

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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**CONTENTS****TABLE DES MATIÈRES**

---

Applications for leave to appeal filed	229 - 230	Demandes d'autorisation d'appel déposées
Applications for leave submitted to Court since last issue	231 - 238	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	239 - 243	Jugements rendus sur les demandes d'autorisation
Judgment on motion	-	Jugement sur requête
Motions	244 - 250	Requêtes
Notices of appeal filed since last issue	251	Avis d'appel déposés depuis la dernière parution
Notices of intervention filed since last issue	-	Avis d'intervention déposés depuis la dernière parution
Notices of discontinuance filed since last issue	-	Avis de désistement déposés depuis la dernière parution
Appeals heard since last issue and disposition	-	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	252 - 253	Jugements rendus sur les appels en délibéré
Rehearing	-	Nouvelle audition
Headnotes of recent judgments	-	Sommaires des arrêts récents
Weekly agenda	254	Ordre du jour de la semaine
Summaries of the cases	255 - 266	Résumés des affaires
Appeals inscribed - Session beginning	-	Appels inscrits - Session commençant le
Notices to the Profession and Press Release	-	Avis aux avocats et communiqué de presse
Deadlines: Motions before the Court	267	Délais: Requêtes devant la Cour
Deadlines: Appeals	268	Délais: Appels
Judgments reported in S.C.R.	269	Jugements publiés au R.C.S.

**APPLICATIONS FOR LEAVE TO  
APPEAL FILED**

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

**Salma Siddiqui**  
Heather Williams  
Nelligan Power LLP  
  
v. (28300)

**Canadian Broadcasting Corporation, et al. (Ont.)**  
Robert MacKinnon  
A.G. of Canada

FILING DATE 1.12.2000

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**Gerald Michael Vaughan**  
Gerald Michael Vaughan  
  
v. (27887)

**Her Majesty the Queen, et al. (Ont.)**  
Alexander Alvaro  
A.G. of Ontario

FILING DATE 20.12.2000

and between

**Gerald Michael Vaughan**  
Gerald Michael Vaughan  
  
v. (27887)

**Her Majesty the Queen, et al. (Ont.)**  
Alexander Alvaro  
A.G. of Ontario

FILING DATE 20.12.2000

and between

**Gerald Michael Vaughan**  
Gerald Michael Vaughan  
  
v. (27887)

**Her Majesty the Queen, et al. (Ont.)**  
Alexander Alvaro  
A.G. of Ontario

FILING DATE 20.12.2000

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**Davinder Singh**  
Davinder Singh  
  
v. (28360)

**Her Majesty the Queen (Ont.)**  
Gregory J. Tweney  
A.G. of Ontario

FILING DATE 22.12.2000

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**Richard Martin Bedard**  
Richard Martin Bedard  
  
v. (28291)

**Her Majesty the Queen (Ont.)**  
Susan Kyle  
A.G. of Ontario

FILING DATE 8.1.2001

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**Her Majesty the Queen**  
Matthew Britton  
A.G. of Manitoba  
  
v. (28358)

**Peter Donald Unfried (Man.)**  
Richard J. Wolson, Q.C.  
Gindin Wolson Simmonds

FILING DATE 11.1.2001

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**Johanne Boulianne, et al.**

Serge Barma  
Gingras Vallerand Barma Laroche Amyot

c. (28359)

**Commission des écoles catholiques de Québec  
(Qué.)**

Luc Jobin  
Tremblay Bois Mignault Lemay

DATE DE PRODUCTION 24.1.2001

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**APPLICATIONS FOR LEAVE  
SUBMITTED TO COURT SINCE LAST  
ISSUE**

**DEMANDES SOUMISES À LA COUR  
DEPUIS LA DERNIÈRE PARUTION**

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**FEBRUARY 5, 2001 / LE 5 FÉVRIER 2001**

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

**Davida Lecompte, Gaétan Héroux, Alexandre Popovic, Patrick Borden, David Teshagher and Michelle Perrozzino**

**v. (28171)**

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

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms - Criminal law - Unlawful assembly - Interpretation - Section 63 of the Criminal Code, R.S.C. 1985, c. C-46 - Sections 2(b), (c), (d) and 7 of the Charter - Vagueness - Whether s. 63 of the Criminal Code is infringes s. 7 of the Charter - Whether s. 63 of the Criminal Code infringes freedom of expression, freedom of peaceful assembly and freedom of association protected by s. 2 of the Charter?*

**PROCEDURAL HISTORY**

September 21, 1998  
Quebec Court, Criminal Division  
(Millette J.C.Q.)

Section 63 of the *Criminal Code*, R.S.C. 1985, c. C-46,  
declared inoperative

February 15, 1999  
Superior Court of Quebec  
(Pinard J.)

Appeals allowed; new trials ordered

July 17, 2000  
Court of Appeal of Québec  
(Michaud C.J.Q., Bearegard and Proulx JJ.A.)

