canadian-source income been limited by the Canada - U.S. Convention and similar bilateral conventions with other countries?

23973 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, ATTORNEY GENERAL OF ONTARIO, WILLIAM MCCORMACK, ROBERT CLARKE, JAMES CROWLEY, ROBERT MONTROSE, ERIC LIBMAN AND DAVID FISHER v. ANTONIO PRETE (Ont.)

CORAM: The Chief Justice and Cory 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

Civil procedure - *Charter* - Limitation of actions - Pleadings - Effect of *Proceedings Against the Crown Act* and *Public Authorities Protection Act* on action for *Charter* remedy - Whether, in circumstances, statement of claim should be struck out or action dismissed.

23922 JAKE FRIESEN v. HER MAJESTY THE QUEEN (F.C.A.)

CORAM: La Forest, Sopinka and Major JJ.

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

La demande de prorogation de délai et la demande d'autorisation d'appel sont accordées.

NATURE OF THE CASE

Taxation - Assessment - Statutes - Interpretation - Adventure or concern in the nature of trade -Inventory valuation - Whether the reasons for judgment of the Federal Court of Appeal contain an inherent inconsistency in that the Court has held that an inventory valuation can only be done for property that is the subject matter of an adventure or concern in the nature of trade in the year of disposition - Subsections 10(1) and 248(1) of the *Income Tax Act*, S.C. 1970-71-72, c. 63.

23928 LAWRENCE O'LEARY v. HER MAJESTY THE QUEEN, in Right of the Province of New Brunswick (N.B.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Administrative law - Jurisdiction - Action - Torts - Negligence - Damages - Labour law - Collective agreement - Labour relations - Master/Servant - Nature and extent of a Court's jurisdiction to entertain an action framed in tort when the claims

asserted arise out of an employment relationship governed by a collective agreement which provides a procedure and forum for the enforcement of all differences between the parties thereto - Whether the Court of Appeal erred in finding that a claim alleged in tort, arising out of and relating to the performance of duties in an employment relationship which prescribes the statutory adjudication of all disputes relating to the collective agreement between the parties, does not constitute an adjudicable difference under that agreement, and clothes the Court with jurisdiction to hear the dispute.

23792 **RODOLFO PACIFICADOR v. REPUBLIC OF THE PHILIPPINES** (Ont.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Extradition - Criminal law - Procedural law - Statutes - Interpretation - Evidence - Whether the Court of Appeal erred in not holding that the evidentiary threshold applicable to committal for extradition under s. 18(1)(*b*) of the *Extradition Act*, R.S.C. 1985, c. E-21, is contrary to the rights guaranteed under s. 7 of the *Charter* - Whether the Court of Appeal erred in holding that the purported arrest from the Respondent was sufficient - Whether the Court of Appeal erred in holding that sufficient evidence had been adduced at the extradition hearing to establish that the person before the Court was the person referred to in the extradition request - Whether the Court of Appeal erred in confirming that the Applicant was not entitled to adduce evidence of the recanting affidavits of a witness - Whether the Court of Appeal erred in holding that the RCMP officer was not a compellable witness for the defence.

23841 **SCOTTISH & YORK INSURANCE CO. LTD. and VICTORIA INSURANCE CO. OF CANADA v. CO-OPERATORS GENERAL INSURANCE CO., FRANK J. CSAR, Liquidator of Security Casualty Co. and GEORGE AYTON** (Ont.)

CORAM: La Forest, Sopinka and Major 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 - Jurisdiction - Statutes - Interpretation - Applicants bringing actions in the Federal Court of Canada and the Supreme Court of Ontario - Legislation amended granting concurrent jurisdiction to provincial courts - Applicants' application to add Her Majesty the Queen as a party defendant to the action dismissed by the Supreme Court of Ontario - Whether the Court of Appeal erred in determining that s. 21 of the *Crown Liability Act*, R.S.C. 1985, c. C-50, as amended by S.C. 1990, c. 8, was meant to apply to litigants who as a matter of necessity had commenced an action in Federal Court against Her Majesty the Queen - Whether the Act to amend the *Federal Court Act*, the *Crown Liability Act*, and the *Supreme Court Act*, S.C. 1990, c. 8, was intended to afford existing litigants, as distinct from future litigants, access to the amendments establishing concurrent provincial jurisdiction over claims against Her Majesty the Queen - Whether it is the law of Canada that a party is precluded from exercising the newly established concurrent provincial court jurisdiction in actions against Her Majesty the Queen because of a "pending" Federal Court action which, if discontinued, would afford Her Majesty the Queen a limitation defence She would not otherwise have - Whether the repeal in its entirety of s. 21(2) of the *Crown Liability Act* and its replacement in identical language by the Act to amend only precluded litigants who after the date of such repeal and replacement elected to sue in Federal Court, from taking advantage of the newly established concurrent provincial court jurisdiction, or whether it precluded extant litigants, who did not have the ability to make a choice of forum when their litigation was commenced, from exercising the newly established concurrent provincial court jurisdiction.

23864 **TOM STRICKLAND, on behalf of himself and all members of the ASSOCIATION OF PROFESSIONAL ENGINEERS OF SASKATCHEWAN employed by the Saskatchewan Institute of Applied Science and Technology v. RALPH ERMEL, on behalf of himself and all members of the S.G.E.U. SIAST academic bargaining unit, SASKATCHEWAN INSTITUTE OF APPLIED SCIENCE AND TECHNOLOGY and ATTORNEY GENERAL FOR SASKATCHEWAN** (Sask.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Labour law - Labour relations - Collective agreement - Statutes - Interpretation - Whether s. 14(3) of *The Institute Act*, S.S. 1986-87-88, c. I-9.1, infringes the Applicants' rights as guaranteed by s. 2(*d*) of the *Charter* by requiring them to be part of a particular bargaining unit - Whether s. 36 of *The Trade Union Act*, R.S.S. 1978, c. T-17, infringes certain of the Applicants' rights as guaranteed by s. 2(*d*) of the *Charter* by requiring them to obtain and/or maintain membership in a designated union.

23870 **DAVID DESHANE and DOROTHY DESHANE on behalf of all persons entitled pursuant to the *Family Law Reform Act*, and the said DOROTHY DESHANE v. DEERE & CO.** (Ont.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Torts - Procedural law - Appeals - Damages - Product liability - Whether the Court of Appeal erred in holding that the common law allows manufacturers to refrain from warning users about known or foreseeable dangers associated with their products if it can be said that the danger is "obvious", notwithstanding that it is foreseeable to the manufacturer that the user of the product may not be fully aware of the danger - Whether the Court of Appeal erred in treating the issue of obviousness of danger as a question on which it was entitled to substitute its view in the place of the clear factual findings of a jury - Whether the Court of Appeal erred in disposing of the appeal on a basis not advanced by the Respondent either at trial or in the Court of Appeal.

23860 **HER MAJESTY THE QUEEN v. CARLTON PARKS** (Crim.)(Ont.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Procedure - Trial - Jury selection - Challenge for cause - Can an accused, who is a member of a visible racial minority, challenge potential jurors for cause on the basis of racial bias?

23933 **DANIEL GEORGE MacGILLIVRAY v. HER MAJESTY THE QUEEN** (Crim.)(N.S.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Procedural law - Offenses - Whether the Court of Appeal erred in its interpretation of *R. v. Hundal*, [1993] 1 S.C.R. 867, in that it applied a purely objective test to the Applicant's conduct - Whether the Courts erred in failing to address the issue that the conduct of the Applicant "amounted to a marked departure from the standard of care that a reasonable person would observe in the accused's situation" - Whether the Court of Appeal erred in failing to address the Applicant's submission that the trial judge in effect only found that the Applicant's conduct amounted to imprudent operation of his boat which in and of itself cannot amount to dangerous driving.

23964 DR. RICHARD H. WADE v. PAULA BREWER (N.B.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Torts - Negligence - Physicians and surgeons - Evidence - Causation - Onus of proof - Whether the trial judge and the Court of Appeal misapprehended the decisions of this Court in *Snell v. Farrell*, [1990] 2 S.C.R. 311 and *Laferrière v. Lawson*, [1991] 1 S.C.R. 541, and have permitted a trial judge to vary from the established common law evidentiary rules in a civil action which require cases to be decided on the balance of probabilities - Whether the Courts below misapplied the law established by the authoritative judgment in the *Snell* and *Laferrière* cases, so as to permit a trial judge to substitute his own views and override expert testimony, expand possibilities into probabilities, and make findings of negligence which are not supported by the evidence.

23807 IMRE GYORVARI v. HER MAJESTY THE QUEEN (F.C.A.)

CORAM: La Forest, Sopinka and Major 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

Procedural law - Pre-trial procedure - Statutes - Interpretation - Whether a notice of motion to strike out a statement of claim pursuant to s. 419(1) of the *Federal Court Rules*, C.R.C. 1978, c. 663, becomes "illegal" when brought prior to the filing of a statement of defence - Whether the Respondent abandoned its right to defend the action in bringing the motion to strike out the statement of claim - Whether the Federal Court of Appeal erred in failing to realize the "illegality" of the order of the Federal Court, Trial Division, to strike out the statement of claim before a statement of defence had been filed.

