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DEMANDES D'AUTORISATION D'APPEL PRODUITES

Joseph Pilon
John D. McAlpine, Q.C.
McAlpine & Hordo

v. (23866)

Dr. A. Bouaziz et al. (B.C.)
` Paul T. McGivern
Harper, Grey, Easton

FILING DATE 14.2.1994

Lisa Colleen Neve
Felicity C. Hunter

v. (23991)

Her Majesty The Queen (Crim.)(Alta.)
Bart Rosborough
A.G. of Alberta

FILING DATE 28.2.1994

Richard Dubois
Richard Wagner
Lavery, de Billy

c. (23993)

Raymond, Chabot, Fafard, Gagnon Inc. (Qué.)
Jean LeFrançois
Guy & Gilbert

DATE DE PRODUCTION 9.2.1994

332415 Alberta Ltd. et al.
Weir Bowen

v. (23994)

Edmonton Oilers Hockey Corp. (Alta.)
Ogilvie & Co.

FILING DATE 21.2.1994

David Partridge
Damien R. Frost
Lomer, Frost

v. (23995)

Her Majesty The Queen (Ont.)
Dept. of Justice

FILING DATE 14.2.1994

Major A.G. Johnstone
Sandra A. Forbes

v. (23996)

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

FILING DATE 21.2.1994

Patricia Morley
Parlee McLaws

v. (23997)

Kalaka Housing Co-Operative Ltd. et al. (Alta.)
Brownlee Fryett

FILING DATE 8.2.1994

Foyer de Val d'Or Inc.
Chantal Boyer
Ayotte Martineau McGuire Boyer

v. (23998)

Syndicat des employés du Foyer de Val d'Or Inc. (CSN) et al. (Qué.)
Pierre Gauthier
Sauvé, Ménard & Associés

FILING DATE 10.2.1994

Lakeview National Hotels Inc. et al.
W.G. Ryall
Fillmore & Riley

v. (23999)

The Assessor for the City of Winnipeg et al. (Man.)
M.S. Samphir
H.R.R. Klapecki

FILING DATE 11.2.1994

David Attis et al.
Neil Finkelstein
Blake, Cassels & Graydon

v. (24002)

The Board of School Trustees, District No. 15 et al. (N.B.)
James C. Letcher, Q.C.

FILING DATE 11.2.1994

Mainland Sand & Gravel Ltd.
D.B. Kirkham, Q.C.
Owen, Bird

v. (24003)

Zoltan Tutinka (B.C.)
Kevin C. Blair

Taylor & Blair

FILING DATE 15.2.1994

The Corporation of the City of Stratford et al.
John W.T. Judson
Lerner & Assoc.

v. (24004)

Albert Large et al. (Ont.)
Kim Twohig
A.G. of Ontario

FILING DATE 17.2.1994

Sequa Chemicals Inc.
Rogert T. Hughes, Q.C.

v. (24005)

United Color and Chemical Ltd. (F.C.A.)
Thomas A. McDougall, Q.C.
Perley-Robertson, Panet, Hill &
McDougall

FILING DATE 18.2.1994

Redpath Industries Ltd.
Vincent M. Prager
Stikeman, Elliott

v. (24006)

The Ship ("Cisco") et al. (F.C.A.)
Victor DeMarco
Brisset Bishop

FILING DATE 18.2.1994

James Gerald Frederick Robert Skinner
Walsh, Micay & Co.

v. (24007)

Her Majesty The Queen (Man.)
Dept. of Justice

FILING DATE 18.2.1994

Sandra Florence Vout
Joseph M. Steiner

v. (24009)

Earl Hay et al. (Ont.)

FILING DATE 21.2.1994

APPLICATIONS FOR LEAVE SUBMITTED TO COURT SINCE LAST ISSUE

REQUÊTES SOUMISES À LA COUR DEPUIS LA DERNIÈRE PARUTION

MARCH 3, 1994 / LE 3 MARS 1994

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

Rafeeq Ahmad Khan

v. (23947)

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

NATURE OF THE CASE

Criminal law - Evidence - Sexual assault - Whether the Court of Appeal erred in law in holding that cross-examination of an accused requiring him to explain why allegations have been made against him is not improper - Whether the Court of Appeal erred in law in holding, that in a trial by judge alone where credibility of the accused is in issue, it is sufficient for the trial judge to find that he accepts the evidence of the complainant without making a further evaluation of and finding in relation to the evidence of the accused.

PROCEDURAL HISTORY

February 19, 1992 Ontario Court of Justice (General Division) (Sheppard J.)	Conviction: Three counts of sexual assault
November 22, 1993 Court of Appeal for Ontario (Grange, Catzman and Austin JJ.A.)	Appeal dismissed
January 14, 1994 Supreme Court of Canada	Application for leave to appeal filed

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Consolidated Enfield Corporation

v. (23887)

Michael F. Blair (Ont.)

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.

PROCEDURAL HISTORY

September 25, 1989 Supreme Court of Ontario (Holland J.)	Third party application allowed and costs awarded against the Applicant and the Respondent
October 28, 1992 Ontario Court of Justice (General Division) (Carruthers J.)	Respondent's application for a declaration of entitlement to indemnity dismissed
October 6, 1993 Court of Appeal for Ontario (Morden A.C.J.O., McKinlay and Carthy JJ.A.)	Appeal allowed
December 6, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Thalayasingam Sivakumar

v. (23962)

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

NATURE OF THE CASE

Immigration - *Canadian Charter of Rights and Freedoms* - International law - Criminal law - Procedural law - Evidence - Exclusion clause - Convention refugee status denied on the basis of crimes against humanity - Proper criteria for denying protection to persons who would otherwise be declared Convention refugees - Degree of complicity required to be found responsible for crimes against humanity - Whether a claimant's right under s. 7 of the *Charter* has been infringed by holding him to a standard of absolute liability for criminal acts under the exclusion clause - Whether the effect of invoking the exclusion clause on such a low standard of proof amounts to cruel and unusual treatment contrary to s. 12 of the *Charter* - Whether the evidence of a refugee claimant at his hearing might open him to charges under the *Criminal Code* and if so, whether this violates ss. 7, 11(c) and 13 of the *Charter* - Whether the Federal Court of Appeal is being faithful to the principles enunciated by this Court in *Singh and M.E.I.*, [1985] 1 S.C.R. 177, to guide and govern the relationship between immigration and refugee law and the *Charter*.

PROCEDURAL HISTORY

May 17, 1991
Immigration and Refugee Board
(Refugee Division) (Riddell and Bajwa)

Applicant's Convention refugee claim denied

November 4, 1993
Federal Court of Appeal (Mahoney and Linden JJ.A., and Henry D.J.)

Appeal dismissed

January 4, 1994
Supreme Court of Canada

Application for leave to appeal filed

Edward James Attridge

v. (23926)

Her Majesty the Queen (Alta.)

NATURE OF THE CASE

Taxation - Business tax - Applicant reporting sales of shares in business in income tax returns at an adjusted cost - Minister of National Revenue revising adjusted cost - Tax Review Board dismissing Applicant's appeal of Notices of Reassessment - Federal Court, Trial Division, allowing Applicant's appeal - Whether the evidence of value found in the course of the trial to determine the fair market value of the business for the purpose of deriving an adjusted cost base under subdivision C of Part 1 of the *Income Tax Act*, S.C. 1970-71-72, c. 63, and s. 26 of the *Income Tax Application Rules*, 1971, can be "adjusted" on the basis of principles applicable to a determination of "fair value" under s. 199 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as was done by the trial judge.

PROCEDURAL HISTORY

March 7, 1991
Federal Court, Trial Division (Muldoon J.)

Applicant's appeal from reassessments of tax allowed

November 22, 1993
Federal Court of Appeal
(Mahoney, MacGuigan and Robertson JJ.A.)

Appeal dismissed

December 30, 1993
Supreme Court of Canada

Application for leave to appeal filed

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

Melvin Darnell Engerdahl

v. (23758)

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

NATURE OF THE CASE

Criminal law - Evidence - Defence counsel inadequately prepared and inexperienced - Whether trial judge erred in not directing complainant as to appropriate manner for answering questions - Should defence have been allowed to examine complainant as to her previous sexual conduct - Introduction of fresh evidence.

PROCEDURAL HISTORY

December 20, 1991 Supreme Court of British Columbia (Sinclair-Prowse, J.)	Convictions: breaking and entering and committing an indictable offence, to wit sexual assault and committing sexual assault
June 16, 1993 Court of Appeal for British Columbia (Cumming, Proudfoot and Gibbs JJ.A.)	Appeal against conviction dismissed
January 17, 1994 Supreme Court of Canada	Application for leave to appeal and for an extension of time filed

**The Royal Bank of Canada,
and Doane Raymond Limited,
Receiver and Manager of Pegasus Helicopters Incorporated
and Peat Marwick Thorne Inc., Trustee of the Estate of the Bankrupt,
Pegasus Helicopters Incorporated**

v. (23914)

Mitsui & Co. (Canada) Ltd. (N.S.)

NATURE OF THE CASE

Commercial law - Contracts - Sale - Lease - Whether the agreements between the parties were true leases or conditional sales contracts - Whether the *Conditional Sales Act* of Nova Scotia, New Brunswick, Newfoundland, Prince Edward Island and the North West Territories apply to leases of goods which contain a provision whereby the lessee has the right to become the owner of the goods - Did the Nova Scotia Court of Appeal err in its interpretation and application of the decision of the British Columbia Court of Appeal in *Re Nishi Industries* (1978), 28 C.B.R. (N.S.) 261, such that conflict now exists between the law governing conditional sales agreements as described by the two provincial Courts of Appeal?

PROCEDURAL HISTORY

April 13, 1993
Supreme Court of Nova Scotia
(Cacchione J.)