Appeals dismissed; charges remitted to trial

September 29, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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**Angelo Del Zotto**

**v. (28100)**

**The Minister of National Revenue and John Edward Thompson (F.C.)**

**NATURE OF THE CASE**

Statutes - Interpretation - Administrative law - Procedural fairness - Inquiry into financial affairs of Applicant initiated by Respondent under s. 231.4 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5<sup>th</sup> Supp.) - Judicial review of rulings made by hearing officer - Did the Court of Appeal err by failing to order that the subject matter of the Inquiry be particularized - Did the Court of Appeal err by refusing to order disclosure of any relevant material in the Crown's possession or control - Did the Court of Appeal err by failing to order that the Applicant be accorded full rights of cross-examination at the inquiry?

**PROCEDURAL HISTORY**

December 3, 1999 Federal Court of Canada, Trial Division (Lemieux J.)	Judicial review application dismissed
May 26, 2000 Federal Court of Appeal (Desjardins, Rothstein and McDonald JJ.A.)	Appeal allowed and trial judgment set aside; judicial review application dismissed
August 25, 2000 Supreme Court of Canada	Application for leave to appeal filed

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**John Grabowski and Brian Thompson**

**v. (28067)**

**The Joint Chiropractic Professional Review Committee and The Government of Saskatchewan (Saskatchewan Health) (Sask.)**

**NATURE OF THE CASE**

Administrative law - Prerogative writs - Prohibition - Reasonable apprehension of bias - Procedural fairness - Natural justice - Whether the Court of Appeal erred in finding that a professional statutory review committee discharged obligations of procedural fairness in providing disclosure - Whether the Court of Appeal erred in finding that the constitution of the review committee raised no reasonable apprehension of bias.

**PROCEDURAL HISTORY**

August 9, 1999 Court of Queen's Bench of Saskatchewan (Goldenberg J.)	Application for Writ of Prohibition dismissed
May 16, 2000 Court of Appeal for Saskatchewan (Cameron, Gerwing, and Sherstobitoff JJ.A.)	Appeal dismissed
August 15, 2000 Supreme Court of Canada	Application for leave to appeal filed
September 21, 2000 Supreme Court of Canada	Motion to extend time granted

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**Workers' Compensation Board of British Columbia**

v. (28103)

**Northern Mountain Helicopters Inc., the Attorney General for Canada as a  
representative of Her Majesty and Her Servants employed by the Department of  
Human Resources and Development (Canada), The Attorney General of British Columbia (B.C.)**

**NATURE OF THE CASE**

Constitutional law - Division of powers - Jurisdiction - Helicopter logging operation - Whether the Court of Appeal erred in upholding the decision that regulation of the occupational health and safety of the ground crew, employed by the helicopter logging operation, fell within federal and not provincial jurisdiction? - Whether the Court of Appeal erred in upholding the finding that Northern Mountain Helicopters Inc.'s operations constituted a single federal work or undertaking? - Whether the Court of Appeal erred in failing to find the trial judge had incorrectly applied the tests set out in *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322 and *UTU v. Central Western Railway Corp.*, [1990] 3 S.C.R. 1112, by failing to consider the degree of functional integration between the logging operation of Northern Mountain Helicopters Inc. and its helicopter operations? - Whether the Court of Appeal erred in failing to give weight to fresh evidence adduced before it as relevant to the trial judge's conclusion regarding "the practical inability to split the crew and pilots efforts into different divisions or businesses." *Constitution Act, 1867*, 30 & 31 Vict., c.3. (U.K.)

**PROCEDURAL HISTORY**

October 30, 1998  
Supreme Court of British Columbia  
(Saunders J.)

Order: Applicant's decision is of no force or effect on the ground that occupational health and safety of ground crew is within the exclusive jurisdiction of the federal government

June 16, 2000  
Court of Appeal of British Columbia  
(McEachern, Donald and Huddart JJ.A.)

Appeal dismissed

August 31, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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

**Novopharm Ltd.**

v. (28287)

**The Wellcome Foundation Limited, Glaxo Wellcome Inc., Apotex Inc., Interpharm Inc. and Allen Barry Shechtman**

**AND BETWEEN:**

**Apotex Inc.**

v.

**The Wellcome Foundation Limited, Glaxo Wellcome Inc., Novopharm Ltd. (F.C.)**

**NATURE OF THE CASE**

Property law - Statutes - Interpretation - Patents - Validity - Definition of and requirements for invention and inventorship - Joint inventorship - Insufficiency of disclosure - Method of medical treatment - Date of invention and whether Federal Court of Appeal decision created artificial date of invention.

**PROCEDURAL HISTORY**

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

Patent No. 1,238,277 declared valid; claims therein declared invalid; Applicants Apotex Inc. and Novopharm Ltd. declared to have infringed several claims; Applicants Apotex Inc. and Novopharm Ltd., and Respondent Interpharm Inc. enjoined from commercial practice or use of AZT as disclosed in Patent No. 1,238,277.