23905 MERCK & CO. INC. and MERCK FROSST CANADA INC. v. APOTEX INC., ATTORNEY GENERAL OF CANADA and MINISTER OF NATIONAL HEALTH AND WELFARE (F.C.A.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Administrative law - Judicial review - Jurisdiction - Prerogative writs - Statutes - Interpretation - Whether the Court of Appeal misconstrued its own jurisdiction when it purported to issue *mandamus* despite s. 55.2(5) of Bill C-91 (*Patent Act Amendment Act*, S.C. 1993, c. 2) and s. 5 of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 - Whether the Court of Appeal erred in holding that *mandamus* is available to direct a Minister as to how to exercise his discretion - Whether the Court of Appeal erred in holding that an applicant for *mandamus* need not satisfy the requirements of a cause of action for that relief when its application is commenced - Whether the Court of Appeal erred in holding that procedural amendments do not, as a matter of law, apply to pending applications - Whether the Court of Appeal erred in holding that the repeal provisions of the *Interpretation Act* apply even where no repeal has occurred - Whether the Court of Appeal erred in holding that in some circumstances the Court, in the exercise of its discretion to issue *mandamus*, is entitled to have regard to "policy rationales underscoring impending legislation", but that in this case the Court could not have regard to "the policy rationales underscoring" Bill C-91 - Whether the Court of Appeal misconstrued the doctrine of *stare decisis* when it considered itself bound to resolve the conflict on the basis of similarity of this case to the factual subject matter one line of conflicting cases rather than on the basis of legal principle.

23833 **SA MAJESTÉ LA REINE c. GÉRALD GOSSELIN** (Crim.)(Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit criminel - Détermination de la peine - Législation - Interprétation - Intimé plaide coupable d'avoir conduit un véhicule à moteur alors que sa capacité de conduire était affaiblie par l'alcool et d'avoir causé la mort d'une autre personne, contrairement à l'art. 255(3) du *Code criminel* - Intimé condamné à trois mois de prison, une suramende de 20$ et interdiction de conduire tout véhicule à moteur au Canada pour une période de dix ans -Sentence modifiée par la Cour d'appel de façon à restreindre l'interdiction de conduire pour permettre à l'intimé de conduire un véhicule automobile pour les fins de son travail - La Cour d'appel pouvait-elle assortir d'une condition suspensive une ordonnance d'interdiction rendue en vertu de l'art. 259(2) du *Code criminel*?

23746 **THE CANADIAN LIFE AND HEALTH INSURANCE COMPENSATION CORPORATION/LA SOCIÉTÉ CANADIENNE D'INDEMNISATION POUR LES ASSURANCES DE PERSONNES - AND - LES SERVICES DE SANTÉ DU QUÉBEC (SSQ, MUTUELLE D'ASSURANCE GROUPE), MUTUELLE DES FONCTIONNAIRES DU QUÉBEC, ASSOCIATION D'HOSPITALISATION DU QUÉBEC, AETERNA-VIE COMPAGNIE D'ASSURANCE, CANASSURANCE, COMPAGNIE D'ASSURANCE-VIE INC., L'UNION-VIE, COMPAGNIE MUTUELLE D'ASSURANCE, PROVINCES-UNIES, COMPAGNIE D'ASSURANCE, L'ENTRAIDE, ASSURANCE-VIE SOCIÉTÉ DE SECOURS MUTUELS, LA QUÉBÉCOISE PROMUTUEL-VIE INC., LA MUTUALITÉ, SOCIÉTÉ D'ASSURANCE-VIE INC., LA PERSONNELLE VIE, CORPORATION D'ASSURANCE, L'EXCELLENCE, COMPAGNIE D'ASSURANCE-VIE - AND - LA COMPAGNIE D'ASSURANCE-VIE MANUFACTURERS, LA NORD-AMÉRICAINE, COMPAGNIE D'ASSURANCE-VIE, LA CONFÉDÉRATION, COMPAGNIE D'ASSURANCE-VIE, LA COMPAGNIE D'ASSURANCE-VIE, UNION COMMERCIALE DU CANADA, LA MUTUELLE DU CANADA, COMPAGNIE D'ASSURANCE SUR LA VIE, LONDON LIFE, COMPAGNIE D'ASSURANCE-VIE, L'EQUITABLE, COMPAGNIE D'ASSURANCE-VIE DU CANADA, SEABORD LIFE INSURANCE COMPANY, NN LIFE INSURANCE COMPANY OF CANADA** (Qué.)

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

The application for leave to appeal by the applicant is dismissed and, consequently, the application for leave to appeal by the interveners is dismissed, with costs.

La demande d'autorisation d'appel de la requérante est rejetée et, en conséquence, la demande d'autorisation d'appel des intervenantes est rejetée, avec dépens.

NATURE OF THE CASE

Commercial law - Contracts - Insurance - Bankruptcy - Interpretation of a contract - Interventions - Whether the courts below erred in law in their interpretation of the Memorandum of Operation - Whether the Applicant's assessment procedure allowed it to levy assessments resulting in a refund of other assessments previously levied in certain assessment bases - Whether the Interveners (Applicants in this Court) could raise, in support of the Applicant's position, grounds that were not raised by the Applicant in the Court of Appeal.

23808 A.K. v. HER MAJESTY THE QUEEN (Crim.)(Man.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Offences - Evidence - Credibility - Unreasonable delay between the date of the offence and the date of the indictment - Applicant convicted of incest following a trial before a judge and jury - Offence occurring on one occasion in the late fall of 1975 when the complainant was 15 years old - Complainant not reporting the incident for nearly 16 years, until April 1991 - When there is no reasonable explanation for delay, should there be a presumption that such a delay is unreasonable and that the accused is substantially prejudiced thereby.

23824 L'INDUSTRIELLE-ALLIANCE, COMPAGNIE D'ASSURANCE-VIE c. RÉJEAN DESLAURIERS ET SUCCESSION DE CAROLE FRANCOEUR DESLAURIERS (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Code civil - Droit commercial - Assurance - Mandat - Banques et opérations bancaires - Prêt - Mandat réel - Mandat apparent - Acceptation du risque - Prêt hypothécaire - Emprunteurs souscrivant à une police d'assurance-vie collective émise par la demanderesse en faveur de la banque prêteuse - Un des deux assurés décède suite à un cancer - Refus de la demanderesse de payer le solde du prêt hypothécaire en vertu d'une clause d'exclusion au contrat sur l'état de santé de l'assurée au moment de la signature de la demande d'assurance - Banque connaissant l'inadmissibilité de l'assurée - Rôle et responsabilité de la banque ou de l'assureur en l'absence de toute preuve quant à l'assurabilité de l'emprunteur au moment même de sa demande d'assurance - Existe-t-il un mandat réel ou un mandat apparent entre l'assureur et la banque?

23984 CHANG-JIE CHEN v. THE MINISTER OF EMPLOYMENT AND IMMIGRATION, SECRETARY OF STATE FOR EXTERNAL AFFAIRS (Ont.)

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

The application for leave to appeal and for an extension of time are granted.

La demande d'autorisation d'appel et la requête pour prorogation de délai sont accordées.

NATURE OF THE CASE

Administrative Law - Immigration - Appeal - Judicial Review - Discretion vested in a visa officer under subsection 11(3) of the *Immigration Regulations*, 1978 - Whether the Federal Court of Appeal erred in law in determining that section 11(3) of the Immigration Regulations should be interpreted to include social factors in the term "successful establishment" which would result in an unlimited mandate for visa officers to exercise their discretion.

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai de production du mémoire d'un intervenant et des intimées

Corporation de Notre-Dame de Bon Secours

c. (23014)

Communauté urbaine de Québec et al. (Qué.)

ACCORDÉE / GRANTED

Motion to extend the time in which to file the intervener's and respondents' factum

Avec le consentement des parties.

20.4.1994

Before / Devant: THE REGISTRAR

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

Her Majesty The Queen

v. (23747)

Josh Randall Borden (N.S.)

GRANTED / ACCORDÉE Time extended to March 25, 1994.

Requête en prorogation du délai de signification et de production du mémoire de l'appelante

With the consent of the parties.

21.4.1994

Before / Devant: LE JUGE IACOBUCCI

Requête en suspension des procédures

Service spécial de vidanges Inc. et al.

c. (24081)

Régie intermunicipale de gestion des déchets de la Mauricie (RIGDM) et al. (Qué.)

ACCUEILLIE / GRANTED

La requête visant à obtenir un sursis est accueillie. Le sursis s'applique à la décision de la Cour d'appel du Québec rendue le 22 mars 1994 ainsi qu'aux procédures d'expropriation entamées devant la Cour du Québec (Chambre de l'expropriation) portant le numéro de dossier 200-34-000277-926; le sursis demeurera en vigueur jusqu'à ce que notre Cour se prononce sur la requête d'autorisation d'appel et, si celle-ci est accueillie, jusqu'à ce que la présente affaire soit tranchée de façon définitive par notre Cour.

Motion for a stay of proceedings

The motion for a stay is granted. The stay applies to the decision of the Quebec Court of Appeal rendered on March 22, 1994 and to the expropriation proceedings instituted before the Court of Quebec, Expropriation Division, bearing the number 200-34-000277-926; the stay shall remain in effect until this Court renders a decision on the application for leave to appeal and, if leave granted, until this Court renders a final judgment on this matter.

22.4.1994

Before / Devant: THE REGISTRAR

Motion for additional time to present oral argument

Her Majesty The Queen

v. (23384)

Robert Lorne Heywood (B.C.)

GRANTED / ACCORDÉE

Requête en prorogation du temps accordé pour la plaidoirie

With the consent of the parties.