Application for declaration that agreement not conditional sales contract pursuant to the *Conditional Sales Act* dismissed;

October 26, 1993
Court of Appeal for Nova Scotia
(Jones [dissenting], Freeman and Roscoe JJ.A.)

Appeal allowed: Agreement was a true lease

December 21, 1993
Supreme Court of Canada

Application for leave to appeal filed

Bradley Young

v. (23893)

Her Majesty's Attorney General for Newfoundland (Nfld.)

NATURE OF THE CASE

Torts - Occupier's Liability - Crown - Whether the standard of care required of the Crown in occupier's liability cases can be less than that accorded individuals - What is the standard of care in such a case.

PROCEDURAL HISTORY

January 7, 1991 Supreme Court of Newfoundland (Roberts J.)	Applicant's action allowed
October 18, 1993 Supreme Court of Newfoundland Court of Appeal (Mifflin, Gushue and Steele, JJ.A.)	Appeal allowed
December 10, 1993 Supreme Court of Canada	Application for leave to appeal filed

Manship Holdings Ltd.

v. (23941)

Eric A. Muise et al. (N.B.)

NATURE OF THE CASE

Property law - Real property - Land titles - Easements - Licenses - Whether the Court of Appeal erred in characterizing the grants in question as easements rather than as personal licences.

PROCEDURAL HISTORY

September 22, 1992
Court of Queen's Bench of New Brunswick
(Creaghan J.)

Application allowed : Declaration that the Respondents have a right-of-way over the land of the Applicant

November 3, 1993
Court of Appeal of New Brunswick
(Hoyt, C.J.N.B., Rice and Ayles JJ.A.)

Appeal dismissed

January 4, 1994
Supreme Court of Canada

Application for leave to appeal filed

Eileen Mary Tierney-Hynes

v. (23930)

Adrian Francis Mary Hynes (Man.)

NATURE OF THE CASE

Family Law - Maintenance - Respondent physician undertaking a four year residency program to upgrade his qualifications - Reasonableness of voluntarily creating a change in circumstances - Consequences of change on children - Assessment of child support to be based on unified or divided family.

PROCEDURAL HISTORY

June 30, 1992 Queen's Bench (Family Division) (Carr, J.)	Respondent's motion to terminate spousal support and to reduce the quantum of monthly child support granted; Applicant's motion to increase child support and for a cost of living allowance clause dismissed. Costs to the Respondent
November 4, 1993 Manitoba Court of Appeal (Huband, Helper and Kroft JJ.A.)	Appeal dismissed without costs
December 29, 1993 Supreme Court of Canada	Application for leave to appeal filed
January 28, 1994 Supreme Court of Canada	Notice of motion to adduce fresh evidence filed

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

Henri-Paul Loubier

c. (23969)

Sa Majesté La Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Infractions - Procès - Plaidoyer de culpabilité par l'intermédiaire d'un avocat - Requête du demandeur pour être relevé de son plaidoyer de culpabilité rejetée - Appel rejeté - La Cour d'appel du Québec a-t-elle erré en restreignant le temps accordé au demandeur pour présenter sa cause par suite du congédiement de son avocat?

HISTORIQUE PROCÉDURAL

Le 19 juillet 1991 Cour du Québec (Chambre criminelle et pénale) (Cliche J.C.Q.)	Requête du demandeur pour être relevé de son plaidoyer de culpabilité rejetée

Le 12 novembre 1993
Cour d'appel du Québec
(Gendreau, Mailhot et Otis, JJ.C.A.)

Appel rejeté

Le 19 janvier 1994
Cour suprême du Canada

Demande d'autorisation d'appel et de prorogation de délai déposée

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MacMillan Bloedel Limited and
Canadian Transport Company Limited

v. (23899)

John Richard Ludbrooke Youell (Representative Under-writer), Orion Insurance Co. Ltd., The Yasuda Fire & Marine Insurance Co.(U.K.) Ltd., Commercial Union Assurance Co. Ltd., Sphere Insurance Co. Ltd., Drake Insurance Co. Ltd., The Threadneedle Insurance Co. Ltd., Insurance Company of North America (U.K.) Ltd. Bishopgate Insurance Co. Ltd., Indemnity Marine Assurance Co. Ltd. British Law Insurance Co. Ltd., La Réunion Française Soc. Anon. D'Assurances et de Réassurances, Albion Insurance Co. Ltd. Ocean Marine Insurance Co. Ltd., Scottish Lion Insurance Co. Ltd., Provincial Insurance Co. Ltd., Minister Insurance Co. Ltd. Andrew Weir Insurance Co. Ltd., Insurance Corporation of Ireland Ltd., and Hansa Marine Insurance Co.(U.K.) Ltd. (B.C.)

NATURE OF THE CASE

Maritime law - Insurance marine - Damages - Whether the Court of Appeal erred in concluding that the Applicants' claim against the Respondents for recovery of mitigation costs be denied.

PROCEDURAL HISTORY

March 11, 1991
Supreme Court of British Columbia
(Cowan J.)

Applicants' application for indemnity allowed

May 27, 1993
Court of Appeal for British Columbia
(Seaton, Southin and Proudfoot JJ.A.)

Appeal allowed

October 7, 1993
Court of Appeal for British Columbia
(Seaton, Southin and Proudfoot JJ.A.)

Supplementary reasons

December 6, 1993
Supreme Court of Canada

Application for leave to appeal filed

Helo Enterprises Ltd.

v. (23924)

Ernst & Young Inc. Liquidators for the Standard Trust Company in Liquidation (B.C.)

NATURE OF THE CASE

Commercial law - Administrative law - Criminal law - Statutes - Interpretation - Loan - Creditor and debtor - Interest - Judicial review - Standard of review - Interpretation and application of section 347 of the *Criminal Code*, R.S.C. 1985, c. C-46, which prohibits agreements to receive interest at a criminal rate, in civil proceedings - Company retained to find a lender for a condominium project - Mortgage agreement and a participation agreement between lender and borrower - Actuary finding that the effective annual rate of interest was over 60 per cent - Mortgage broker's facility fee included in calculation of interest - Whether the mortgage broker's facility fee was a cost to the borrower as found in the "soft costs" and was rightly included in the calculation of interest under section 347 of the *Criminal Code* - Whether the Court of Appeal for British Columbia erred in not making reference to the decision of the Court of Appeal for Ontario in *William E. Thompson Associates v. Carpenter* (1989) 61 D.L.R. (4th) 1, 69 O.R. (2d) 545 (C.A.).

PROCEDURAL HISTORY

November 27, 1992 Supreme Court of British Columbia (Hardinge J.)	Order declaring void and unenforceable mortgage and participation agreements
December 3, 1993 Court of Appeal for British Columbia (Southin, Taylor and Prowse JJ.A.)	Appeal allowed
January 6, 1994 Supreme Court of Canada	Application for leave to appeal filed
January 7, 1994 Supreme Court of Canada (La Forest J.)	Application for a stay of proceedings dismissed

Omineca Enterprises Ltd.

v. (23939)

Minister of Forests and the Appeal Board appointed pursuant to the Forest Act by Order in Council number 349 dated March 6, 1992 (B.C.)

NATURE OF THE CASE

Administrative law - Procedural law - Appeal - Jurisdiction - Barristers and solicitors - Bias - *Audi alteram partem* - Whether an appeal tribunal is entitled to have a lawyer advise it on matters raised on the appeal - Whether a denial of natural justice arises where the lawyer for the appeal tribunal and the lawyer for the respondent are both appointed and paid by the Attorney General.

PROCEDURAL HISTORY

July 8, 1992 Supreme Court of British Columbia (Mackenzie J.)	Appeal dismissed
November 18, 1993 Court of Appeal for British Columbia (McEachern C.J. [dissenting], Gibbs and Prowse JJ.A.)	Appeal dismissed
January 7, 1994 Supreme Court of Canada	Application for leave to appeal filed

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Milk Board

v. (23927)

Ronald Grisnich and Gilbert Grisnich (B.C.)

NATURE OF THE CASE

Administrative law - Statutes - Statutory instruments - Interpretation - Series of orders enacted by the Milk Board as part of its regulation of the dairy industry - Whether statutory bodies with powers derived from multiple sources should be able to exercise those powers concurrently or whether they must choose one power or the other when enacting a particular rule or order - Whether statutory bodies with powers derived from multiple sources are required to specify on the face of each rule or order enacted by the statutory body which power is being exercised in the particular rule or order.

PROCEDURAL HISTORY

June 7, 1991 Supreme Court of British Columbia (Rowan J.)	Action to collect levies allowed
October 26, 1993 Court of Appeal for British Columbia (Legg, Taylor and Proudfoot JJ.A.)	Appeal allowed
December 23, 1993 Supreme Court of Canada	Application for leave to appeal filed

MARCH 3, 1994 / LE 3 MARS 1994

23777 COMMERCIAL UNION ASSURANCE CO. OF CANADA v. THE BANK OF NOVA SCOTIA, a Canadian Chartered Bank (N.S.)

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

Commercial law - Insurance - Interpretation - Applicant issuing fire insurance policy for house on which Respondent was mortgagee - Policy lapsing without notice to Respondent -House burning after policy lapsed and Applicant rejecting Respondent's claim for loss - Obligation of an insurer to notify mortgagees of the lapse of policy coverage - Supreme Court of Nova Scotia, Trial Division, holding Applicant liable to Respondent - Whether the majority of the Court of Appeal erred in interpreting the standard mortgage clause in the insurance policy so as to impose on the Applicant an obligation to notify the Respondent of the lapse of the insurance policy by the passage of time.