December 4, 2000  
Federal Court of Appeal  
(Rothstein, Sexton, Malone JJ.A)

Patent No. 1,238,277 declared valid; most claims therein declared invalid; Applicants Apotex Inc. and Novopharm Ltd., and Respondent Interpharm Inc. enjoined from commercial practice or use of AZT in pharmaceutical dosage form as disclosed in said Patent.

December 22, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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**Le Groupe Forex Inc. et Louisiana-Pacific Canada Ltd.**

c. (28027)

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

**NATURE DE LA CAUSE**

Droit commercial - Contrats - Contrats d'approvisionnement et d'aménagement forestier (CAAF) émis par le ministre aux Forêts en conformité de la *Loi sur les forêts* à la demanderesse - Mode d'attribution applicable - Exigibilité du paiement de droits d'un bénéficiaire de CAAF alors que celui-ci n'a pas pu effectuer aucune récolte de bois suite à la décision du ministère de ne pas émettre un permis d'intervention bien que toutes les conditions relatives à son obtention aient été remplies.

**HISTORIQUE PROCÉDURAL**

Le 23 mars 1998  
Cour supérieure du Québec  
(Guertin j.c.s.)

Action de l'intimé accueillie: Demanderesse condamnée à verser 168 080,56\$ avec intérêts à l'intimé



Le 3 mai 2000  
Cour d'appel du Québec  
(Deschamps, Thibault et Denis jj.c.a.(*ad hoc*))

Appel rejeté

Le 28 juillet 2000  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Tysanna Robertson**

**v. (28044)**

**Orrin Hart, executor for Maurice Rupert King (Alta.)**

**NATURE OF THE CASE**

Property law - Real property - Title - Nature of interest - Adverse possession - Owner of ranch permitting Applicant to reside rent-free in a cabin on his property for several years - Owner dying without making provision for Applicant in will - Whether Applicant was a licensee or tenant-at-will - Whether Applicant acquired interest in cabin and surrounding land by way of adverse possession - Whether Court of Appeal erred in law and/or in fact in dismissing appeal and confirming trial judgment

**PROCEDURAL HISTORY**

March 5, 1999  
Court of Queen's Bench of Alberta  
(McBain J.)

Applicant's claims dismissed; Respondent's counterclaim for arrears of rent dismissed

November 4, 1999  
Court of Appeal of Alberta  
(Fraser C.J.A., Wittmann and Costigan JJ.A.)

Appeal dismissed; Applicant ordered to vacate the premises

August 8, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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**Assiniboine South Teachers' Association of the Manitoba Teachers' Society**

**v. (28115)**

**Assiniboine South School Division No. 3 (Man.)**

**NATURE OF THE CASE**

Labour law - Collective agreement - Grievances - Arbitration - Judicial review - Respondent school division denying teacher's request that she be allowed to advise her students of her lesbian sexual orientation - Arbitration board ruling that resulting grievance not arbitrable - Whether motions judge erred in quashing board's award - Whether arbitration board has jurisdiction to decide whether a policy of the school division is reasonable, in cases where teachers might be disciplined for violating that policy.

**PROCEDURAL HISTORY**

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February 15, 1999  
Court of Queen's Bench of Manitoba  
(Wright J.)

Application for judicial review of an arbitration award  
granted; award quashed

June 16, 2000  
Court of Appeal of Manitoba  
(Philp, Twaddle, and Kroft [dissenting] JJ.A)

Appeal allowed

September 11, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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

**David Scott Hall**

**v. (28223)**

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

**NATURE OF THE CASE**

Canadian Charter - Criminal - Criminal Law - Pre-Trial Procedure - Judicial Interim Release - Detention of an accused in custody pending trial for just cause where necessary to maintain confidence in the administration of justice - Whether provision allowing detention consistent with s. 11(e) of *Charter* - Whether provision unconstitutionally vague or over broad - Whether Court of Appeal erred in determining constitutionality without regard to wording of provision - *Criminal Code*, R.S.C. 1985, c. C-46, s. 515(10)(c).

**PROCEDURAL HISTORY**

November 30, 1999  
Superior Court of Justice  
(Caputo J.)

Application for release pending trial dismissed

September 1, 2000  
Court of Appeal for Ontario  
(Osborne, Finlayson, Labrosse JJ.A.)