22.4.1994

Before / Devant: THE REGISTRAR

Motion for leave to intervene **Requête en autorisation d'intervention**

BY/PAR: A.G. of Manitoba

IN/DANS: United Steelworkers of America, Local 9332 et al.

v. (23621)

Gerald J. Phillips et al. (N.S.)

GRANTED / ACCORDÉE

22.4.1994

Before / Devant: IACOBUCCI J.

Motion to strike affidavit **Requête en radiation d'affidavit**

Elizabeth Rebecca Walker et al.

v. (24057)

The Bank of New York Inc., et al. (Ont.)

GRANTED / ACCORDÉE

Upon reading the notion of motion to strike affidavit material in the application for leave to appeal and the submissions made by the parties and related material, I make the following order:

1. The motion to strike is granted.

2. The materials listed in the Appendix A to the notice of motion are hereby struck from the application for leave to appeal with leave to the applicants to file a revised application for leave to appeal and a correspondingly revised memorandum of argument within 10 days hereof.

3. The respondents to the application for leave shall be given 20 days following service and filing of applicants' revised application for leave to appeal and memorandum of argument to file their response.

22.4.1994

Before / Devant: McLACHLIN J.

Other motion **Autre requête**

Walter Francis Gillespie

v. (22771)

Her Majesty The Queen (N.B.)

DISMISSED / REJETÉE

This is an application to vacate an order of May 27, 1992 appointing Angie Codina as counsel for Mr. Gillespie, pursuant to s. 694(1) of the *Criminal Code*.

Ms. Codina was appointed under s. 694(1) to represent Mr. Gillespie on applications for an extension of time for leave to appeal and leave to appeal. Mr. Gillespie stood convicted of murder and was in prison serving his sentence at all material times. The basis of the appointment was Ms. Codina's affidavit stating that Mr. Gillespie had insufficient funds to pursue the motions in question. After being appointed as counsel under s. 694(1) Ms. Codina pursued the aforesaid applications. The application for leave to appeal as ultimately dismissed on January 27, 1994.

The Attorney-General applies to have the order vacating Ms. Codina's appointment set aside on the ground that she did not disclose in her initial affidavit that she had received a retainer of $2,500 from Mr. Gillespie. This detail was first mentioned in Mr. Gillespie's affidavit of November 17, 1993. The Attorney-General submits that in the absence of this specific disclosure, the conditions of making an order under s. 694.1(1) were not met.

Section 294.1(1) provides:

> **694.1**(1) The Supreme Court of Canada or a judge thereof may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal to the Court or to proceedings preliminary or incidental to an appeal to the Court where, in the opinion of the Court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and here it appears that the accused has not sufficient means to obtain that assistance.

The conditions posed by the section are:

(1) that it appears desirable in the interests of justice that the accused have legal assistance; and

(2) that it appears that the accused lacks sufficient funds to obtain that assistance.

The first condition is not contested. The question, therefore, is whether the second condition was satisfied.

In my view, the material before the Court on May 27, 1992 was sufficient to satisfy the second requirement of s. 694.1(1) of the *Criminal Code.* It was averred that Mr. Gillespie had insufficient funds to pay for the legal services required to pursue his application for leave to appeal. The truth of that allegation is borne out by subsequent events, and is not contradicted by the fact of the initial retainer. Ms. Codina performed 40 hours of service and incurred almost $1000 of disbursements after the initial retainer was exhausted. In addition, she retained an Ottawa agent and a New Brunswick agent. They submitted accounts to Ms. Codina. The Attorney-General has since settled and paid these accounts, the amounts agreed to being $2,342.67 and $2,776.02 respectively.

It is suggested that the failure to disclose the earlier retainer "amounts to material non-disclosure sufficient to void the order". I cannot agree. Ms. Codina's sworn statement that Mr. Gillespie lacked sufficient funds was not challenged. Such retainers as he might have been able to give in the past had been exhausted or were clearly insufficient to pursue the motions in question. The material did not suggest that there had been no previous retainers. It might, in hindsight, have been preferable if the $2,500 retainer had specifically been disclosed at the outset instead of part way through the proceedings. However, the record as it stands amply supports the order and negates the suggestion of any impropriety.

The application is dismissed.

22.4.1994

Before / Devant: THE CHIEF JUSTICE LAMER

Motion for an order that this appeal is to be deemed not abandoned

Victor Francisco Clemente

v. (23931)

Her Majesty The Queen (Man.)

GRANTED / ACCORDÉE

Requête en déclaration que le présent appel est censé ne pas avoir été abandonné

22.4.1994

Before / Devant: THE REGISTRAR

Motion to file case on appeal in its present form and motion to extend the time in which to serve and file the case on appeal

Victor Francisco Clemente

v. (23931)

Her Majesty The Queen (Man.)

Requête en production du dossier d'appel dans sa forme actuelle et requête en prorogation du délai de signification et de production du dossier d'appel

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to April 14, 1994.

27.4.1994

Before / Devant: THE REGISTRAR

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

Allen Maurice Kinsella

v. (24014)

The Attorney General of Ontario et al. (Ont.)

GRANTED / ACCORDÉE Time extended to April 22, 1994.

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

With the consent of the parties.

27.4.1994

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai de signification et de production du mémoire de l'intervenant

Procureur général du Québec et al.

c. (23345)

Téléphone Guèvremont Inc. (Qué.)

ACCORDÉE / GRANTED Délai prorogé au 18 avril 1994.

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

Avec le consentement des parties.

15.4.1994

Deborah Simpson

v. (24099)

Her Majesty The Queen (Nfld.)

AS OF RIGHT

BY/PAR: Attorney General for Saskatchewan

IN/DANS: **United Steelworkers of America, Local 9332**

v. (23621)

The Honourable Justice K. Peter Richard et al. (N.S.)

25.4.1994

CORAM: La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Major JJ.

Her Majesty The Queen in right of Canada et al.

v. (23361)

Reza (Ont.)

J.E. Thompson, Q.C. and Donald A. MacIntosh, for the appellants.

Mel Green, Barbara Jackman and Carter Hoppe, for the respondent.

Françoise St-Martin, pour l'intervenant le procureur général du Québec.

Jean-François Goyette, for the intervener the Canadian Council for Refugees.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Constitutional law - *Canadian Charter of Rights and Freedoms* - Administrative law - Courts - Jurisdiction - Interpretation - Availability of concurrent jurisdiction.

Nature de la cause:

Droit constitutionnel -- *Charte canadienne des droits et libertés* -- Droit administratif - Tribunaux -- Compétence -- Interprétation -- Possibilité de recours à une cour ayant compétence concurrente.

25.4.1994

CORAM: The Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Her Majesty The Queen

v. (23608)

Mathew Oommen (Crim.)(Alta.)

Paul C. Bourque, for the appellant.

Mona T. Duckett, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Defence - Evidence - Interpretation - Insanity - Section 16(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 - Respondent convicted of murder after trial where defence of insanity not fully canvassed - Respondent suffering from paranoid delusions and killing victim because of fear of being killed by her - Whether the Court of Appeal erred in law in holding that the trial judge erred in law in failing to consider evidence of a delusion caused by mental disorder which may give rise to a justification for the killing - Whether the Court of Appeal erred in law in holding that s. 16(1) embodies a defence of "incapacity to apply knowledge" because of a delusion caused by a mental disorder.

Nature de la cause:

Droit criminel - Moyen de défense - Preuve - Interprétation - Aliénation mentale - Paragraphe 16(1) du *Code criminel*, L.R.C. (1985), ch. C-46 - Intimé reconnu coupable de meurtre à la suite d'un procès où la défense d'aliénation mentale n'a pas été examinée minutieusement - Intimé souffrant d'idées délirantes paranoïdes et ayant tué la victime parce qu'il craignait d'être tué par elle - La Cour d'appel a-t-elle commis une erreur de droit en statuant que le juge du procès a commis une erreur de droit en ne tenant pas compte de la preuve de l'existence d'idées délirantes provoquées par des troubles psychiques, qui peuvent justifier le meurtre? - La Cour d'appel a-t-elle commis une erreur de droit en statuant que le par. 16(1) renferme une défense d'«incapacité d'appliquer ses connaissances» à cause d'idées délirantes provoquées par des troubles psychiques?

26.4.1994

CORAM: Le juge en chef Lamer et les juges La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci et Major

Procureur général du Québec et al.

c. (23345)

Téléphone Guèvremont Inc. (Qué.)

Jean-François Jobin, Louis Rochette, Luc Chamberland et Alain Gingras, pour les appelants.

Thomson Irvine, for the intervener the A.G. of Saskatchewan.

Peter T. Costigan, Q.C. and Leo B. Chrzanowski, for the intervener Edmonton Telephones Corporation.

André Jolicoeur, Louis Masson et Lucie Rodrigue, pour l'intimée.

Jean-Marc Aubry, c.r. et Jeff Richstone, pour l'intervenant le procureur général du Canada.

Andrew J. Roman and M. Christine O'Donohue, for the interveners the Public Utilities Commission of Cochrane et al.