23835 ALLAHYER SOHRABIAN v. HER MAJESTY THE QUEEN (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 - Offences - Narcotics - Conspiracy - Whether an agreement between two parties for the sale and purchase of narcotics where the seller knows that the buyer will re-sell the drugs constitutes a conspiracy to traffic in narcotics? - Section 4 of the *Narcotic Control Act*, R.S.C. 1985, c. N-1 - *R. v. Sokoloski*, [1977] 2 S.C.R. 523.

23831 ROY KENSHIN LEE v. HER MAJESTY THE QUEEN (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 - Procedural law - Trial - Evidence - Applicant charged with first degree murder - Witness giving statement, after his arrest on a robbery charge, to the police and testifying at trial that Applicant described how he committed the murder - Applicant's counsel, in cross-examination, attempting to question the witness as to the circumstances under which he admitted to robbery - Trial judge holding that the evidence concerning the admission of robbery was collateral - Whether the Court of Appeal erred in holding that the trial judge did not err in denying Applicant's counsel the right to call evidence to contradict a portion of the testimony of a key Crown witness on the basis that this evidence was collateral to the main issue.

23838 RAYMOND MERCER v. HER MAJESTY THE QUEEN (Crim.) (Nfld.)

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 - Procedural law - Sentencing - Applicant having unprotected sexual intercourse with two women knowing of his possible infection with the HIV virus, and and after receiving results confirming this - Applicant convicted on two counts of criminal negligence causing bodily harm and one count of breach of bail undertaking and sentenced to a total of 27 months imprisonment - Whether the Court of Appeal erred in finding evidence establishing aggravating factors for sentence to be proved beyond reasonable doubt - Whether the Court of Appeal erred in not directing itself to the burden of proof required to establish aggravating factors on sentence - Whether the Court of Appeal erred in failing to specifically state the acts or omissions which constituted the criminal negligence in this case - Whether the Court of Appeal erred in including a consent analysis in its determination of the aggravating actions of the Applicant - Whether the Court of Appeal erred by placing too much weight on the Applicant's silence as an aggravating factor in sentence.

23782 BHIM SINGH MAYER v. BHAGWAN SINGH MAYER, BHORA SINGH MAYER and MHINDER SINGH MAYER, and BHAGWAN SINGH MAYER and BHORA SINGH MAYER, executors of the will of WELBIER SINGH MAYER, also known as WELBIER S. MAYER, deceased (B.C.)

CORAM: La Forest, Sopinka and Major JJ.

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

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

NATURE OF THE CASE

Procedural law - Pre-trial procedure - Court - Jurisdiction - Settlement agreement - Whether the Court of Appeal erred in concluding that a misstatement of law could not give rise to a right of rescission for innocent misrepresentation - Whether the Court of Appeal erred in concluding that a Court has jurisdiction to set aside a settlement agreement that has been unfairly obtained.

23680 Y.L. v. CHILDREN'S AID SOCIETY OF HALIFAX (N.S.)

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

Family law - Custody - Adoption - Infants - Child welfare proceedings - Proceedings begun under the *Children's Services Act* - Numerous delays - New legislation enacted during course of proceedings - Family Court Judge ordering that child be placed in care and custody of the Respondent - Court of Appeal allowing Applicant's appeal as a result of the conclusion that the Family Court Judge was without jurisdiction - Child reapprehended - Disposition order made by subsequent Family Court Judge - Mother of the child having improved her life considerably by the time she testified in the second proceeding - Family Court Judge concluding that the improvements made by the Appellant came too late - Court of Appeal concluding that Family Court Judge made a disposition order in the best interests of the child, which remains the governing consideration under the legislation.

23770 THE GOVERNMENT OF MANITOBA v. A.J. - and - DOUGLAS CALMAIN and KARYN JUNE POWELL as the Executors and Trustees of the Estate of JUNE IRIS CAIRNIE and W.D. (Man.)

CORAM: La Forest, Sopinka and Major JJ.

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

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

NATURE OF THE CASE

Procedural law - Actions - Appeals - Limitations - Statutes - Interpretation - Application for leave to bring action that would otherwise be barred by reason of limitation periods - Criteria for extension of time - Impact of other legislation - Effect of limitation period applying to representatives of an estate contained in the *Trustee Act* - Whether the limitation period in *Public Officers Act* prevents the commencement or continuation of proceedings against the Government of Manitoba - Did Court of Appeal err in substituting its discretion for that of the chambers judge - Was Court of Appeal correct in its reasons on the issue of prejudice - Reasons of Court of Appeal on motion to settle terms of Certificate of Judgment.

23823 REGIONAL MUNICIPALITY OF PEEL, LARRY ARTHUR WISOTZKI and DOUGLAS K. BURROWS, Chief of Police of the Regional Municipality of Peel v. NOORJAHAN ANDANI, Administratrix of the Estate of AMIRALI ANDANI, deceased, and the said NOORJAHAN ANDANI - AND - REGIONAL MUNICIPALITY OF PEEL, LARRY ARTHUR WISOTZKI and DOUGLAS K. BURROWS, Chief of Police of the Regional Municipality of Peel v. LAURA BANNON, Administratrix of the Estate of PETER ALLAN BANNON, deceased, and the said LAURA BANNON and NOORJAHAN ANDANI, NOORJAHAN ANDANI as Administratrix of the Estate of AMIRALI ANDANI, deceased, and WILLOWDALE DODGE CHRYSLER LTD., THE HOME INSURANCE CO. and COMMERCIAL UNION ASSURANCE CO. (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

Procedural law - Civil procedure - Judgments and orders - Interest - Prejudgment interest -Significant decreases in interest rates between date action commenced and date of judgment - Whether trial judge and Court of Appeal erred in refusing to apply averaging to rate of prejudgment interest and approving prejudgment rates of over 20%.

23828 DONALD E. CRAIG and ST. JOSEPH'S HOSPITAL, Saint John, New Brunswick, a body corporate v. ROSEMARY LAHEY, Executrix, Estate of EDWARD J. LAHEY, and in her own right - AND - ROSEMARY LAHEY, Executrix, Estate of EDWARD J. LAHEY, and in her own right v. DONALD E. CRAIG and ST. JOSEPH'S HOSPITAL (N.B.)

CORAM: La Forest, Sopinka and Major JJ.

The two applications for leave to appeal are dismissed, each with costs.

Les deux demandes d'autorisation d'appel sont rejetées, chacune avec dépens.

NATURE OF THE CASE

Torts - Procedural law - Actions - Appeals - Physicians and surgeons - Did Court of Appeal err in conducting trial *de novo* and making findings of fact without seeing witnesses; thereby reaching conclusions as to Applicant's liability.

23837 CANADIAN BROADCASTING CORPORATION and PACIFIC PRESS LTD. v. LOUISE PIERRE (B.C.)

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 - Procedural Law - Crown - Actions - Civil Procedure - Damages - Trial - Trial without a jury in a proceedings against the Crown - Whether this Court's decision *National Harbours Board v. Langelier*, [1969] S.C.R. 60, means, as held by the Court of Appeal for British Columbia, that agents of the Crown, individual or corporate, are disentitled in tort actions to rely on the special defences and procedures of the Crown as provided by the *Crown Liability and Proceedings Act*, S.C. 1990, c. 8 ("CPLA") and, in particular, from relying upon s. 26 of the CPLA which prohibits jury trials as against the Crown, even where, as in this case, any damages recovered against the Crown agent would be ultimately recovered from the assets of the Crown - Whether the Court should strive to avoid two modes of trial within the same action by the same trial judge, one with a jury and one without a jury.

23854 TAMARA ARNDT v. HANS-JOACHIM ARNDT (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

Family law - Division of property - Divorce - Applicant ordered to make an equalization payment based on valuation date property value - Real estate market declining considerably in the period between the valuation date and the date of trial - Whether a constructive trust is available to redress unfairness caused by post-separation events, such as a decrease in property values - Whether the *Family Law Act (Ontario)*, R.S.O. c. F-3 permits the consideration of post-separation events, such as decline in property values - The nature of the relationship between the doctrine of constructive trust and s. 5(6) of the *Family Law Act (Ontario)* concerning post-separation events - Application of *Rawluk v. Rawluk*, [1990] 1 S.C.R. to the issue of post-separation events and specifically a post-separation decline in property value.

23869 LEONE LIBERATI and JAMES L. LABONTE v. THE CANADA EMPLOYMENT AND IMMIGRATION COMMISSION and THE ATTORNEY GENERAL OF CANADA (Ont.) (F.C.A.)

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

Statutes - Interpretation - Unemployment insurance - Treatment of vacation pay for purposes of unemployment insurance benefits - Whether the Federal Court of Appeal's decisions respecting the treatment of vacation pay appear to be inconsistent, are in conflict, and are not in line with the decision of this Court in *Bryden v. Canada Employment and Immigration Commission*, [1982] 1 S.C.R. 443, and have the affect of treating individuals in identical situations differently.

23840 LEONARD J. OTTO and ELSIE V. COMIN v. HAMILTON & OLSEN SURVEYS LTD. (Alta.)

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

Labour law - Pensions - Whether the Court of Appeal erred in holding that the Respondent's unilateral reduction in the pension and vacation benefit terms of the employment contracts did not constitute constructive dismissal of the Applicants - Whether the Court of Appeal erred by holding that the Respondent's economic circumstances justified its unilateral change to the employment contracts of the Applicants - Law governing employment and the termination of employment found to be of central importance to Canadian society in *Machtinger v. HOJ Industries Ltd.,* [1992] 1 S.C.R. 986.