Appeal dismissed

October 31, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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**Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada  
and in his capacity as Minister of Justice, The Treasury Board of Canada and  
The Deputy Minister of Justice**

v. (28091)

**Patricia Babcock, Linda Bell, Victoria Bryan, Lynn Burch, Karl Burdak, George Carruthers, Gordon Carscadden, Margaret E.T. Clare, Timothy W. Clarke, Moyra Dhaliwal, Mary Jane Dodge, Jonas Dubas, S. David Frankel, Greg D. Franklin, Valerie Hartney, Bruce Hilchey, John Kennedy, Digby Kier, Daniel L. Kiselbach, Ingeborg E. Lloyd, Josephine Loncaric, John Loo, William Mah, Ian McKinnon, Robert Moen, Nancy Oster, Michael Owens, Brent Paris, Darlene Patrick, Paul Pelletier, David Prest, Brian Burdy, Christopher Randall, Brian Sedgwick, Karen Shirley, Pamela Lindsay Smith, Tim Stokes, Cory Stolte, Josee Tremblay, Karen A. Truscott, Max Weder, Harry Wruck and Wendy Yoshida, Rosemary Lutter and Emily Reid (B.C.)**

**NATURE OF THE CASE**

Procedural law - Evidence - Production and disclosure of documents - Privilege - Public interest immunity - Cabinet Confidentiality - *Canada Evidence Act*, s. 39 - Whether the Court of Appeal erred in law in holding that public interest immunity under s. 39 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 can be waived and that a waiver can be effected by someone other than the Clerk of Privy Council or a minister of the Crown - Whether the Court of Appeal erred in law in holding that waiver of public interest immunity for one Cabinet confidence results in the waiver of the immunity for all Cabinet confidences listed in a certificate under s. 39 of the *Canada Evidence Act*.

**PROCEDURAL HISTORY**

July 28, 1999 Supreme Court of British Columbia (Edwards J.)	Applications compelling production of documents and court inspection of documents to determine if documents privileged dismissed
June 6, 2000 Court of Appeal of British Columbia (Mackenzie, Newbury, JJ.A., Southin J.A (dissenting))	Appeal allowed
August 29, 2000 Supreme Court of Canada	Application for leave to appeal filed

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**Davinder Singh**

v. (28346)

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

**NATURE OF THE CASE**

Immigration Law - Judicial Review - Jurisdiction - Appeals - Whether the Supreme Court of Canada has jurisdiction to hear this matter - Whether the Federal Court, Trial Division erred in dismissing the application for judicial review - Whether provision limiting right of appeal infringes *Charter of Rights and Freedoms - Immigration Act*, R.S.C. 1985, c. I-2, s. 83(1)

**PROCEDURAL HISTORY**

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September 15, 2000  
Federal Court of Canada, Trial Division  
(Muldoon J.)

Applicant's application for a writ of *mandamus* directing the Respondent to process Applicant's application for permanent residence dismissed

November 23, 2000  
Federal Court of Canada, Trial Division  
(Muldoon J.)

Application for an order for reconsideration dismissed

December 5, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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**Canada Post Corporation**

**v. (28099)**

**Canadian Union of Postal Workers (N.S.)**

**NATURE OF THE CASE**

Labour law - Arbitration - Standard of review - Disciplinary immunity - What is the appropriate standard of review of an arbitrator's decision to grant disciplinary immunity to full-time union officials - Whether decision in *Douglas Aircraft Co. of Canada Ltd. v. McConnell et al.* (1979), 99 D.L.R. (3d) 385 stands for the proposition that a full-time union official on unpaid leave of absence can never be disciplined - Whether provision in collective agreement can be used to enshrine misconceptions in general external law - Whether concept of disciplinary immunity is inconsistent with *Canada Labour Code*, R.S.C. 1985, c. L-2 and modern approach to arbitrator's authority

**PROCEDURAL HISTORY**

July 13, 1998  
Nova Scotia Board of Arbitration  
(Outhouse)

Union grievances allowed; employees reinstated

January 28, 1999  
Nova Scotia Board of Arbitration  
(Outhouse)

Union grievances allowed in whole or in part; employee dismissals and suspensions set aside or reduced

October 13, 1999  
Supreme Court of Nova Scotia, Trial Division  
(Davison J.)

Application for judicial review dismissed

May 31, 2000  
Nova Scotia Court of Appeal  
(Glube C.J., Cromwell and Freeman JJ.A.)

Appeal dismissed

August 30, 2000  
Supreme Court of Canada

Application for leave to appeal filed

**JUDGMENTS ON APPLICATIONS  
FOR LEAVE**

**JUGEMENTS RENDUS SUR LES  
DEMANDES D'AUTORISATION**

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**FEBRUARY 8, 2001 / LE 8 FÉVRIER 2001**

**28028**            **A.K. - v. - HER MAJESTY THE QUEEN** (Sask.) (Criminal)

CORAM:            Gonthier, Major and Binnie JJ.

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

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

**NATURE OF THE CASE**

Criminal law - Evidence - Sentence - Sexual assault - Whether the statutory repeal of corroboration does not apply retrospectively - Whether the statutory repeal of the law of recent complaint does not apply retrospectively - Whether s. 718.3(4) of the *Criminal Code* permits consecutive sentencing when two offences ground only one conviction.