LE JUGE EN CHEF (oralement) -- Nous sommes tous d'avis que Téléphone Guèvremont Inc. est un ouvrage et une entreprise interprovinciale qui relève de la compétence législative que possède le Parlement du Canada en vertu des al. 92(10)*a*) et 91(29) de la *Loi constitutionnelle de 1867* en raison de la nature des services offerts et du mode d'opération de l'entreprise qui offre un service de transport de signaux en matière de télécommunication par lequel ses abonnés envoient et reçoivent des communications interprovinciales et internationales selon les motifs de Mme le juge Rousseau-Houle. La question constitutionnelle reçoit la réponse suivante:

Question 1: Téléphone Guèvremont Inc. est-elle un ouvrage ou une entreprise qui relève de la compétence législative que possède le Parlement du Canada en vertu des al. 92(10)*a*) et 91(29), de l'alinéa introductif de l'art. 91 ou d'une autre disposition de la *Loi constitutionnelle de 1867*?

Réponse: Oui.

Le pourvoi est rejeté avec dépens. L'appel incident est rejeté parce que sans objet eu égard au sort de l'appel.

THE CHIEF JUSTICE (orally) -- We are all of the view that Téléphone Guèvremont Inc. is an interprovincial work or undertaking within the legislative authority of the Parliament of Canada by virtue of ss. 92(10)(*a*) and 91(29) of the *Constitution Act, 1867* by reason of the nature of the services provided and the mode of operation of the undertaking, which provides a telecommunication signal carrier service whereby its subscribers send and receive interprovincial and international communications as set out in the reasons of Rousseau-Houle J.A. The constitutional question is answered as follows:

Question 1: Is Téléphone Guèvremont Inc. a work or undertaking within the legislative authority of the Parliament of Canada by virtue of ss. 92(10)(*a*) and 91(29), of the opening words of s. 91 or otherwise of the *Constitution Act, 1867*?

Answer: Yes.

The appeal is dismissed with costs. The cross-appeal is dismissed since it is unfounded in view of the outcome of the appeal.

27.4.1994

CORAM: The Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Her Majesty The Queen

v. (23384)

Robert Lorne Heywood (Crim.)(B.C.)

Robert A. Mulligan, for the appellant.

Bernard Laprade, for the intervener the A.G. of Canada.

B. Rory B. Morahan, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Statutes - Offenses - Interpretation -Respondent convicted of sexual assault charged with offence under s. 179(1)(*b*) of the *Criminal Code* - Provincial Court of British Columbia holding that s. 179(1)(*b*) contrary to ss. 7 and 11(*d*) of the *Charter* but a reasonable limit under s. 1 - Provincial Court convicting Respondent - Supreme Court of British Columbia dismissing Respondent's appeal - Court of Appeal for British Columbia allowing Respondent's appeal - Whether the Court of Appeal erred in the meaning given to the word "loitering" in s. 179(1)(*b*) of the *Criminal Code* - Whether the Court of Appeal erred in holding that lack of provision for notice is a constitutional defect of s. 179(1)(*b*) and that s. 19 of the *Criminal Code* did not apply - Whether the Court of Appeal erred in assuming or finding that s. 179(1)(*b*) violated ss. 7 and 11(*d*) of the *Charter* - Whether the Court of Appeal erred in finding that s. 179(1)(*b*) was not a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society within the meaning of s. 1 of the *Charter*.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Lois - Infractions - Interprétation - L'intimé déclaré coupable d'agression sexuelle, accusé d'avoir commis une infraction en contravention de l'al. 179(1)*b*) du *Code criminel* - La Cour provinciale de la Colombie-Britannique a conclu que l'al. 179(1)*b*) portait atteinte à l'art. 7 et à l'al. 11*d*) de la *Charte*, mais que cette atteinte constituait une limite raisonnable en vertu de l'article premier - La Cour provinciale a déclaré l'intimé coupable - La Cour suprême de la Colombie-Britannique a rejeté l'appel de l'intimé - La Cour d'appel de la Colombie-Britannique a accueilli l'appel de l'intimé - La Cour d'appel a-t-elle commis une erreur dans son interprétation du terme «flânant» mentionné à l'al. 179(1)*b*) du *Code criminel*? - La Cour d'appel a-t-elle commis une erreur en concluant que la non-mention d'un avis dans l'al. 179(1)*b*) est inconstitutionnel et que l'art. 19 du *Code criminel* ne s'applique pas? - La Cour d'appel a-t-elle commis une erreur en supposant ou en concluant que l'al. 179(1)*b*) ne constituait pas une limite raisonnable, prévue par une règle de droit, dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique au sens de l'article premier de la *Charte*?

27.4.1994

CORAM: Sopinka, Gonthier, McLachlin, Iacobucci and Major JJ.

Darryl R.

Maureen Forestell, for the appellant.

v. (23685)

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

Christine Bartlett-Hughes, for the respondent.

ALLOWED / ACCUEILLI

Nature of the case:

Criminal law - Young Offenders - Procedural law - Evidence - Statutes - Interpretation - Whether the majority of the Court erred in finding that as the Applicant had been cautioned as an adult the statements were entirely voluntary - Whether an initial breach of s. 56 of the *Young Offenders' Act*, R.S.C. 1985, c. Y-1, resulting in an inculpatory statement taints a subsequent statement obtained following a proper s. 56 caution.

Nature de la cause:

Droit criminel - Jeunes contrevenants - Droit de la procédure - Preuve - Lois - Interprétation - La Cour d'appel à la majorité a-t-elle commis une erreur en concluant que les déclarations étaient entièrement volontaires puisque le demandeur avait été averti en tant qu'adulte? - Une violation initiale de l'art. 56 de la *Loi sur les jeunes contrevenants*, L.R.C. (1985), ch. Y-1, ayant donné lieu à une déclaration inculpatoire, a-t-elle pour effet de vicier une déclaration subséquente obtenue à la suite d'un avertissement en bonne et due forme en application de l'art. 56?

28.4.1994

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

Andre Barclay Masters

v. (22676)

Georgia Annette Masters (Sask.)

R. Bradley Hunter, for the appellant.

No one appearing for the respondent.

LAFOREST J. (orally for the Court) -- Madame Justice McLachlin will pronounce the judgment of the Court.

McLACHLIN J. -- This is an appeal from an order of a trial judge declining to vary support agreed to under a separation agreement. The wife was successful in both courts below. She was not represented by counsel at the hearing in this Court, and we did not have the benefit of a factum or submissions from her.

No error in the findings or reasoning of the trial judge has been established. The trial judge found that the separation agreement was final. No unforeseen or radical change in circumstances from those contemplated at the time of the separation agreement was demonstrated. It is therefore unnecessary to consider the issue of whether, had such change been demonstrated, that change need be causally connected to the circumstances of the marriage, or if so, was demonstrated on the evidence in this case to have been causally connected.

We would dismiss the appeal with costs.

LE JUGE LA FOREST (oralement au nom de la Cour) -- Madame le juge McLachlin prononcera le jugement de la Cour.

LE JUGE McLACHLIN -- Il s'agit en l'espèce d'un pourvoi contre une ordonnance d'un juge de première instance, qui a refusé de modifier les aliments accordés en vertu d'une entente de séparation. L'épouse a eu gain de cause dans les deux juridictions inférieures. Elle n'était pas représentée par un avocat à l'audience devant notre Cour, et nous n'avons pu bénéficier ni d'un mémoire ni d'une plaidoirie en son nom.

Nous n'avons pu établir aucune erreur dans les conclusions ou le raisonnement du juge de première instance, qui a conclu que l'entente de séparation était finale. Aucun changement imprévu ou radical n'a été démontré dans la situation telle qu'elle avait été prévue au moment de l'entente de séparation. Il n'est donc pas nécessaire de tenter de déterminer si, dans le cas où un changement aurait été démontré, ce changement devait avoir un lien de causalité avec la situation au moment du mariage ou, le cas échéant, si la preuve démontrait en l'espèce qu'il y avait un lien de causalité.

Nous sommes d'avis de rejeter le pourvoi avec dépens.

AGENDA for the week beginning May 2, 1994.
ORDRE DU JOUR pour la semaine commençant le 2 mai 1994.

Date of Hearing/ Date d'audition	NO.	Case Number and Name/ Numéro et nom de la cause
02/05/94		Motions - Requêtes
03/05/94	9	Mary Tataryn v. Edward James Tataryn, Executor named in the will of Alex Tataryn, a.k.a. Alex Tataryn and Alexander (B.C.)(23398)
03/05/94	19	Her Majesty The Queen v. Melvin Lorne Mason (Crim.)(N.S.)(23385)
04/05/94	11	Donald Anton Zazulak v. Her Majesty The Queen (Crim.)(Alta.)(23713)
04/05/94	25	Jacques Bilodeau et al. c. Roland Boutin et al. (Qué.)(23095)
05/05/94	13	Doug Stevenson v. Her Majesty The Queen (Crim.)(Alta.)(23478)
05/05/94	29	Lorne François v. Her Majesty The Queen (Crim.)(Ont.)(23677)

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.

23398 **MARY TATARYN v. EDWARD JAMES TATARYN, EXECUTOR NAMED IN THE WILL OF ALEX TATARYN, A.K.A. ALEX TATARYN AND ALEXANDER TATARYN, DECEASED**

Property law - Family law - Wills - Variation - Maintenance - Whether Court of Appeal failed to provide for widow appropriately in varying will - Whether it is just and equitable, under dependants' relief legislation to provide a widow with a life estate in the family assets where she contributed to their acquisition on an equal basis with her husband - What is the appropriate approach to be taken by the courts in dealing with such claims - Should the approach be examined in light of values expressed in recent matrimonial property and spousal support cases.