23879 JAMES ALASTAIR THOMAS v. HER MAJESTY THE QUEEN (Crim.) (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 - Criminal law - Offences - Evidence - Trial by a jury - Uttering a threat to cause death - Possession of a weapon for a purpose dangerous to the public peace - Whether the Saskatchewan Court of Appeal erred by failing to find that the trial record disclosed that there was a breach of the Applicant's rights under sections 8 and 9 of the *Charter* - Whether the Saskatchewan Court of Appeal erred by failing to grant a new trial to determine the appropriate remedy for the said breaches notwithstanding that the Applicant did not raise the issue at trial - Whether the Saskatchewan Court of Appeal erred by failing to find that the trial judge's charge to the jury was deficient.

23868 SHORE BOAT BUILDERS LTD. v. CHARLES J. MOSES (B.C.)

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

International law - Conflict of laws - Recognition and enforcement of foreign judgments - Whether the "real and substantial connection" test for recognition and enforcement of extraprovincial judgments pronounced by the Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, should be applied *simpliciter* to default judgments entered by the courts of truly foreign states.

23707 FRANCK CÔTÉ, PETER DECONTIE *ET ALS* c. SA MAJESTÉ LA REINE (Qué.)

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

La demande d'autorisation d'appel et la demande d'autorisation d'appel incident sont accordées.

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

NATURE DE LA CAUSE

Indiens - Droit constitutionnel - Législation - Interprétation - Pêcheries - Demandeurs accusés d'avoir pêché sur le territoire de la Z.E.C. Bras-Coupé-Désert, sans avoir payé le tarif d'accès requis par l'art. 5 du *Règlement sur les zones d'exploitation contrôlée* - Demandeur Côté accusé d'avoir pêché sans permis sur le territoire de la Z.E.C., en contravention à l'art. 4(1) du *Règlement de pêche du Québec* - Les Algonquins de la rivière Désert ont-ils des droits ancestraux existants, d'accès et de pêche, sur le territoire de la Z.E.C. Bras-Coupé-Désert? - La *Proclamation royale* du 7 octobre 1763 confirme-t-elle la protection de l'exercice des droits d'accès et de pêche des Algonquins sur leurs terres ancestrales? - Les droits d'accès des Algonquins, issus du Traité de Swegatchy, sont-ils protégés de l'application du *Règlement sur les zones d'exploitation contrôlée*, en vertu de l'art. 88 de la *Loi sur les Indiens*? - Les Algonquins bénéficient-ils de la protection de l'art. 35(1) de la *Loi constitutionnelle de 1982*, quant à leur libre accès à la Z.E.C. et à leur droit d'y pêcher, qui rendrait inopérants quant à eux les règlements créant les infractions reprochées?

23762 GUY BELLEFLEUR, les héritiers de feu JEAN-ROBERT BELLEFLEUR, et al c. LE PROCUREUR GÉNÉRAL DU QUÉBEC (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

Indiens - Droit administratif - Droit de l'environnement - Législation - Interprétation - Contrôle judiciaire - Énergie - Action directe en nullité d'un décret administratif autorisant la réalisation d'un projet hydro-électrique rejetée - Le gouvernement du Québec et le ministre de l'Environnement ont-ils erré en appliquant les art. 31.1 ss. de la *Loi sur la qualité de l'environnement*, L.R.Q., ch. Q-2? - L'étude d'impact environnementale était-elle conforme à la *Loi*? - La procédure de consultation publique réalisée respectait-elle les dispositions de la *Loi*? - La décision arbitraire du ministre de l'environnement de juger "satisfaisante" l'étude d'impact environnementale ouvre-t-elle la voie au contrôle judiciaire de l'erreur manifeste dans l'appréciation des faits? - Lors de la réactivation du dossier, six ans après la consultation officielle et neuf ans après l'avis de projet initial, le promoteur Hydro-Québec avait-il l'obligation de respecter des règles de procédure - Application de la doctrine de l'attente légitime dans la mesure où la réactivation du dossier nécessitait le respect d'une forme d'équité procédurale impliquant une consultation des demandeurs.

23716 JEAN-YVES DUCHESNEAU c. SA MAJESTÉ LA REINE (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 - Procédure - Preuve - La Cour d'appel a-t-elle erré en ne décrétant pas que la tenue d'un voir-dire était nécessaire avant d'admettre une déclaration antérieure incompatible d'un témoin aux fins d'attaquer sa crédibilité? - La Cour d'appel a-t-elle erré dans son interprétation de l'arrêt *R. v. B.(K.G.)*, 79 C.C.C.(3d) 257, [1993] 1 R.C.S. 750? - La Cour d'appel a-t-elle erré en ne décrétant pas que le juge de première instance aurait dû *proprio motu* ordonner la tenue d'un voir-dire, avant d'autoriser l'utilisation d'une déclaration incompatible d'un témoin, un suspect, qui apparaissait avoir été obtenue à la suite de la violation des droits fondamentaux du déclarant? - La Cour d'appel a-t-elle erré en ne décrétant pas que l'utilisation d'une déclaration antérieure incompatible d'un témoin, extorquée et obtenue en violation de ses droits fondamentaux, était de nature à porter atteinte à l'équité du procès et à ternir l'image de la justice? - La Cour d'appel a-t-elle erré en n'intervenant pas dans l'appréciation de la crédibilité accordée au témoin de la défense par le juge de première instance? - La Cour d'appel a-t-elle erré en maintenant une condamnation alors qu'un élément essentiel de l'accusation n'a pas été prouvé?

23880 1229-1605 QUÉBEC INC. c. MARCHÉ A.J.T. (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

Procédure - Procédure civile - Appel - La Cour d'appel a-t-elle appliqué correctement les principes juridiques devant prévaloir en matière de rejet d'appel en raison de son caractère abusif ou dilatoire? - Peut-il exister autorité de la chose jugée entre d'une part, le jugement d'un tribunal de première instance déterminant qui, du locataire ou du locateur, doit supporter les coûts d'exploitation d'un centre commercial en vertu d'un bail et, d'autre part, l'interprétation dudit bail quant à la fixation d'un loyer maximum?

23915 J.W.S. Jr. v. H.A.D. and R.M.D. (Alta.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Family law - Custody and access - Adoption - International law - Conflict of laws - Infants -American born child given up for adoption by birth mother without consent of Applicant, the child's father - Alberta courts awarding custody of child to Respondents and allowing them to adopt child - Did trial judge err in not considering the *Convention on the Civil Aspect of Child Abduction (the Hague Convention)* prior to determining questions of custody and guardianship - Did Court of Appeal err in saying Convention did not apply since child was not customarily resident in United States when removed to Canada and that removal was not wrong - Did courts err in not taking into account proper administration of justice in determining issues before them.

23871 DAVID LYNN BISHOP v. HER MAJESTY THE QUEEN (Crim.) (Alta.)

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

Canadian Charter of Rights and Freedoms - Criminal law - Sentencing - Detention - Whether the Alberta Court of Appeal erred in law in not finding that Applicant's constitutional rights, guaranteed by s. 12 of the *Canadian Charter of Rights and Freedoms*, were violated or infringed by the imposition of the sentence of indeterminate incarceration - If the answer is in the affirmative, whether the Court of Appeal erred in law in not applying the provisions of s. 24(1) of the *Canadian Charter of Rights and Freedoms* and, as a remedy thereunder, in imposing a determinate sentence on the Applicant.

23907 DANIEL LEWIS GYORI v. HER MAJESTY THE QUEEN (Crim.) (Alta.)

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

Canadian Charter of Rights and Freedoms - Criminal law - Offences - Failing to provide breath samples - Right to counsel - Whether the Court of Appeal of Alberta erred in law in not upholding the conclusion of the Summary Conviction Appeal Court judge that the Applicant's right to counsel under section 10(b) of the *Charter* had been violated or infringed and that, pursuant to section 24(2) of the *Charter*, the evidence of the Applicant's refusal to take the breathalyser test was properly excluded from evidence.

23460/90 **RJR - MACDONALD INC. v. THE ATTORNEY GENERAL OF CANADA and THE ATTORNEY GENERAL OF QUEBEC and THE HEART AND STROKE FOUNDATION OF CANADA, THE CANADIAN CANCER SOCIETY, THE CANADIAN COUNCIL ON SMOKING AND HEALTH, and PHYSICIANS FOR A SMOKE-FREE CANADA and between IMPERIAL TOBACCO LTD. v. THE ATTORNEY GENERAL OF CANADA and THE ATTORNEY GENERAL FOR QUEBEC and THE HEART AND STROKE FOUNDATION OF CANADA, THE CANADIAN CANCER SOCIETY, THE CANADIAN COUNCIL ON SMOKING AND HEALTH, and PHYSICIANS FOR A SMOKE-FREE CANADA** (Que)

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

The applications for a stay are dismissed with costs to the successful party on the appeal.

Les demandes de sursis sont rejetées avec dépens adjugés à la partie qui aura gain de cause en appel.

[See headnote at p. 372 / Voir sommaire à la p. 372.]

Before / Devant: THE DEPUTY REGISTRAR

Motion to extend the time in which to serve and file a factum

Requête en prorogation du délai de signification et de production d'un mémoire

Bruce Douglas Branch et al.

v. (22978)

B.C. Securities Commission (B.C.)

GRANTED / ACCORDÉE Time extended to February 15, 1994 *nunc pro tunc.*

24.2.1994

Before / Devant: THE DEPUTY REGISTRAR

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

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

Mary Tataryn

v. (23398)

Edward James Tataryn (B.C.)

GRANTED / ACCORDÉE Time extended to February 25, 1994.

25.2.1994

Before / Devant: LE REGISTRAIRE ADJOINT

Requête en prorogation du délai de production du mémoire de l'intimée

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

Le procureur général du Québec

c. (23345)

Téléphone Guèvremont Inc. (Qué.)

ACCORDÉE / GRANTED Délai prorogé au 23 février 1994.

28.2.1994

Before / Devant: THE REGISTRAR

Motion to file factum in its present form

Requête en production du mémoire dans sa forme actuelle

Richard B. et al.

v. (23298)

Children's Aid Society of Metro Toronto (Ont.)