**PROCEDURAL HISTORY**

July 28, 1997 Court of Queen's Bench of Saskatchewan (Noble J.)	Conviction: 13 counts including sexual assault, rape, common assault, incest, assault causing bodily harm and indecent assault; Applicant sentenced 5 years of imprisonment
September 16, 1998 Court of Appeal for Saskatchewan (Gerwing, Sherstobitoff and Jackson JJ.A.)	Appeal on conviction dismissed; cross-appeal with respect to sentence allowed and Applicant sentenced to 10 years of imprisonment
December 14, 2000 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

---

**28204**            **ANDREW JAMES MAXWELL - v. - HER MAJESTY THE QUEEN** (B.C.) (Criminal)

CORAM:            Gonthier, Major and Binnie 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 accueillie et la demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Sentencing - Whether sentence was unfit and excessive in all the circumstances - Whether trial judge erred in law by imposing a sentence not in parity with the sentence of co-accused.

**PROCEDURAL HISTORY**

February 18, 1999 Supreme Court of British Columbia (Oppal J.)	Sentence: fourteen years imprisonment for manslaughter
November 5, 1999 Court of Appeal for British Columbia	Application for leave to appeal from sentence granted; appeal from sentence dismissed

(Southin, Hall and Mackenzie JJ.A.)

October 18, 2000  
Supreme Court of Canada

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

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**28046**            **ADAM JOHN SPENCER - v. - MANSOUR'S LIMITED, A BODY CORPORATE, CASEY REALTY LIMITED, A BODY CORPORATE AND THE TOWN OF AMHERST, A BODY CORPORATE** (N.S.) (Civil)

CORAM:            Gonthier, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Labour law - Workers' compensation - Worker residing in one province and injured in another during the course of his employment - Whether he is a "worker" pursuant to the *Workers' Compensation Act*, R.S.N.S. 1989, c. 508, and therefore barred from suing the Respondents, as employers, under ss. 18 and 20 - Whether Court of Appeal erred in concluding that the Applicant was a "worker" under the *Act* by incorrectly assessing the effect of his place of residence outside of Nova Scotia on his ability to sustain an action in tort for a workplace accident occurring within the province of Nova Scotia - Whether Court of Appeal erred in failing to address the fact that the Applicant's employer had not paid into the Nova Scotia Worker's Compensation scheme and the effect this would have on the Applicant's ability to sustain his tort action

**PROCEDURAL HISTORY**

November 12, 1999  
Supreme Court of Nova Scotia  
(Goodfellow J.)

Order permitting the Applicant to proceed with his personal injury action against the Respondents

May 10, 2000  
Nova Scotia Court of Appeal  
(Chipman, Bateman and Freeman JJ.A.)

Appeal allowed; Applicant's action barred by s.20 of the former *Workers' Compensation Act*

August 8, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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**28089**            **ROY YAWOROWSKI - v. - HER MAJESTY THE QUEEN** (FC) (Civil)

CORAM:            Gonthier, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

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Taxation - Income tax - Procedure - Taxpayer appeal from assessment dismissed - Extension of time for judicial review dismissed - Whether Tax Court of Canada erred in not allowing the appeal - Whether Tax Court of Canada erred in the interpretation of 39(1)(c) and subsection 50(1) when he states the corporation must be carrying on an active business.

**PROCEDURAL HISTORY**

November 16, 1999 Tax Court of Canada (Sarchuk J.T.C.C.)	Appeal from assessment under the <i>Income Tax Act</i> dismissed.
July 5, 2000 Federal Court of Appeal (Rothstein J.A.)	Motion for extension of time for judicial review dismissed
August 5, 2000 Federal Court of Appeal (Rothstein J.A.)	Application for reconsideration dismissed
August 30, 2000 Supreme Court of Canada	Application for leave to appeal filed

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**28065**      **HARRY BELL, ROBERT WALKUS SENIOR, PATRICK CHARLIE, CORRINE WALKUS, BRIAN WALKUS, DOREEN WALKUS, JOHNSON BELL, ALVIN WALKUS, RAYMOND E. CLAIR, JOYE WALKUS, HENRY WALKUS, LLOYD WALKUS AND JAMES WALKUS - v. - HER MAJESTY THE QUEEN** (FC) (Civil)

CORAM:      Gonthier, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Taxation - Native law - Assessment - Exemption from income tax for income earned on reserve - Native fishers involved in commercial fishery near reserve but paid from office on reserve - Whether amounts exempt from income tax.