Alex Tataryn died leaving bank deposits totalling $122,629.69, and two properties. One property (the "home property") was valued at $111,800.00; the other (the "rental property") was valued at $86,700.00 and generated rental income. All of these assets were solely in Alex Tataryn's name. There were $5,865.00 in debts.

Alex's wife, Mary, was 63 years old and had $25,000.00 in the bank when he died. The two had been married nearly 43 years. Mary worked outside the home and her earnings were used for general household and family expenses until she had a mild stroke in 1975. During the marriage, she helped Alex to finish building an earlier house, and to build their house on the home property. During their marriage, she did housekeeping and gardening chores. As well she looked after her father-in-law and his step-father who lived their last years in the family home. When her case was heard at trial, she was receiving $763.00 monthly from her pension.

John Tataryn, the elder of Alex's two sons, was disliked by his father. He was 40 years old when Alex died and had been unemployed since 1989. His assets at trial consisted of a townhouse (valued at $122,000 and a few thousand dollars).

Edward Tataryn, the younger son, received Alex's financial assistance to become a pilot. He moved to New Brunswick when he was 19. His assets combined with those of the woman he has been living with totalled approximately $185,000, at the time of trial. Edward occasionally returned to British Columbia to see his parents.

Alex Tataryn's will gave Edward the rental property and its contents. It gave John nothing. It gave Mary a life estate in the home property and its furnishings, and contained a number of provisions concerning the powers of the Trustee (Edward). On Mary's death, it further said, the house or its proceeds would go to Edward. After directing the Trustee to "retain the residue ... in the form in which it may be at the time of my death or invest the residue ... in his own discretion as he shall deem advisable ...," and authorizing the Trustee "to use both the capital and income from the residue ... for the benefit of my said wife, as my Trustee shall in his sole discretion deem advisable," the will further stated that any remaining residue would go to Edward on Mary's death.

Mary and John brought an action for relief, under the *Wills Variation Act*, R.S.B.C. 1979, c. 435, against Edward as executor and trustee. Paris J. varied the will, and appeals by Mary and John from that variation were dismissed.

Origin of the case:	British Columbia
File No.:	23398
Judgment of the Court of Appeal:	November 26, 1992
Counsel:	Davis & Company, for the Appellant McLachlan, Brown, Anderson, for the Respondent

23398 MARY TATARYN c. EDWARD JAMES TATARYN, EXÉCUTEUR NOMMÉ DANS LE TESTAMENT D'ALEX TATARYN, ALIAS FEU ALEX TATARYN ET ALEXANDER TATARYN

Droit des biens - Droit de la famille - Testaments - Modification - Obligation alimentaire - En modifiant le testament, la Cour d'appel a-t-elle manqué de répondre convenablement aux besoins de la veuve? - Est-il juste et équitable, en vertu de la loi d'aide aux personnes à charge, de fournir à une veuve un domaine viager sur les biens familiaux si elle a contribué à leur acquisition dans une proportion égale avec son mari? - Quelle est la démarche que doivent suivre les tribunaux relativement à ce type de réclamations? - Cette démarche devrait-elle être examinée par rapport aux valeurs exprimées dans les récents dossiers en matière de biens matrimoniaux et d'obligation alimentaire à l'égard du conjoint?

A son décès, Alex Tataryn possédait des dépôts bancaires totalisant 122 629,69 $ et deux propriétés. L'une des propriétés (le «domaine familial») était évaluée à 111 800 $; l'autre («la propriété louée») était évaluée à 86 700 $ et générait des revenus de location. Tous ces biens étaient seulement au nom d'Alex Tataryn. Le montant des dettes s'élevait à 5 865 $.

Lors du décès d'Alex, son épouse, Mary, était âgée de 63 ans et avait 25 000 $ en banque. Le couple avait été marié pendant 43 ans. Jusqu'à ce qu'elle souffre d'un léger accident cérébrovasculaire en 1975, Mary a travaillé à l'extérieur du foyer et ses revenus avaient servi aux dépenses courantes du ménage et de la famille. Au cours du mariage, elle a aidé Alex à finir la construction d'une autre maison et à construire leur maison sur le domaine familial. Elle s'est également occupée de l'entretien ménager et du jardinage. Elle a aussi pris soin de son beau-père et du mari de la mère de son mari, qui ont vécu dans la maison familiale pendant les dernières années de leur vie. Lors de l'audition de l'affaire en première instance, Mary recevait la somme de 763 $ de son régime de pension.

Alex n'aimait pas John Tataryn, l'aîné de ses deux fils. John était âgé de 40 ans lors du décès d'Alex et il était en chômage depuis 1989. Lors du procès, il possédait une maison en rangée (évaluée à quelque 122 000 $ et un peu d'argent).

Alex avait financièrement aidé son autre fils, Edward Tataryn, à devenir pilote. A l'âge de 19 ans, Edward est déménagé au Nouveau-Brunswick. Lors du procès, Edward et sa conjointe avaient des biens d'une valeur totalisant approximativement 185 000 $. Edward rendait occasionnellement visite à ses parents en Colombie-Britannique.

Aux termes du testament, Edward recevait la propriété louée et son contenu; Mary, un domaine viager sur le domaine familial et ses meubles meublants; John ne recevait rien. Le testament renfermait un certain nombre de dispositions sur les pouvoirs du fiduciaire (Edward). Il y était également prévu que c'était Edwards qui devait recevoir la maison ou son produit au moment du décès de Mary. Dans son testament, Alex avait ordonné au fiduciaire [TRADUCTION] «de conserver le reliquat [...] dans son état à la date de mon décès ou de l'investir [...] à sa discrétion [...]» et autorisé le fiduciaire à « utiliser, à sa discrétion, à la fois le capital et les revenus tirés du reliquat [...] pour le bénéfice de mon épouse»; le testament précisait enfin que le reliquat devait échoir à Edward au décès de Mary.

Mary et John ont présenté une demande de redressement en vertu du *Wills Variation Act*, R.S.B.C. 1979, ch. 435, contre Edwards, en qualité d'exécuteur et de fiduciaire. Le juge Paris a modifié le testament; il y a eu rejet des appels interjetés par Mary et John contre l'ordonnance de modification du testament.

Origine: Colombie-Britannique

N° de greffe: 23398

Arrêt de la Cour d'appel: 26 novembre 1992

Avocats: Davis & Company, pour l'appelant
McLachlan, Brown, Anderson, pour l'intimé

23385 HER MAJESTY THE QUEEN v. MELVIN LORNE MASON

Criminal law - Statutes - Interpretation - Offenses - Evidence - Respondent convicted of sexual assault - Appeal Division allowing Respondent's appeal - Whether the Court of Appeal erred in ruling that the Respondent was not exercising his position of authority when he sexually assaulted the complainant and in its interpretation of the legal meaning of exercise of authority in s. 265(3)(*d*) of the *Criminal Code* - Whether the Court of Appeal erred in holding that absence of consent by the complainant could not be inferred from the circumstances - Whether the Court of Appeal erred in holding that the Appellant had not proved lack of consent beyond a reasonable doubt - Whether the Court of Appeal erred in holding that there was no evidence of lack of consent - Whether the Court of Appeal erred in that it misconstrued the meaning in law of s. 686(1)(*a*)(i) of the *Criminal Code*, thereby exceeding its jurisdiction under s. 686(1)(*a*)(i) by setting aside the conviction.

The Respondent was charged with the sexual assault of his 16 year old stepdaughter. The stepdaughter testified that the Respondent had touched and fondled her private parts, and that on other occasions, the Respondent attempted to have sexual contact with her but she either moved away or pushed him away. The complainant also testified that she was afraid of the Respondent and that she pretended to be asleep when the incidents occurred. The complainant testified that she had accused the Respondent of sexually abusing her in 1987 and had been removed, along with her younger sister and brother, from her residence by Department of Community Services officials. The complainant later recanted her allegations of sexual abuse because she did not want to be separated from her younger sister. The complainant found two notes in her bedroom which appeared to refer to the sexual contacts between the Respondent and herself and to invite further involvement. She also found a printed note in her jacket pocket. A handwriting expert ascribed the handwritten notes to the Respondent with a high degree of probability. It was determined that the notes had a probative value outweighing their prejudice to the Respondent and they were admitted into evidence.

The Respondent was convicted and appealed his conviction on the ground that the trial judge erred in admitting the notes into evidence. The Respondent was granted an adjournment to call the complainant in support of an application to admit fresh evidence. The Court reserved judgment on the motion. On granting the adjournment, the Court indicated that it had concerns whether the Appellant had established beyond a reasonable doubt that the sexual acts complained of were without the consent of the complainant. The Appellant furnished the Court with supplementary written argument and further oral argument was directed to this issue at the hearing. The Supreme Court of Nova Scotia, Appeal Division, allowed the Respondent's appeal, set aside the conviction and entered an acquittal. Chipman J.A. dissented.