GRANTED / ACCORDÉE

28.2.1994

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai de production d'une réponse

Motion to extend the time in which to file a response

Jacques Bois

c. (23353)

Sa Majesté La Reine (Qué.)

ACCORDÉE / GRANTED Délai prorogé au 16 février 1994.

28.2.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file a case on appeal

Requête en prorogation du délai de signification et de production du dossier d'appel

Stanley Gordon Johnson

v. (23593)

Her Majesty The Queen (N.S.)

GRANTED / ACCORDÉE Time extended to March 2, 1994.

28.2.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file a factum

Requête en prorogation du délai de signification et de production d'un mémoire

Her Majesty The Queen

v. (23217)

Henry Arthur Johnson et al. (Ont.)

GRANTED / ACCORDÉE Time extended to February 10, 1994.

28.2.1994

Before / Devant: THE REGISTRAR

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

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

Peter Edwards

v. (23932)

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

GRANTED / ACCORDÉE Time extended to February 11, 1994.

1.3.1994

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai de signification et de production d'une réponse

Attorney General for the province of Ontario

v. (23986)

Wayne Parmajewon et al. (Ont.)

GRANTED / ACCORDÉE Time extended to April 11, 1994.

1.3.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the response to 30 days following the decision of the Court of Appeal

Requête en vue de proroger le délai de signification et de production à 30 jours après la décision de la Cour d'appel

International Lottery Distributors Inc. et al.

v. (23958)

The Government of Manitoba et al. (Man.)

GRANTED / ACCORDÉE

1.3.1994

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai de signification et de production d'une réponse conjointe

Harbanse Singh Doman

v. (23938 / 23979)

Superintendent of Brokers et al. (B.C.)

GRANTED / ACCORDÉE Time extended to March 9, 1994.

1.3.1994

Before / Devant: THE REGISTRAR

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

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

Her Majesty The Queen

v. (23253)

Native Women's Association of Canada et al. (F.C.A.)

GRANTED / ACCORDÉE Time extended to February 16, 1994.

1.3.1994

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai de signification et de production de la réplique du requérant

William Hutter

v. (23950)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to February 28, 1994.

1.3.1994

Before / Devant: CORY J.

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

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

Sequa Chemicals Inc.

v. (24005)

United Color and Chemicals Ltd. (F.C.A.)

GRANTED / ACCORDÉE Time extended to February 21, 1994.

22.2.1994

Jasmine Bisson, Carmen Lortie-Fleury, Robert Lortie

c. (24010)

Procureur général du Canada (Crim.)(Qué.)

DE PLEIN DROIT

21.2.1994

Bruno Jacques

c. (24012)

Sa Majesté La Reine (Crim.)(Qué.)

DE PLEIN DROIT

1.3.1994

Antonio Silveira

v. (24013)

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

AS OF RIGHT

1.3.1994

Telecommunications Workers Union

v. (23778)

Canadian Radio-Television and Telecommunications Commission et al (F.C.A.)(Ont.)

1.3.1994

Kwong Hung Chan

v. (23813)

The Minister of Employment and Immigration (F.C.A.)(B.C.)

BY/PAR: Attorney General of British Columbia

IN/DANS: **Stanley Gordon Johnson**

v. (23593)

Her Majesty the Queen (N.S.)

BY/PAR: Indian Taxation Advisory Board (ITAB)

IN/DANS: **Matsqui Indian Band Council**

v. (23643)

Canadian Pacific Ltd. et al. (F.C.A.)(Ont.)

Attorney General of British Columbia

v. (23767)

Lachlan McCallumet al. (B.C.)

and between

B.J. Shulman et al.

v. (23767)

Lachlan McCallum et al. (B.C.)

(motion)

24.2.1994

CORAM: The Chief Justice Lamer and La Forest, Sopinka, Gonthier, McLachlin, Iacobucci and Major JJ.

British Columbia Securities Commission

v. (23113)

Murray Pezim, Lawrence Page and John Ivany

and between

The Superintendent of Brokers

v. (23107)

Murray Pezim, Lawrence Page and John Ivany (B.C.)

M.J. Gregory Walsh and Catherine M. Esson, for the appellant The Superintendent of Brokers.

John L. Finlay and Susan E. Ross, for the appellant British Columbia Securities Commission.

Deborah K. Lovett, for the intervener the A.G. of B.C.

Frances L. Zinger and Glenda A. Campbell, for the intervener Alberta Securities Commission.

Stephen T. Goudge, Q.C. and Sandra Forbes, for the intervener Ontario Securities Commission.

Alan J. Lenczner, Q.C. and Winton K. Derby, Q.C., for the respondents.

Bryan Finlay, Q.C. and Philip Anisman, for the intervener Securities Dealers Society of Ontario.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Administrative law - Law of Professions - Stockbrokers - Procedural law - Courts - Appeals - *Securities Act*, S.B.C. 1985, c. 83 - Appeal to Court of Appeal from decision of Appellant Commission - Appeal limited by judge granting leave - On a statutory appeal, what power does the Court of Appeal have to interfere with findings of fact, interpretations of law and opinions as to the public interest? Was Court of Appeal correct in its interpretation of s. 67 of the *Act* which requires timely disclosure of material changes in the affairs of a reporting issuer?

Nature de la cause:

Droit administratif - Droit des professions - Courtiers en valeurs mobilières - Droit procédural - Tribunaux - Appels - *Securities Act*, S.B.C. 1985, ch. 83 - Appel à la Cour d'appel d'une décision de la commission appelante - Appel limité par l'autorisation d'appel - Dans un appel prévu par la loi, quel pouvoir a la Cour d'appel de modifier des conclusions de fait, des interprétations du droit et des opinions quant à l'intérêt public? - La Cour d'appel a-t-elle interprété correctement l'art. 67 de la *Loi* qui exige la divulgation en temps opportun de modifications importantes dans les affaires d'un émetteur?

25.2.1994

CORAM: The Chief Justice Lamer and La Forest, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

Douglas James Whittle

v. (23466)

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

James Lockyer, for the appellant.

David Finley, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Offences - Police - Detention - Evidence - Admissibility of statements - Right to counsel - Right to remain silent - Appellant severally mentally handicapped - Directed verdict of "not guilty" - Court of Appeal for Ontario allowing appeal, setting aside the verdict and ordering a new trial - Appeal as of right.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Infractions - Police - Détention - Preuve - Admissibilité des déclarations - Droit à l'assistance d'un avocat - Droit de garder le silence - L'appelant est gravement handicapé sur le plan mental - Verdict imposé d'«innocence» - La Cour d'appel de l'Ontario a accueilli l'appel, annulé le verdict et ordonné la tenue d'un nouveau procès - Pourvoi de plein droit.

25.2.1994

CORAM: The Chief Justice Lamer and La Forest, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

Quoc Dung Tran

v. (23321)

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

Marguerite J. MacNeil and Frank E. DeMont, for the appellant.

Robert E. Lutes, Q.C., for the respondent.

THE CHIEF JUSTICE (orally) -- The appeal is allowed and a new trial is ordered, reasons to follow.

LE JUGE EN CHEF (oralement) -- Le pourvoi est accueilli et un nouveau procès est ordonné, motifs à suivre.

28.2.1994 and / et 1.3.1994

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

Reinie Jobin et al.

v. (23190)

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

and between

Bruce Douglas Branch et al.

v. (22978)

British Columbia Securities Commission (Crim.)(B.C.)

and between

Robert James S.

v. (23581)

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

and between

Dorne James Primeau

v. (23613)

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

Alan D. Gold, for the appellant Robert James S.

Clayton C. Ruby, Howard Rubin and Shaun Nakatsuru, for the appellants Reinie Jobin et al.

Hugh M. Harradence, for the appellant Dorne James Primeau.

Ms. Michal Fairburn and Scott Hutchison, for the respondent A.G. of Ontario (in Robert James S.)

Paul C. Bourque, for the respondent the A.G. of Alberta (in Reinie Jobin et al.)

Graeme G. Mitchell, for the respondent the A.G. of Saskatchewan (in D.J. Primeau)

S. Ronald Fainstein, Q.C. and Robert Frater, for the intervener the A.G. of Canada (in R. Jobin et al. & R. James S.)

Ms. Michal Fairburn and Scott Hutchison, for the intervener the A.G. of Ontario (in R. Jobin et al.)

Jacques Gauvin et Gilles Laporte, pour l'intervenant le procureur général du Québec (in R. Jobin et al. & R. James S.)

Marva J. Smith, for the intervener the A.G. of Manitoba (in R. Jobin et al. & R. James S.)

George H. Copley, for the intervener the A.G. of B.C. (in R. Jobin et al. & R. James S.)

Paul C. Bourque, for the intervener the A.G. of Alberta (in R. James S.)

Alastair Rees-Thomas, for the appellants B.D. Branch / P.A. Levitt.

Mark L. Skwarok, for the respondent B.C. Securities Commission.

Michael R. Dambrot, Q.C. and John S. Tyhurst, for the intervener the A.G. of Canada (in B.D. Branch et al.)

Leah Price and Michel Hélie, for the intervener the A.G. of Ontario (in B.D. Branch et al.)

Jacques Gauvin et Gilles Laporte, pour l'intervenant le procureur général du Québec (in B.D. Branch et al.)

Louise Walsh Poirier, for the intervener the A.G. of Nova Scotia (in B.D. Branch et al.)

Marva J. Smith, for the intervener the A.G. of Manitoba (in B.D. Branch et al.)

George H. Copley, for the intervener the A.G. of B.C. (in B.D. Branch et al.)

Richard F. Taylor, for the intervener the A.G. of Alberta (in B.D. Branch et al.)