**PROCEDURAL HISTORY**

June 29, 1998 Tax Court of Canada (Bowie J.T.C.C.)	Applicants' appeals from assessments for income tax dismissed
May 18, 2000 Federal Court of Appeal (Desjardins, Létourneau and McDonald JJ.A.)	Applicants' motion to introduce new evidence and an Amended Memorandum of Fact and Law dismissed; Applicants' appeal dismissed with costs
August 16, 2000 Supreme Court of Canada	Application for leave to appeal filed

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**28242**            **PATRICK DAVID CLARK - v. - HER MAJESTY THE QUEEN** (Alta.) (Criminal)

CORAM:            Gonthier, Major and Binnie JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal Law - Offences - Statutes - Interpretation - Person convicted of impaired driving - Three-month mandatory driving prohibition and license suspended for one year imposed - Following suspension, person fails to take steps required under provincial motor vehicle administration legislation to reinstate license - Person charged with operating a vehicle while disqualified contrary to section 259(5) of the *Criminal Code* - Whether Parliament intended to criminalize a failure to comply with provincial license reinstatement conditions.

**PROCEDURAL HISTORY**

August 21, 1998  
Provincial Court of Alberta  
(Abbott J.)

Applicant acquitted of driving while disqualified contrary to s. 259(4)(b) of the *Criminal Code*

October 19, 1999  
Court of Queen's Bench of Alberta  
(Binder J.)

Appeal against acquittal dismissed

September 15, 2000  
Court of Appeal of Alberta  
(Picard, Berger and Wittmann JJ.A.)

Appeal against acquittal allowed, conviction entered;  
Remitted to trial court for sentencing

November 10, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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**28086**            **GORDON GLAVES HOLDINGS LTD. - v. - CARE CORPORATION OF CANADA LIMITED, RALPH RODGERS, EARL CAMPBELL, RALPH GOODHUE, KEN GOODHUE AND JOHN MCGREGOR AND PETER FRANCIS - and between - GORDON GLAVES HOLDINGS LTD. - v. - PETER J. FRANCIS HOLDINGS LTD.** (Ont.) (Civil)

CORAM:            Gonthier, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Commercial law - Company law - Oppression of minority shareholders - Whether s. 248 of *Ontario Business Corporations Act* requires an applicant to prove reasonable expectations rather than oppression or unfairness - Whether conduct of the Respondents in denying to the Applicant a benefit enjoyed by all other shareholders was neither oppressive nor unfair - Whether Court of Appeal erred in law in relying on the self-serving statements of the directors - Whether

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memorandum of Care Corp.'s solicitor based on a misunderstanding - Whether Peter Francis had ostensible authority to act as agent for Gordon Glaves Holdings Limited - Whether the Court of Appeal erred in law in substituting its own discretion for that of the learned motions judge.

**PROCEDURAL HISTORY**

February 26, 1998  
Ontario Court of Justice  
(Greer J.)

Order that Respondents Care Corporation *et al.*, purchase from the Appellant Gordon Glaves Holdings 18,000 shares of Care Corporation at \$41.67 per share in addition to a payment in the sum of \$100,000 payable to the said Appellant; Application of Respondent Peter J. Francis dismissed

March 15, 1999  
Superior Court of Justice  
(Southey, McNeely [dissenting] and  
Brockenshire JJ.)

Appeal of Respondents Care Corporation *et al.* allowed; appeal related to shares in Care Corporation held by Glaves Holdco and Francis Holdco allowed

June 1, 2000  
Court of Appeal for Ontario  
(McMurtry C.J.O, Goudge and Sharpe JJ.A.)

Applicant's appeal and oppression application dismissed; Respondents Care Corporation of Canada *et al.* and Peter J. Francis cross-appeals allowed

August 25, 2000  
Supreme Court of Canada

Application for leave to appeal filed

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23.1.2001

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

**Motion for costs**

**Requête visant l'obtention de dépens**

Lorne Brown, et al.

v. (27150)

Regional Municipality of Durham Police Service Board  
(Ont.)

**GRANTED IN PART / ACCORDÉE EN PARTIE**

**THE COURT:**

**UPON THE APPLICATIONS** of the respondent and the intervener, the Canadian Association of Chiefs of Police, each requesting costs following the discontinuance of the above appeal;

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

1. No costs are awarded on the application for leave to appeal;
2. Costs on the appeal are awarded on a party and party basis to the respondent; and
3. No costs are awarded to the intervener, the Canadian Association of Chiefs of Police.

23.1.2001

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

**Motion for costs**

**Requête visant l'obtention de dépens**

Robert Dennis Starr

v. (26514)

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

**GRANTED IN PART / ACCORDÉE EN PARTIE**

**THE COURT:**

**UPON THE APPLICATIONS** of the appellant and the intervener, the Criminal Lawyers' Association (Ontario), each requesting costs on the abandoned motion of the intervener, the Attorney General for Ontario, for a rehearing in the above appeal;

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

1. Costs on the motion for a rehearing are awarded on a party and party basis to the appellant; and
  2. No costs are awarded to the intervener, the Criminal Lawyers' Association (Ontario).
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26.1.2001

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file a reply 15 days after the respondent's response is filed**

**Requête en prorogation du délai imparti pour signifier et déposer une réplique 15 jours après la réponse de l'intimé est déposée**

Alicia Payne

v. (28317)

Ontario Board of Inquiry (Human Rights Code), et al.  
(Ont.)