Origin of the case:	Nova Scotia
File No. :	23385
Judgment of the Court of Appeal:	December 21, 1992
Counsel:	Attorney General of Nova Scotia, for the Appellant M. Jane McClure, for the Respondent

23385 SA MAJESTÉ LA REINE C. MELVIN LORNE MASON

Droit criminel - Lois - Interprétation - Infractions - Preuve - L'intimé a été déclaré coupable d'agression sexuelle - La Section d'appel a accueilli l'appel de l'intimé - La Cour d'appel a-t-elle commis une erreur en concluant que l'intimé n'était pas en situation d'autorité lorsqu'il a agressé sexuellement la plaignante? - A-t-elle commis une erreur dans son interprétation du sens juridique de l'exercice de l'autorité visé à l'al. 265(3)*d*) du *Code criminel*? - La Cour d'appel a-t-elle commis une erreur en concluant que l'absence de consentement de la part de la plaignante ne pouvait être déduit des circonstances? - La Cour d'appel a-t-elle commis une erreur en concluant que l'appelante n'avait pas prouvé l'absence de consentement hors de tout doute raisonnable? - La Cour d'appel a-t-elle commis une erreur en concluant qu'il n'existait pas de preuve de l'absence de consentement? - La Cour d'appel a-t-elle commis une erreur en interprétant mal le sens juridique du sous-al. 686(1)*a*)i) du *Code criminel*, excédant ainsi sa compétence en vertu de cette disposition lorsqu'elle a annulé la déclaration de culpabilité.

L'intimé a été accusé d'agression sexuelle sur la personne de sa belle-fille de seize ans. Celle-ci a témoigné que l'intimé avait touché et caressé ses parties intimes et qu'à d'autres occasions, l'intimé avait tenté d'avoir un contact sexuel avec elle, mais qu'elle l'avait alors poussé ou était partie. La plaignante a également témoigné qu'elle avait peur de l'intimé et qu'elle prétendait être endormie lorsque se sont produits les incidents. La plaignante a témoigné qu'elle avait accusé l'intimé de l'avoir agressée sexuellement en 1987 et que les fonctionnaires du département des services communautaires l'avaient retirée avec sa soeur et son frère plus jeunes de la résidence. La plaignante s'est par la suite rétractée et nié ses allégations d'agression sexuelle parce qu'elle ne voulait pas être séparée de sa jeune soeur. La plaignante a trouvé dans sa chambre à coucher deux notes qui paraissaient faire allusion aux contacts sexuels qui s'étaient produits et à en solliciter d'autres. Elle a aussi trouvé une note imprimée dans la poche de son manteau. Un calligraphe a dit que l'auteur des notes était fort probablement l'intimé. On a établi que la valeur probante de ces notes l'emportait sur le préjudice pour l'intimé et on les a admises en preuve.

L'intimé a été déclaré coupable et a interjeté appel de la déclaration de culpabilité au motif que le juge de première instance avait commis une erreur en admettant les notes en preuve. Un ajournement a été accordé à l'intimé pour qu'il puisse assigner l'appelante à l'appui d'une demande visant le dépôt de nouveaux éléments de preuve. La cour a pris la requête en délibéré. Lorsqu'elle a accordé l'ajournement, la cour a indiqué qu'elle se demandait si l'appelante avait établi hors de tout doute raisonnable l'absence de consentement relativement aux actes sexuels reprochés. L'appelante a fourni à la cour des observations écrites supplémentaires; à l'audition, cette question a également soulevé d'autres observations orales. La Section d'appel de la Cour suprême de Nouvelle-Écosse a accueilli l'appel de l'intimé et annulé la déclaration de culpabilité. Le juge Chipman était dissident.

Origine:	Nouvelle-Écosse
N^{o} de greffe:	23385
Arrêt de la Cour d'appel:	21 décembre 1992
Avocats:	Procureur général de la Nouvelle-Écosse, pour l'appelante M. Jane McClure, pour l'intimé

23713 DONALD ANTON ZAZULAK v. HER MAJESTY THE QUEEN

Criminal law - Procedural law - Evidence - Whether the Court of Appeal erred in holding that a retraction of earlier false testimony occurring during the same proceedings will not negate the "intent to mislead" - Whether the Court of Appeal erred in holding that the explanation offered by the Appellant in his recantation was not an "explanation or clarification", contemplated by the authorities, required to negative an "intent to mislead" - Whether the Court of Appeal erred in holding that the trial decision should not be supported on public policy grounds - Whether the Court of Appeal erred in holding that the Respondent's appeal involved a question of law alone.

The Appellant, an R.C.M.P. officer, was assigned the duty of file coordinator in the investigation into the death of Desjarais. Nepoose was convicted of second degree murder in the death but the conviction was set aside by the Court of Appeal for Alberta. On Nepoose appealing his conviction, a Special Commissioner was appointed to inquire into and report back to the Court concerning the credibility and weight of any evidence which was proposed to be offered to the Court as new evidence in relation to the question of the guilt or innocence of Nepoose. The Appellant reviewed his file and found a message from an R.C.M.P. investigator to the R.C.M.P. in Ottawa, referring to Nepoose as a "slime ball". The Appellant, who had circled the words "slime ball" and written the word "yeah" beside it, obliterated the words, telling two police officers, Sergeant Murch and Corporal Ingram. Defence counsel noted the obliteration and was advised by Murch of what the words were.

The Appellant testified under oath at the Special Commission that he did not have any knowledge of who obliterated the words on the message and that he, himself, did not obliterate the words. Murch was present during the testimony and, as a result of concerns raised by him, the Appellant was re-examined the next day "to clarify matters". He was shown a fax of the original message and asked about the origin of the obliteration, but he did not recant his testimony. A few days later, he told Murch that his wife had struck out the words "slime ball" and that she had told him this after his re-examination. The Appellant attended before the investigating officer and admitted that his testimony was false. Then, at his own request, he testified under oath that he had added the word "yeah", carried out the obliterations and lied in his earlier testimony, explaining his conduct by stating that he was under severe stress and felt that he was becoming "obsessed" with the Nepoose file and "made a mistake and panicked". The Appellant was charged with one count of perjury. Wachowich J. of the Court of Queen's Bench of Alberta acquitted the Appellant, concluding that he did not have the requisite intent to mislead the Court. The Court of Appeal for Alberta allowed the Respondent's appeal.

Origin of the case:	Alberta
File No.:	23713
Judgment of the Court of Appeal:	September 2, 1993
Counsel:	C.D. Evans, Q.C., for the Appellant William G. Pinckney, for the Respondent

23713 DONALD ANTON ZAZULAK c. SA MAJESTÉ LA REINE

Droit criminel - Droit de la procédure - Preuve - La Cour d'appel a-t-elle commis une erreur lorsqu'elle a conclu que la rétractation d'un faux témoignage fait précédemment au cours de la même instance n'écarte pas l'«intention de tromper»? - La Cour d'appel a-t-elle commis une erreur lorsqu'elle a conclu que l'explication donnée par l'appelant dans sa rétractation n'était pas une «explication ou une clarification» visée par la doctrine et la jurisprudence pour écarter l'«intention de tromper»? - La Cour d'appel a-t-elle commis une erreur lorsqu'elle a conclu que la décision de 1re instance ne devrait pas être appuyée pour des motifs d'intérêt public? La Cour d'appel a-t-elle commis une erreur lorsqu'elle a conclu que l'appel de l'intimé portait seulement sur une question de droit?

L'appelant, un agent de la G.R.C., a été chargé de coordonner le dossier dans l'enquête sur le décès de Desjarais. Nepoose a été déclaré coupable de meurtre au deuxième degré, mais la déclaration de culpabilité a été annulée par la Cour d'appel de l'Alberta. Lorsque Nepoose a interjeté appel contre sa déclaration de culpabilité, un commissaire spécial a été nommé pour faire enquête sur la crédibilité et la valeur de tout élément de preuve qui serait présenté à la Cour en tant que nouvel élément de preuve relativement à la question de la culpabilité et de l'innocence de Nepoose et pour faire rapport à la Cour. L'appelant a examiné son dossier et a trouvé un message d'un enquêteur de la G.R.C. destiné à la G.R.C. à Ottawa, qualifiant Nepoose de «dégueulasse». L'appelant, qui a encerclé le terme «dégueulasse» et écrit le mot «ouais» à côté de celui-ci, a effacé les termes, et en a fait part à deux agents, le sergent Murch et le caporal Ingram. L'avocat de la défense a noté que des termes avaient été effacés et Murch lui a dit quels étaient ces mots.

L'appelant a déposé sous serment devant la commission spéciale qu'il ne savait absolument pas qui avait effacé les mots sur le message et que, lui-même, ne les avait pas effacé. Murch était présent lors du témoignage et, par suite des préoccupations qu'il a soulevées, l'appelant a été interrogé de nouveau le lendemain pour «clarifier la question». On lui a montré une télécopie du message original et on lui a demandé pour quelle raison il manquait des mots, mais il ne s'est pas rétracté. Quelques jours plus tard, il a dit à Murch que son épouse avait enlevé le terme «dégueulasse» et lui en avait fait part après son nouvel interrogatoire. L'appelant s'est présenté devant l'agent enquêteur et a admis que son témoignage était faux. Alors, à sa propre demande, il a témoigné sous serment qu'il avait ajouté le mot «ouais», avait effacé les termes et avait menti lors de son témoignage précédent, expliquant sa conduite en disant qu'il subissait un stress important et s'est senti «obsédé» par le dossier Nepoose et «a commis une erreur et a paniqué». L'appelant a été accusé de parjure. Le juge Wachowich de la Cour du banc de la Reine de l'Alberta a acquitté l'appelant et a conclu qu'il n'avait pas l'intention requise de tromper la cour. La Cour d'appel de l'Alberta a accueilli l'appel de l'intimée.