Graeme G. Mitchell, for the intervener the A.G. of Saskatchewan (in R. Jobin, R. James S. & B.D. Branch)

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Appeal - Jurisdiction -Right to silence and privilege against self-incrimination - Issuance of a subpoena pursuant to the *Criminal Code* to compel a witness to attend and give evidence on behalf of the Crown at a trial of indictable criminal offences - Whether an accomplice can be compelled to give evidence before he has been tried on his indictment and whether a witness in the same circumstances who is merely a suspect be compelled to give evidence - Appeal to the Court of Appeal and to the Supreme Court of Canada from the decision of a chambers judge dismissing the application for an order the quash subpoenas - Are these issues premature and is there a right of appeal?

Nature de la cause:

Droit criminel - *Charte canadienne des droits et libertés* - Preuve - Appel - Compétence - Droit de ne pas témoigner et privilège de ne pas s'incriminer - Délivrance d'une assignation, conformément au *Code criminel*, pour contraindre une personne à témoigner, pour le compte du ministère public, en première instance relativement à des actes criminels - Un complice peut-il être contraint à témoigner avant d'avoir subi son procès relativement à l'acte criminel dont il est accusé? - Un témoin qui est un simple suspect peut-il, dans les mêmes circonstances, être contraint à témoigner? - La décision du juge en son cabinet, qui a rejeté la demande d'annulation des assignations, a été portée en appel devant la Cour d'appel et la Cour suprême du Canada - Ces questions sont-elles soulevées prématurément et existe-il un droit d'appel?

1.3.1994

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

Marcel George Harper

v. (23160)

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

and between

Cyril Patrick Prosper

v. (23178)

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

and between

Her Majesty The Queen

v. (23312)

Ross Nelson Matheson (Crim.)(P.E.I.)

and between

Kenneth Bartle

v. (23623)

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

and between

Walter Pozniak

v. (23642)

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

Roger A. Burrill and Vincent Calderhead, for the appellant C.P. Prosper.

John C. Pearson, for the respondent (in C.P. Prosper).

Darrell E. Coombs, for the appellant Her Majesty The Queen.

John K. Mitchell, for the respondent R.N. Matheson.

Mark J. Freiman, for the intervener the Committee on poverty issues (in C.P. Prosper & R.N. Matheson).

Bill Armstrong, for the appellant M.G. Harper.

Donna J. Miller, Q.C., for the respondent (in M.G. Harper).

Alan D. Gold, for the appellant K. Bartle.

Anil K. Kapoor, for the appellant W. Pozniak.

Ian R. Smith, for the respondents (in K. Bartle & W. Pozniak).

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Right to counsel - Evidence - Admissibility of evidence - Duty of police to inform accused of available of duty counsel -Incriminating spontaneous statement made by Appellant - Whether Court of Appeal erred in ruling that the Appellant's right to be advised of his right to counsel was not infringed pursuant to s. 10(b) of the *Charter* in that the Appellant was not advised of his right to duty counsel - Whether the statement of the Appellant should not have been admitted into evidence on the basis that there was an infringement of the Appellant's s. 10(b) rights of the *Charter* and that the admission of the evidence would bring the administration of justice into disrepute pursuant to s. 24 of the *Charter*.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Droit à l'assistance d'un avocat - Preuve - Admissibilité de la preuve - Obligation de la police d'informer l'accusé de la possibilité de consulter l'avocat de service - Déclaration spontanée incriminante faite par l'appelant - La Cour d'appel a-t-elle commis une erreur en statuant qu'il n'y avait pas eu violation du droit à l'assistance d'un avocat, garanti à l'appelant par l'al. 10*b*) de la *Charte*, du fait que celui-ci n'avait pas été informé de son droit à l'assistance de l'avocat de service? - La déclaration de l'appelant aurait-elle dû être écartée au motif qu'il y avait eu violation des droits garantis à l'appelant par l'al. 10*b*) de la *Charte* et que l'utilisation de cette déclaration était susceptible de déconsidérer l'administration de la justice?

R.J.R. MacDonald Inc. and the Attorney General of Canada (Qué.) - and - Imperial Tobacco Ltd. and the Attorney General of Canada (Qué.) **(23460 / 23490)**
Applications for interlocutory relief rendered March 3, 1994 / Demandes de redressement interlocutoire rendues le 3 mars 1994
Indexed as: R.J.R. - Macdonald Inc. *v.* Canada (Attorney General) / Répertorié: R.J.R. - Macdonald Inc. *c.* Canada (Procureur général)

Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

Practice -- Interlocutory motions to stay implementation of regulations pending final decision on appeals and to delay implementation if appeals dismissed -- Leave to appeal granted shortly after applications to stay heard -- Whether the applications for relief from compliance with regulations should be granted -- Tobacco Products Control Act, S.C. 1988, c. 20, ss. 3(a), (b), (c), 4-8, 9, 11-16, 17(f), 18. -- Tobacco Products Control Regulations, amendment, SOR/93-389 -- Canadian Charter of Rights and Freedoms, ss. 1, 2(b), 24(1) -- Rules of the Supreme Court, SOR/83-74, s. 27 -- Supreme Court Act, R.S.C., 1985, c. S-26, s. 65.1.

The *Tobacco Products Control Act* regulates the advertisement of tobacco products and the health warnings which must be placed upon those products. Both applicants successfully challenged the Act's constitutional validity in the Quebec Superior Court on the grounds that it was *ultra vires* Parliament and that it violates the right to freedom of expression in s. 2(*b*) of the *Canadian Charter of Rights and Freedoms*. The Court of Appeal ordered the suspension of enforcement until judgment was rendered on the Act's validity but declined to order a stay of the coming into effect of the Act until 60 days following a judgment validating the Act. The majority ultimately found the legislation constitutional.

The *Tobacco Products Control Regulations, amendment*, would cause the applicants to incur major expense in altering their packaging and these expenses would be irrecoverable should the legislation be found unconstitutional. Before a decision on applicants' leave applications to this Court in the main actions had been made, the applicants brought these motions for stay pursuant to s. 65.1 of the *Supreme Court Act*, or, in the event that leave was granted, pursuant to Rule 27 of the *Rules of the Supreme Court*. In effect, the applicants sought to be released from any obligation to comply with the new packaging requirements until the disposition of the main actions. They also requested that the stays be granted for a period of 12 months from the dismissal of the leave applications or from a decision of this Court confirming the validity of *Tobacco Products Control Act*.

This Court heard applicants' motions on October 4 and granted leave to appeal the main action on October 14. At issue here was whether the applications for relief from compliance with the *Tobacco Products Control Regulations, amendment* should be granted. A preliminary question was raised as to this Court's jurisdiction to grant the relief requested by the applicants.

Held: The applications should be dismissed.

The powers of the Supreme Court of Canada to grant relief in this kind of proceeding are contained in s. 65.1 of the *Supreme Court of Canada Act* and rule 27 of the *Rules of the Supreme Court of Canada.*

The words "other relief" in Rule 27 of the *Supreme Court Rules* are broad enough to permit the Court to defer enforcement of regulations that were not in existence when the appeal judgment was rendered. It can apply even though leave to appeal may not yet be granted. In interpreting the language of the rule, regard should be had to its purpose: to facilitate the "bringing of cases" before the Court "for the effectual execution and working of this Act". To achieve its purpose the rule can neither be limited to cases in which leave to appeal has already been granted nor be interpreted narrowly to apply only to an order stopping or arresting execution of the Court's process by a third party or freezing the judicial proceeding which is the subject matter of the judgment in appeal.

Section 65.1 of the *Supreme Court Act* was adopted not to limit the Court's powers under Rule 27 but to enable a single judge to exercise the jurisdiction to grant stays in circumstances in which, before the amendment, a stay could be granted by the Court. It should be interpreted as conferring the same broad powers as are included in Rule 27. The Court, pursuant to both s. 65.1 and rule 27, can not only grant a stay of execution and of proceedings in the traditional sense but also make any order that preserves matters between the parties in a state that will, as far as possible, prevent prejudice pending resolution by the Court of the controversy, so as to enable the Court to render a meaningful and effective judgment. The Court must be able to intervene not only against the direct dictates of the judgment but also against its effects. The Court therefore must have jurisdiction to enjoin conduct on the part of a party acting in reliance on the judgment which, if carried out, would tend to negate or diminish the effect of the judgment of this Court.

Jurisdiction to grant the relief requested by the applicants exists even if the applicants' requests for relief are for "suspension" of the regulation rather than "exemption" from it. To hold otherwise would be inconsistent with *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.* which established that the distinction between "suspension" and "exemption" cases is made only after jurisdiction has been otherwise established. If jurisdiction under s. 65.1 of the *Act* and Rule 27 were wanting, jurisdiction would be found in s. 24(1) of the *Canadian Charter of Rights and Freedoms*. A

Charter remedy should not be defeated because of a deficiency in the ancillary procedural powers of the Court to preserve the rights of the parties pending a final resolution of constitutional rights.

The three-part *American Cyanamid* test (adopted in Canada in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*) should be applied to applications for interlocutory injunctions and as well for stays in both private law and *Charter* cases.

At the first stage, an applicant for interlocutory relief in a *Charter* case must demonstrate a serious question to be tried. Whether the test has been satisfied should be determined by a motions judge on the basis of common sense and an extremely limited review of the case on the merits. The fact that an appellate court has granted leave in the main action is, of course, a relevant and weighty consideration, as is any judgment on the merits which has been rendered, although neither is necessarily conclusive of the matter. A motions court should only go beyond a preliminary investigation into the merits when the result of the interlocutory motion will in effect amount to a final determination of the action, or when the constitutionality of a challenged statute can be determined as a pure question of law. Instances of this sort will be exceedingly rare. Unless the case on the merits is frivolous or vexatious, or the constitutionality of the statute is a pure question of law, a judge on a motion for relief must, as a general rule, consider the second and third stages of the *Metropolitan Stores* test.