**GRANTED / ACCORDÉE**

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26.1.2001

Before / Devant: GONTHIER 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 dépôt de la demande d'autorisation**

Jeanette Dechant

v. (28293)

The Law Society of Alberta (Alta.)

**REFERRED to the panel seized of the application for leave to appeal which remains to be filed. / DÉFÉRÉE à la formation saisie de la demande d'autorisation d'appel, qui n'a pas encore été déposée.**

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26.1.2001

Before / Devant: GONTHIER 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 dépôt de la demande d'autorisation**

Jeanette Dechant

v. (28292)

Zahra Coulter, et al (Alta.)

**REFERRED to the panel seized of the application for leave to appeal which remains to be filed. / DÉFÉRÉE à la formation saisie de la demande d'autorisation d'appel, qui n'a pas encore été déposée.**

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1.2.2001

Before / Devant: LEBEL 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 dépôt de la demande d'autorisation**

Raymond Errol Conley

v. (28316)

Tracy Lynn Beaudoin, et al. (Man.)

**GRANTED / ACCORDÉE** Time extended to December 28, 2000.

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1.2.2001

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de jurisprudence et de doctrine de l'intimée**

Peter William Fliss

v. (27998)

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

**GRANTED / ACCORDÉE** Time extended to March 15, 2001.

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1.2.2001

Before / Devant: LEBEL 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 dépôt de la demande d'autorisation**

Life Insurance Council, et al.

v. (28323)

RBC DS Financial Services Inc., et al. (Sask.)

**GRANTED / ACCORDÉE** Time extended to January 18, 2001.

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2.2.2001

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai imparti pour déposer le mémoire de l'appellant**

Dai Geun Rhee

v. (27863)

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

**GRANTED / ACCORDÉE** Time extended to January 11, 2001.

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2.2.2001

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file the factum and book of authorities of the intervener the Attorney General of Canada**

**Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de jurisprudence et de doctrine de l'intervenant le Procureur général du Canada**

Her Majesty the Queen

v. (27738)

Clayton George Mentuck (Crim.)(Man.)

**GRANTED / ACCORDÉE** Time extended to January 25, 2001.

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2.2.2001

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file the book of authorities of the intervener the Attorney General for Ontario**

**Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine de l'intervenant le Procureur général de l'Ontario**

Her Majesty the Queen

v. (27738)

Clayton George Mentuck (Crim.)(Man.)

**GRANTED / ACCORDÉE** Time extended to January 24, 2001.

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2.2.2001

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai imparti pour signifier et déposer les dossier, mémoire et recueil de jurisprudence et de doctrine de l'appelante**

Her Majesty the Queen

v. (27717)

Ford Ward (Nfld.)

**GRANTED / ACCORDÉE** Time extended to January 19, 2001.

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2.2.2001

Before / Devant: THE REGISTRAR

**Motion to file a memorandum of argument of 24 pages on leave to appeal**

**Requête pour permission de déposer un mémoire de 24 pages sur une demande d'autorisation**

442246 B.C., et al.

v. (28329)

Lawrence T. Salloum, et al. (B.C.)

**GRANTED / ACCORDÉE**

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5.2.2001

Before / Devant: BASTARACHE 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  
dépôt de la demande d'autorisation**

Régent Millette

c. (28277)

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

**GRANTED / ACCORDÉE** Délai prorogé au 29 novembre 2000.

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5.2.2001

Before / Devant: MAJOR J.

**Motion for leave to intervene**

**Requête en autorisation d'intervention**

BY/PAR: Federation of Law Societies of  
Canada

IN/DANS: The Law Society of Alberta

v. (28275)

Craig Charles Krieger, et al. (Alta.)

**DISMISSED/ REJETÉE**

**UPON APPLICATION** by the Federation of Law Societies of Canada for leave to intervene in the above application for leave to appeal;

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

The application for leave to intervene is denied, without prejudice to the applicant's right to bring the same application, if leave to appeal is granted.

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5.2.2001

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai imparti pour déposer les mémoire, dossier et recueil de jurisprudence et de doctrine de l'intimé**

The General Manager, Liquor Control and Licensing Branch

v.(27371)

Ocean Port Hotel Limited (B.C.)

**GRANTED / ACCORDÉE** Time to serve and file the respondent's factum extended to December 15, 2000.  
Time to serve and file the respondent's record and book of authorities extended to December 21, 2000.

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6.2.2001

Before / Devant: THE REGISTRAR

**Motion to be added as a party**

**Requête visant à être ajoutée comme partie**

The Corporation of the City of Windsor

v. (28272)

Canadian Pacific Railway Company, et al. (Ont.)

**GRANTED / ACCORDÉE** The motion on behalf of the Canadian Transportation Agency to be added as a party respondent is granted.