Origine : Alberta

Nº du greffe : 23713

Arrêt de la Cour d'appel : 2 septembre 1993

Avocats : C.D. Evans, c.r., pour l'appelant
William G. Pinckney, pour l'intimée

23095 BILODEAU AND LES DISTRIBUTIONS C.L.B. INC. v. BOUTIN AND QUALIPRO INC.

Property law - Copyright - Procedure - Courts - Appeal - Jurisdiction - Evidence - Test for determining infringement - Burden of proof on author of work - Whether on evidence Court of Appeal made error in concluding that respondent's card could not be regarded as reproduction or at most simple adaptation of appellant's card - Whether Court of Appeal observed rule of limit on its power to review on appeal when it overturned trial judge's findings of fact - *Copyright Act*, R.S.C. 1985, c. C-42.

In 1984 the appellant Les Distributions C.L.B. Inc. (hereinafter "C.L.B. Inc.") marketed cards to be used in the promotion of and collection of funds for charitable or non-profit organizations. These cards contained a hundred squares covered with a thin film, which had to be scratched to show the amount of the voluntary contribution. The appellant registered its copyright for these cards as a literary work. In 1986 the respondents in turn decided to enter the market and informed C.L.B. Inc. of this. The company then sent a notice to the respondent Qualipro Inc. requiring it to cease infringing its product. It also directly contacted Qualipro Inc.'s customers to urge them not to deal with that company. Legal proceedings were subsequently brought by one party against the other. The respondents claimed from the appellants a total of $13,000 for engaging in unfair and unlawful competition against them as the result of malicious, wrongful and dishonest acts or words. The appellants challenged this action and filed a counterclaim for $11,000, alleging infringement of a literary work protected by the *Copyright Act*.

On the principal action the Court of Quebec, civil division, held that the appellants had made defamatory statements about the respondents. However, it dismissed the Qualipro Inc. action as there was no evidence of direct and actual damage. The Court ordered the appellants to pay the respondent Boutin $1,000 in non-pecuniary damages. On the counterclaim, the Court held the respondents liable and ordered them to pay $4,000 damages for infringement. The respondents appealed to the Quebec Court of Appeal, which allowed the appeal and concluded that there was no infringement in the case at bar.

Origin of case:	Quebec
File No.:	23095
Court of Appeal judgment:	April 30, 1992
Counsel:	Dominique Jobin for the appellants Sylvie Poulin for the respondents

23095 BILODEAU ET LES DISTRIBUTIONS C.L.B. INC. c. BOUTIN ET QUALIPRO INC.

Droit des biens - Droit d'auteur - Procédure - Tribunaux - Appel - Compétence - Preuve - Test applicable pour déterminer une contrefaçon - Fardeau de preuve imposé à l'auteur de l'oeuvre - Compte tenu de la preuve, la Cour d'appel a-t-elle commis une erreur en concluant que la carte des intimés ne peut être considérée comme une reproduction ou au mieux, une simple adaptation de la carte des appelants? - La Cour d'appel a-t-elle respecté le principe de la limite de la portée de son pouvoir de contrôle en appel en écartant les conclusions de fait du juge de première instance? - *Loi sur le droit d'auteur,* L.R.C. (1985), ch. C-42.

En 1984, l'appelante Les Distributions C.L.B. Inc. (ci-après C.L.B. Inc.) met sur le marché des cartes devant servir à la promotion et à la collecte de fonds pour des oeuvres de charité ou à but non lucratif. Ces cartes contiennent cent carreaux recouverts d'un mince film, qu'il suffit de gratter pour découvrir le montant de la contribution volontaire. L'appelante obtient l'enregistrement de ses droits d'auteur en tant qu'oeuvre littéraire pour ces cartes. En 1986, les intimés décident à leur tour d'entrer sur le marché et en avisent C.L.B. Inc. La société met alors l'intimée Qualipro Inc. en demeure de cesser la contrefaçon de son produit. Elle prend également contact directement avec les clients de Qualipro Inc. pour les inciter à ne pas contracter avec celle-ci. Par la suite, des poursuites réciproques sont entreprises. Les intimés réclament des appelants une somme totale de 13 000$ pour avoir exercé à leur égard une concurrence déloyale, illégale par suite de procédés ou paroles malicieuses, abusives et malhonnêtes. Les appelants contestent cette action et déposent une demande reconventionnelle pour une somme de 11 000$, alléguant violation d'une oeuvre littéraire protégée par la *Loi sur le droit d'auteur*.

La Cour du Québec, chambre civile, sur l'action principale, statue que les appelants ont tenu à l'égard des intimés des propos diffamatoires. Elle rejette cependant l'action de Qualipro Inc. vu l'absence de preuve d'un dommage direct et réel. La Cour condamne toutefois les appelants à payer à l'intimé Boutin une somme de 1 000$ à titre de dommages moraux. Quant à la demande reconventionnelle, la Cour retient la responsabilité des intimés et condamne ceux-ci à 4 000$ de dommages-intérêts pour contrefaçon. Les intimés interjettent appel à la Cour d'appel du Québec, qui accueille le pourvoi en concluant qu'il n'y a pas eu contrefaçon en l'espèce.

Origine de la cause:	Québec
No de greffe:	23095
Jugement de la Cour d'appel:	30 avril 1992
Avocats:	Me Dominique Jobin pour les appelants Me Sylvie Poulin pour les intimés

23478 DOUG STEVENSON v. HER MAJESTY THE QUEEN

Criminal law - Evidence - Charge to the jury - Supplemental charge provided in response to a question from the jury with respect to evidence and reasonable doubt - Whether the trial judge erred in not repeating his initial instructions concerning onus of proof and proof beyond a reasonable doubt - Whether the Court of Appeal erred in not considering *R. v. W.(D.).* [1991] 1 S.C.R. 742 - Whether the Court of Appeal erred in treating the trial judge's main charge and recharge as a single unit.

The Appellant, who is 75 years of age, was charged with one count of sexual assault of each of his twin nieces. The assaults were alleged to have occurred during the same time period, some three of four years prior to the charge, but on two separate occasions when the complainants would have been 12 or 13 years of age. At the time, the Appellant lived on a farm in a house trailer while the complainants lived in the main house with the rest of their family. The allegations were similar except that the first assault was alleged to have been more serious than the fondling allegations claimed in the second. At trial, there was no corroborative evidence for either allegation except for the common agreement that on occasion the complainants were in the trailer alone with their uncle. The Appellant denied that the alleged incidents had ever taken place. The trial judge instructed the jury after and it was determined that there was no need for a re-charge. Four hours after deliberations began, the jury sent a second message to the trial judge which stated the following:

> The jury is hung up, and there has been no change in the vote. We would like an explanation of the guideline on the jury's duty regarding evidence and reasonable doubt

After being re-instructed by the trial judge, the jury convicted the Appellant on one count of sexual assault and acquitted him of the other. The Appellant's appeal to the Court of Appeal was dismissed. McClung J.A. dissented and would have allowed the appeal

The following are the questions raised in this appeal:

1. Did the trial judge err, when, at the time he re-instructed the jury concerning the issue of the burden of proof and credibility he told the jury their task was primarily confined to deciding whose evidence they believed, the Appellant's or the complainants'?

2. Did the Court of Appeal err in law:

   (a) when it did not review the trial judge's re-charge standing by itself to determine if an error was made but rather treated the main jury charge and the later supplemental jury charge as a single unit which it said was to be considered as a whole when determining whether or not the trial judge erred in his supplemental charge to the jury, and,

   (b) when it found that no error was made by the trial judge in his supplemental charge.

3. Did the majority of the Court of Appeal err when it found that the verdict should not be set aside on the ground that it was unreasonable or could not be supported by the evidence?

Origin of the case:	Alberta
File No.	23478
Judgment of the Court of Appeal:	February 4, 1993
Counsel:	Brian A. Beresh for the Appellant Agent of the Attorney General for Alberta for the Respondent

23478 DOUG STEVENSON c. SA MAJESTÉ LA REINE

Droit criminel - Preuve - Exposé au jury - Exposé supplémentaire en réponse à une question du jury relativement à la preuve et au doute raisonnable - Le juge a-t-il commis une erreur en ne répétant pas ses directives initiales sur la charge de la preuve et la preuve hors de tout doute raisonnable? - La Cour d'appel a-t-elle commis une erreur en ne tenant pas compte de *R. c. W. (D.)*, [1991] 1 R.C.S. 742? - La Cour d'appel a-t-elle commis une erreur en considérant l'exposé principal et l'exposé supplémentaire comme un tout?

L'appelant, âgé de 75 ans, a été accusé d'un chef d'agression sexuelle contre chacune de ses nièces jumelles. Les agressions seraient survenues au cours de la même période, trois ou quatre ans avant l'accusation, mais à deux occasions distinctes quand les plaignantes avaient 12 ou 13 ans. L'appelant vivait alors sur une ferme dans une caravane tandis que les plaignantes vivaient dans la maison principale avec le reste de leur famille. Les allégations étaient semblables sauf que la première agression aurait été plus grave que les allégations d'attouchements de la seconde. Au procès, il n'y a eu aucune preuve corroborante quant à l'une ou l'autre allégation si ce n'est qu'il a été reconnu que les plaignantes se sont retrouvées dans la caravane seules avec leur oncle. L'appelant a nié les incidents. Le juge du procès a par la suite donné des directives au jury et on a déterminé qu'il n'était pas nécessaire de faire un nouvel exposé. Après quatre heures de délibérations, le jury a adressé un second message au juge :

> Le jury est dans une impasse; il n'y a pas eu de changement dans le vote. Nous aimerions avoir une explication de la directive sur le devoir du jury concernant la preuve et le doute raisonnable.