At the second stage the applicant is required to demonstrate that irreparable harm will result if the relief is not granted. `Irreparable' refers to the nature of the harm rather than its magnitude. In *Charter* cases, even quantifiable financial loss relied upon by an applicant may be considered irreparable harm so long as it is unclear that such loss could be recovered at the time of a decision on the merits.

The third branch of the test, requiring an assessment of the balance of inconvenience to the parties, will normally determine the result in applications involving *Charter* rights. A consideration of the public interest must be taken into account in assessing the inconvenience which it is alleged will be suffered by both parties. These public interest considerations will carry less weight in exemption cases than in suspension cases. When the nature and declared purpose of legislation is to promote the public interest, a motions court should not be concerned whether the legislation has in fact this effect. It must be assumed to do so. In order to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit.

As a general rule, the same principles would apply when a government authority is the applicant in a motion for interlocutory relief. However, the issue of public interest, as an aspect of irreparable harm to the interests of the government, will be considered in the second stage. It will again be considered in the third stage when harm to the applicant is balanced with harm to the respondent including any harm to the public interest established by the latter.

Here, the application of these principles to the facts required that the applications for stay be dismissed.

The observation of the Quebec Court of Appeal that the case raised serious constitutional issues and this Court's decision to grant leave to appeal clearly indicated that these cases raise serious questions of law.

Although compliance with the regulations would require a significant expenditure and, and in the event of their being found unconstitutional, reversion to the original packaging would require another significant outlay, monetary loss of this nature will not usually amount to irreparable harm in private law cases. However, where the government is the unsuccessful party in a constitutional claim, a plaintiff will face a much more difficult task in establishing constitutional liability and obtaining monetary redress. The expenditures which the new regulations require will therefore impose irreparable harm on the applicants if these motions are denied but the main actions are successful on appeal.

Among the factors which must be considered in order to determine whether the granting or withholding of interlocutory relief would occasion greater inconvenience are the nature of the relief sought and of the harm which the parties contend they will suffer, the nature of the legislation which is under attack, and where the public interest lies. Although the required expenditure would impose economic hardship on the companies, the economic loss or inconvenience can be avoided by passing it on to purchasers of tobacco products. Further, the applications, since they were brought by two of the three companies controlling the Canadian tobacco industry, were in actual fact for a suspension of the legislation, rather than for an exemption from its operation. The public interest normally carries greater weight in favour of compliance with existing legislation. The weight given is in part a function of the nature of the legislation and in part a function of the purposes of the legislation under attack. The government passed these regulations with the intention of protecting public health and furthering the public good. When the government declares that it is passing legislation in order to protect and promote public health and it is shown that the restraints which it seeks to place upon an industry are of the same nature as those which in the past have had positive public benefits, it is not for a court on an interlocutory motion to assess the actual benefits which will result from the specific terms of the legislation. The applicant, rather, must offset these public interest considerations by demonstrating a more compelling public interest in suspending

the application of the legislation. The only possible public interest in the continued application of the current packaging requirements, however, was that the price of cigarettes for smokers would not increase. Any such increase would not be excessive and cannot carry much weight when balanced against the undeniable importance of the public interest in health and in the prevention of the widespread and serious medical problems directly attributable to smoking.

APPLICATIONS for interlocutory relief ancillary to constitutional challenge of enabling legislation following judgment of the Quebec Court of Appeal, [1993] R.J.Q. 375, 53 Q.A.C. 79, 102 D.L.R. (4th) 289, 48 C.P.R. (3d) 417, allowing an appeal from a judgment of Chabot J., [1991] R.J.Q. 2260, 82 D.L.R. (4th) 449, 37 C.P.R. (3d) 193, granting the application. Applications dismissed.

Colin K. Irving, for the applicant R.J.R. - Macdonald Inc.

Simon V. Potter, for the applicant Imperial Tobacco Inc.

Claude Joyal and *Yves Leboeuf*, for the respondent.

W. Ian C. Binnie, *Q.C.*, and *Colin Baxter*, for the Heart and Stroke Foundation of Canada, the Canadian Cancer Society, the Canadian Council on Smoking and Health, and Physicians for a Smoke-Free Canada.

Solicitors for the applicant R.J.R. - Macdonald Inc.: Mackenzie, Gervais, Montreal.

Solicitors for the applicant Imperial Tobacco Inc.: Ogilvy, Renault, Montreal.

Solicitors for the respondent: Côté & Ouellet, Montreal.

Solicitors for the Heart and Stroke Foundation of Canada, the Canadian Cancer Society, the Canadian Council on Smoking and Health, and Physicians for a Smoke-Free Canada: McCarthy, Tétrault, Toronto.

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

Pratique -- Demandes interlocutoires visant à surseoir à l'application d'un règlement en attendant la décision finale sur des appels et à en retarder la mise en oeuvre si les appels sont rejetés -- Autorisations d'appel accordées peu après l'audition des demandes de sursis -- Les demandes de dispense de l'application du règlement devraient-elles être accordées? -- Loi réglementant les produits du tabac, L.C. 1988, ch. 20, art. 3a), b), c), 4 à 8, 9, 11 à 16, 17f), 18 -- Règlement sur les produits du tabac - Modification (DORS/93-389) -- Charte canadienne des droits et libertés, art. 1, 2b), 24(1) -- Règles de la Cour suprême du Canada, DORS/83-74, art. 27 -- Loi sur la Cour suprême, L.R.C. (1985), ch. S-26, art. 65.1.

La *Loi réglementant les produits du tabac* vise à réglementer la publicité des produits du tabac et les mises en garde qui doivent être apposées sur ces produits. Les deux requérantes ont eu gain de cause devant la Cour supérieure du Québec lorsqu'elles ont contesté la constitutionnalité de la Loi au motif qu'elle était *ultra vires* du Parlement et contrevenait à l'al. 2*b*) de la *Charte canadienne des droits et libertés*. La Cour d'appel a ordonné la suspension du contrôle d'application jusqu'à ce que jugement soit rendu sur la validité de la Loi, mais elle a refusé de suspendre l'application de la Loi pendant une période de 60 jours suivant un jugement déclarant la Loi valide. La Cour d'appel à la majorité a ultérieurement déclaré la loi constitutionnelle.

Le *Règlement sur les produits du tabac - Modification* obligerait les requérantes à engager des dépenses considérables pour modifier leurs emballages, et ces dépenses ne seraient pas recouvrables si la législation était déclarée inconstitutionnelle. Avant la décision relative aux autorisations de pourvoi dans les actions principales, les requérantes ont demandé un sursis d'exécution en vertu de l'art. 65.1 de la *Loi sur la Cour suprême* ou, dans l'éventualité où les autorisations d'appel seraient accordées, en vertu de la règle 27 des *Règles de la Cour suprême du Canada*. En réalité, les requérantes demandent d'être libérées de toute obligation de se conformer aux nouvelles exigences en matière d'emballage jusqu'aux décisions sur les actions principales. Elles ont aussi demandé que le sursis soit accordé pour une période de 12 mois à compter d'un refus des autorisations d'appel ou d'un arrêt de notre Cour confirmant la validité de la *Loi réglementant les produits du tabac*.

Notre Cour a entendu les demandes des requérantes le 4 octobre et a accordé, le 14 octobre, les autorisations d'appel relativement aux actions principales. La question est de savoir si les demandes visant à obtenir une dispense de l'application du *Règlement sur les produits du tabac - Modification* devraient être accordées. Une question préliminaire a été soulevée relativement à la compétence de notre Cour d'accorder le redressement demandé par les requérantes.

Arrêt: Les demandes sont rejetées.

Les pouvoirs de la Cour suprême du Canada d'accorder un redressement dans des procédures de ce genre sont prévus à l'art. 65.1 de la *Loi sur la Cour suprême du Canada* et à la règle 27 des *Règles de la Cour suprême du Canada*.

L'expression «autre redressement» à la règle 27 des *Règles de la Cour suprême du Canada* est suffisamment générale pour permettre à notre Cour de retarder l'application d'un règlement qui n'existait pas au moment où la cour d'appel a rendu son jugement. La règle peut s'appliquer même si l'autorisation d'appel n'a pas encore été accordée. Dans l'interprétation du libellé de la règle, il faut en examiner l'objet: faciliter les «recours» devant la Cour et «prendre les mesures nécessaires à l'application de la présente loi». Pour réaliser son objet, la règle ne peut être limitée aux cas où l'autorisation d'appel a déjà été accordée ni recevoir une interprétation restrictive de façon à s'appliquer seulement à une ordonnance qui suspend ou arrête l'exécution des procédures de la Cour par une tierce partie ou encore qui bloque l'exécution du jugement objet de l'appel.

L'adoption de l'art. 65.1 de la *Loi sur la Cour suprême* ne visait pas à restreindre les pouvoirs de notre Cour en vertu de la règle 27, mais à permettre à un seul juge d'exercer la compétence d'accorder un sursis dans les cas où, avant la modification, c'était la Cour qui pouvait accorder un sursis. Il faut l'interpréter comme conférant les mêmes pouvoirs généraux que ceux de la règle 27. La Cour est habilitée, tant en vertu de l'art. 65.1 que de la règle 27, non seulement à accorder un sursis d'exécution et une suspension d'instance dans le sens traditionnel, mais aussi à rendre toute ordonnance visant à maintenir les parties dans une situation qui, dans la mesure du possible, ne sera pas cause de préjudice en attendant le règlement du différend par la Cour, de façon que cette dernière puisse rendre une décision qui ne sera pas dénuée de sens et d'efficacité. Notre Cour doit être en mesure d'intervenir non seulement à l'égard des termes mêmes du jugement, mais aussi à l'égard de ses effets. Notre Cour doit donc posséder la compétence d'interdire à une partie d'accomplir tout acte fondé sur le jugement, qui, s'il était accompli, tendrait à annuler ou à diminuer l'effet de la décision de notre Cour.

Notre Cour possède la compétence d'accorder le redressement demandé par les requérantes, même si les requérantes demandent une «suspension» du règlement plutôt qu'une «exemption» de son application. Une conclusion différente sur ce point irait à l'encontre de l'arrêt *Manitoba (Procureur général) c. Metropolitan Stores (MTS) Ltd.*, selon lequel la distinction entre les cas de «suspension» et d'«exemption» ne se fait qu'après que la compétence a été par ailleurs établie. Si la compétence de notre Cour ne pouvait reposer sur l'art. 65.1 de la Loi et la règle 27, le fondement de cette compétence pourrait être le par. 24(1) de la *Charte canadienne des droits et des libertés*. Une lacune dans les pouvoirs accessoires de notre Cour en matière de procédure permettant de préserver les droits des parties en attendant le règlement final d'un différend touchant des droits constitutionnels ne devrait pas faire obstacle à une réparation fondée sur la *Charte*.

Le critère en trois étapes de l'arrêt *American Cyanamid* (adopté au Canada dans *Manitoba (Procureur général) c. Metropolitan Stores (MTS) Ltd.*) devrait s'appliquer aux demandes d'injonction interlocutoire et de suspension d'instance, tant en droit privé que dans des cas relevant de la Charte.

À la première étape, le requérant d'un redressement interlocutoire dans un cas relevant de la *Charte* doit établir l'existence d'une question sérieuse à juger. Le juge de la requête doit déterminer s'il est satisfait au critère, en se fondant sur le bon sens et un examen extrêmement restreint du fond de l'affaire. Le fait qu'une cour d'appel a accordé une autorisation d'appel relativement à l'action principale constitue une considération pertinente et importante, de même que tout jugement rendu sur le fond, mais ni l'un ni l'autre n'est concluant sur ce point. Le tribunal saisi de la requête ne devrait aller au-delà d'un examen préliminaire du fond de l'affaire que lorsque le résultat de la requête interlocutoire équivaudra en fait à un règlement final de l'action, ou que la question de constitutionnalité d'une loi se présente comme une pure question de droit. Les cas de ce genre sont extrêmement rares. Sauf lorsque la demande est futile ou vexatoire ou que la question de la constitutionnalité d'une loi se présente comme une pure question de droit, le juge de la requête doit en général procéder à l'examen des deuxième et troisième étapes du critère de l'arrêt *Metropolitan Stores*.

À la deuxième étape, le requérant doit établir qu'il subira un préjudice irréparable en cas de refus du redressement. Le terme «irréparable» a trait à la nature du préjudice et non à son étendue. Dans les cas relevant de la *Charte*, même une perte financière quantifiable, invoquée à l'appui d'une demande, peut être considérée comme un préjudice irréparable s'il n'est pas évident qu'il pourrait y avoir recouvrement au moment de la décision sur le fond.

La troisième étape du critère, l'appréciation de la prépondérance des inconvénients, permettra habituellement de trancher les demandes concernant des droits garantis par la *Charte*. Il faut tenir compte de l'intérêt public dans l'appréciation des inconvénients susceptibles d'être subis par les deux parties. Les considérations d'intérêt public auront moins de poids dans les cas d'exemption que dans les cas de suspension. Si la nature et l'objet affirmé de la loi sont de promouvoir l'intérêt public, le tribunal des requêtes ne devrait pas se demander si la loi a réellement cet effet. Il faut supposer que tel est le cas. Pour arriver à contrer le supposé avantage de l'application continue de la loi que commande l'intérêt public, le requérant qui invoque l'intérêt public doit établir que la suspension de l'application de la loi serait elle-même à l'avantage du public.

En règle générale, les mêmes principes s'appliquent lorsqu'un organisme gouvernemental présente une demande de redressement interlocutoire. Cependant, c'est à la deuxième étape que sera examinée la question de l'intérêt public, en tant qu'aspect du préjudice irréparable causé aux intérêts du gouvernement. Cette question sera de nouveau examinée à la troisième étape lorsque le préjudice du requérant est examiné par rapport à celui de l'intimé, y compris le préjudice que ce dernier aura établi du point de vue de l'intérêt public.

En l'espèce, l'application de ces principes aux faits aboutit au rejet des demandes de sursis.

L'observation de la Cour d'appel du Québec que l'affaire soulève des questions constitutionnelles sérieuses, ainsi que les autorisations d'appel accordées par notre Cour, indiquent clairement que l'affaire soulève des questions de droit sérieuses.

Bien que l'application du règlement obligerait les requérantes à faire des dépenses importantes et, si ce règlement était déclaré inconstitutionnel, à engager d'autres dépenses considérables pour revenir à leurs méthodes actuelles d'emballage, une perte monétaire de cette nature n'équivaudra habituellement pas à un préjudice irréparable dans des affaires de droit privé. Toutefois, lorsque le gouvernement est la partie qui échoue dans une affaire de nature constitutionnelle, un demandeur aura beaucoup plus de difficulté à établir la responsabilité constitutionnelle et à obtenir une réparation monétaire. Les dépenses nécessitées par le nouveau règlement causeront donc un préjudice irréparable aux requérantes si les demandes sont rejetées, mais les actions principales accueillies en appel.

Pour déterminer lequel de l'octroi ou du refus du redressement interlocutoire occasionnerait le plus d'inconvénients, il faut notamment procéder à l'examen de la nature du redressement demandé et du préjudice invoqué par les parties, de la nature de la loi contestée et de l'intérêt public. Les dépenses nécessaires imposeraient un fardeau économique aux sociétés, mais la perte ou les inconvénients économiques peuvent être reportés sur les acheteurs des produits du tabac. Par ailleurs, puisqu'elles sont présentées par deux des trois sociétés qui contrôlent l'industrie canadienne du tabac, les demandes constituent en réalité un cas de suspension plutôt qu'un cas d'exemption de l'application de la législation. L'intérêt public pèse habituellement plus en faveur du respect de la législation existante. Le poids accordé aux préoccupations d'intérêt public dépend en partie de la nature de la loi et en partie de l'objet de la loi contestée. Le gouvernement a adopté le règlement dans l'intention de protéger la santé publique et donc de promouvoir le bien public. Si le gouvernement déclare qu'il adopte une loi pour protéger et favoriser la santé publique et s'il est établi que les limites qu'il veut imposer à l'industrie sont de même nature que celles qui, dans le passé, ont eu des avantages concrets pour le public, il n'appartient pas à un tribunal saisi d'une requête interlocutoire d'évaluer les véritables avantages qui découleront des exigences particulières de la loi. Les requérantes doivent plutôt faire contrepoids à ces considérations d'intérêt public en établissant que la suspension de l'application de la loi serait davantage dans l'intérêt public. Pour ce qui est du maintien de l'application des exigences actuelles en matière d'emballage, seule la non-majoration du prix des cigarettes pour les fumeurs pourrait être dans l'intérêt du public. Une telle majoration ne serait vraisemblablement pas excessive et ne peut avoir beaucoup de poids face à l'importance incontestable de l'intérêt public dans la protection de la santé et la prévention de problèmes médicaux répandus et graves directement attribuables à la cigarette.

DEMANDES de redressement interlocutoire faisant partie d'une contestation de la constitutionnalité d'une loi habilitante à la suite d'un arrêt de la Cour d'appel du Québec, [1993] R.J.Q. 375, 53 Q.A.C. 79, 102 D.L.R. (4th) 289, 48 C.P.R. (3d) 417, qui a accueilli un appel de la décision du juge Chabot, [1991] R.J.Q. 2260, 82 D.L.R. (4th) 449, 37 C.P.R. (3d) 193, qui avait fait droit à la demande. Demandes rejetées.

Colin K. Irving, pour la requérante R.J.R. - Macdonald Inc.

Simon V. Potter, pour la requérante Imperial Tobacco Inc.

Claude Joyal et *Yves Leboeuf*, pour l'intimé.

W. Ian C. Binnie, *c.r.*, et *Colin Baxter*, pour la Fondation des maladies du coeur du Canada, la Société canadienne du cancer, le Conseil canadien sur le tabagisme et la santé et Médecins pour un Canada sans fumée.

Procureurs de la requérante R.J.R. - Macdonald Inc.: Mackenzie, Gervais, Montréal.

Procureurs de la requérante Imperial Tobacco Inc.: Ogilvy, Renault, Montréal.

Procureurs de l'intimé: Côté & Ouellet, Montréal.

Procureurs de la Fondation des maladies du coeur du Canada, de la Société canadienne du cancer, du Conseil canadien sur le tabagisme et la santé et des Médecins pour un Canada sans fumée: McCarthy, Tétrault, Toronto.

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning March 7, 1994.
ORDRE DU JOUR pour la semaine commençant le 7 mars 1994.

Date of Hearing/ Date d'audition	NO.	Case Number and Name/ Numéro et nom de la cause

The Court is not sitting this week

La Cour ne siège pas cette semaine

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.

CUMULATIVE INDEX - APPLICATIONS FOR LEAVE TO APPEAL

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Cet index comprend les requêtes en autorisation de pourvoi en délibéré au début de 1994 et toutes celles produites ou entendues en 1994 jusqu'à maintenant.

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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	**:**	**May 2, 1994**
Service	:	April 11, 1994
Filing	:	April 18, 1994
Respondent	:	April 25, 1994
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	**:**	**2 mai 1994**
Signification	:	11 avril 1994
Dépot	:	18 avril 1994
Intimé	:	25 avril 1994
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.

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