Après avoir reçu de nouvelles directives, le jury a reconnu l'appelant coupable relativement à un chef d'agression sexuelle et l'a acquitté relativement à l'autre. Son appel a été rejeté. Le juge McClung de la Cour d'appel, dissident, l'aurait accueilli.

Le pourvoi soulève les questions suivantes :

1. Le juge du procès a-t-il commis une erreur quand, au cours des nouvelles directives sur la question du fardeau de la preuve et de la crédibilité, il a dit au jury que sa tâche se limitait d'abord à décider quel témoignage il croyait, celui de l'appelant ou celui des plaignantes?

2. La Cour d'appel a-t-elle commis une erreur de droit :

   a) quand elle n'a pas examiné le nouvel exposé de façon isolée pour déterminer s'il y avait eu erreur, considérant plutôt l'exposé principal et l'exposé supplémentaire comme un seul et même exposé qui, a-t-elle dit, devait être pris comme un tout quand il s'agit de déterminer si le juge du procès a commis une erreur dans son exposé supplémentaire, et

   b) quand elle a conclu que le juge du procès n'avait pas commis d'erreur dans son exposé supplémentaire?

3. La Cour d'appel à la majorité a-t-elle commis une erreur quand elle a conclu que le verdict ne devrait pas être infirmé pour le motif qu'il était déraisonnable ou qu'il ne pouvait pas être appuyé par la preuve?

Origine :	Alberta
N° du greffe :	23478
Arrêt de la Cour d'appel	le 4 février 1993
Avocat :	Brian A. Beresh pour l'appelant Le substitut du procureur général de l'Alberta pour l'intimée

23677 LORNE FRANÇOIS v. HER MAJESTY THE QUEEN

Criminal law - Procedural law - Judgment - Trial - Whether the majority of the Court of Appeal erred in holding that the verdict was not unreasonable within the meaning of s. 686(1)(*a*)(i) of the *Criminal Code*, R.S.C. 1985, c. C-46, and that the jury did not draw an improper inference of guilt from failure of the Appellant to testify.

The Appellant was charged that, between January 1, 1979, and January 3, 1983, he sexually assaulted a young girl. The complainant testified at trial that she lived with her family next door to the home of the Appellant, that they did not have a telephone, and that they had the Appellant's permission to use his telephone. She testified that, when she was 13 years old, she was sent to make a call and the Appellant raped her. She froze, was frightened, and said nothing to her parents. She was regularly sent to make calls and she testified that the Appellant raped her on 10 or 20 occasions over the course of 12 months. The complainant testified that she did not report the assaults until 1990 because she was afraid of what the Appellant might do to her. It was revealed at trial, during the complainant's cross-examination, that in her initial statement in 1990, she stated that she had been raped 3 times. At the preliminary hearing, she stated that she had been raped 5 or 6 times and, at trial, the number grew to 10 to 20.

The complainant was questioned with respect to an affidavit sworn in 1986, stating that she had never been sexually abused, and with respect to an affidavit sworn in 1989, stating that she was a virgin prior to 1985. The complainant admitted that the affidavits were important statements in the proceedings in which they were filed and that they were untrue. The complainant stated that she believed the statements made in the affidavits were true because she had blocked out the incidents involving the Appellant until her memory returned in a flashback in 1990, when she was interviewed in connection with other proceedings. The complainant's evidence in cross-examination was in contradiction of her testimony in chief that she did not complain until 1990 because of her fear of the Appellant. The Appellant did not testify at trial and, at the conclusion of the complainant's evidence, the jury retired. The jury returned to ask for clarification as to the Appellant's right to take the stand in his defence and was instructed that the Appellant was entitled to give evidence or call evidence on his behalf, but that there was no onus on him to prove his innocence. The jury returned ten minutes later with a verdict. The Appellant was convicted and appealed his conviction to the Court of Appeal for Ontario, the principal ground of appeal being that the verdict was unreasonable. The Appellant claimed that the jury, which returned immediately with a verdict after being instructed on the Appellant's right to take the stand in his defence, drew too strong an inference from the failure of the Appellant to give evidence. The Court of Appeal dismissed the Appellant's appeal, Carthy J.A. dissenting.

Origin of the case:	Ontario
File No.:	23677
Judgment of the Court of Appeal:	June 24, 1993
Counsel:	Duncan, Fava, Schermbrucker, for the Appellant James K. Stewart, for the Respondent

23677 LORNE FRANÇOIS c. SA MAJESTÉ LA REINE

Droit criminel - Droit procédural - Jugement - Procès - La Cour d'appel à la majorité a-t-elle commis une erreur lorsqu'elle a conclu que le verdict n'était pas déraisonnable au sens du sous-al. 686(1)*a*)(i) du *Code criminel*, L.R.C. (1985), ch. C-46, et que le jury n'avait pas conclu incorrectement à la culpabilité parce que l'appelant n'avait pas témoigné?

L'appelant a été accusé d'avoir, entre le 1er janvier 1979 et le 3 janvier 1983, agressé sexuellement une jeune fille. La plaignante a témoigné au procès qu'elle habitait avec sa famille à côté de la maison de l'appelant, qu'ils n'avaient pas de téléphone et que l'appelant leur permettait d'utiliser son téléphone. Elle a déposé que, lorsqu'elle était âgée de 13 ans, on l'a envoyée faire un appel et l'appelant l'a violée. Elle a figé, elle était effrayée et n'a rien dit à ses parents. On l'a régulièrement envoyé faire des appels et elle a déposé que l'appelant l'avait violée à 10 ou 20 reprises pendant une période de 12 mois. La plaignante a témoigné qu'elle n'a pas fait état des agressions avant 1990 parce qu'elle avait peur de ce que l'appelant aurait pu lui faire. Au procès, il est ressorti du contre-interrogatoire de la plaignante, qu'elle avait au départ déclaré en 1990, qu'elle avait été violée 3 fois. À l'enquête préliminaire, elle a dit qu'elle avait été violée 5 ou 6 fois et, au procès le nombre a augmenté à 10 ou 20.

La plaignante a été interrogée au sujet d'un affidavit fait sous serment en 1986, selon lequel elle n'avait jamais été agressé sexuellement, et relativement à un affidavit fait sous serment en 1989, selon lequel elle était vierge avant 1985. La plaignante a admis que les affidavits constituaient des déclarations importantes dans les procédures dans lesquelles ils ont été déposés et qu'ils étaient faux. La plaignante a dit qu'elle croyait que les déclarations faites dans les affidavits étaient vraies parce qu'elle avait oublié les incidents relatifs à l'appelant jusqu'à ce que sa mémoire lui revienne en 1990, lorsqu'elle a été interrogée relativement à d'autres procédures. Le témoignage de la plaignante en contre-interrogatoire était contraire à son témoignage principal selon lequel elle n'avait pas porté plainte avant 1990 parce qu'elle avait peur de l'appelant. L'appelant n'a pas témoigné au procès et, lorsque la plaignante eut terminé son témoignage, le jury s'est retiré. Le jury est revenu pour demander des précisions sur le droit de l'appelant de témoigner pour assurer sa défense, on lui a répondu que l'appelant avait le droit de témoigner ou de citer des éléments de preuve pour son compte, mais que le fardeau de la preuve ne lui incombait pas de démontrer son innocence. Le jury est revenu dix minutes plus tard avec un verdict. L'appelant a été déclaré coupable et il a interjeté appel contre la déclaration de culpabilité à la Cour d'appel de l'Ontario, le principal moyen d'appel étant que le verdict était déraisonnable. L'appelant a soutenu que le jury, qui est revenu immédiatement avec un verdict après avoir reçu des directives sur le droit de l'appelant de témoigner pour sa défense, a tiré une déduction trop forte du fait que l'appelant n'a pas témoigné. La Cour d'appel a rejeté l'appel de l'appelant, avec la dissidence du juge Carthy.

Origine : Ontario

Nº du greffe : 23677

Arrêt de la Cour d'appel : Le 24 juin 1993

Avocats : Duncan, Fava, Schermbrucker, pour l'appelant
James K. Stewart, pour l'intimée

DEADLINES: MOTIONS

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	**:**	**June 6, 1994**
Service	:	May 16, 1994
Filing	:	May 23, 1994
Respondent	:	May 30, 1994

DÉLAIS: REQUÊTES

DEVANT LA COUR:

Conformément à l'article 23.1 des *Règles de la Cour suprême du Canada*, les délais suivants doivent être respectés pour qu'une requête soit entendue par la Cour:

Audience du	**:**	**6 juin 1994**
Signification	:	16 mai 1994
Dépot	:	23 mai 1994
Intimé	:	30 mai 1994

DEADLINES: APPEALS

The next session of the Supreme Court of Canada commences on April 25, 1994.

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

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

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

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

Intervener's factum must be filed within two weeks of the date of service of the respondent's factum.

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

The Registrar shall enter on a list all appeals inscribed for hearing at the April 1994 Session on March 1, 1994.

DÉLAIS: APPELS

La prochaine session de la Cour suprême du Canada débute le 25 avril 1994.

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

Le dossier d'appel doit être déposé dans les trois mois du dépôt de l'avis d'appel.

Le mémoire de l'appelant doit être déposé dans les cinq mois du dépôt de l'avis d'appel.

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

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

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

Le 1 mars 1994, le registraire met au rôle de la session d'avril 1994 tous les appels inscrits pour audition.