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**NOTICE OF APPEAL FILED SINCE  
LAST ISSUE**

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

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26.1.2001

**Her Majesty the Queen**

**v. (28361)**

**Edward David McKenna (a.k.a. Edison Edward  
McKenna (B.C.))**

**AS OF RIGHT**

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30.1.2001

**Sa Majesté la Reine du chef de la Province du  
Nouveau-Brunswick représenté par le Bureau du  
Conseil exécutif, et al.**

**c. (28206)**

**La juge Jocelyne Moreau-Bérubé (N.-B.)**

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2.2.2001

**The Vancouver Sun**

**v. (28190)**

**Her Majesty the Queen, et al. (B.C.)**

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Reasons for judgment are available

Les motifs de jugement sont disponibles

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REVISED / RÉVISÉ

JANUARY 26, 2001 / LE 26 JANVIER 2001

27376 HER MAJESTY THE QUEEN - v. - JOHN ROBIN SHARPE - and - THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL OF QUEBEC, THE ATTORNEY GENERAL OF NOVA SCOTIA, THE ATTORNEY GENERAL FOR NEW BRUNSWICK, THE ATTORNEY GENERAL OF MANITOBA, THE ATTORNEY GENERAL FOR ALBERTA, THE CANADIAN POLICE ASSOCIATION (CPA), THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE (CACP), CANADIANS AGAINST VIOLENCE (CAVEAT), THE CRIMINAL LAWYERS' ASSOCIATION, THE EVANGELICAL FELLOWSHIP OF CANADA, FOCUS ON THE FAMILY (CANADA) ASSOCIATION, THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, THE CANADIAN CIVIL LIBERTIES ASSOCIATION, BEYOND BORDERS, CANADIANS ADDRESSING SEXUAL EXPLOITATION (CASE), END CHILD PROSTITUTION, CHILD PORNOGRAPHY AND TRAFFICKING IN CHILDREN FOR SEXUAL PURPOSES (ECPAT) AND THE INTERNATIONAL BUREAU FOR CHILDREN'S RIGHTS (B.C.) (Criminal) 2001 SCC 2 / 2001 CSC 2

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

The appeal is allowed and the charges are remitted to trial. The constitutional questions are answered as follows:

1. Does s. 163.1(4) of the *Criminal Code*, R.S.C. 1985, c. C-46, violate s. 2(b) of the *Canadian Charter of Rights and Freedoms*?

Answer Yes.

2. If s. 163.1(4) of the *Criminal Code*, R.S.C. 1985, c. C-46, infringes s. 2(b) of the *Canadian Charter of Rights and Freedoms*, is s. 163.1(4) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society for the purposes of s. 1 of the *Charter*?

Answer In its main application, yes. However, s. 163.1(4) of the *Criminal Code* is not justified in its application to: (1) the possession of any written material or visual representation created by the accused alone, and held by the accused alone, exclusively for his or her own personal use; and (2) the possession of any visual recording, created by or depicting the accused, provided it does not depict unlawful sexual activity and is held by the accused exclusively for private use. L'Heureux-Dubé, Gonthier and Bastarache JJ. would answer in the affirmative.

3. Does s. 163.1(4) of the *Criminal Code*, R.S.C. 1985, c. C-46, violate s. 7 of the *Canadian Charter of Rights and Freedoms*?

Answer Yes.

4. If s. 163.1(4) of the *Criminal Code*, R.S.C. 1985, c. C-46, infringes s. 7 of the *Canadian Charter of Rights and Freedoms*, is s. 163.1(4) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society for the purposes of s. 1 of the *Charter*?

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Answer In its main application, yes. However, s. 163.1(4) of the *Criminal Code* is not justified in its application to: (1) the possession of any written material or visual representation created by the accused alone, and held by the accused alone, exclusively for his or her own personal use; and (2) the possession of any visual recording, created by or depicting the accused, provided it does not depict unlawful sexual activity and is held by the accused exclusively for private use. L'Heureux-Dubé, Gonthier and Bastarache JJ. would answer in the affirmative.

Le pourvoi est accueilli et les accusations sont renvoyées devant le tribunal de première instance. Les questions constitutionnelles reçoivent les réponses suivantes:

1. Le paragraphe 163.1(4) du *Code criminel*, L.R.C. 1985, ch. C-46, contrevient-il à l'al. 2b) de la *Charte canadienne des droits et libertés*?

Réponse Oui.

2. S'il contrevient à l'al. 2b) de la *Charte canadienne des droits et libertés*, le par. 163.1(4) du *Code criminel*, L.R.C. 1985, ch. C-46, constitue-t-il une limite raisonnable prescrite par une règle de droit, dont la justification peut se démontrer dans le cadre d'une société libre et démocratique, aux fins de l'article premier de la *Charte*?

Réponse Oui, en ce qui concerne son application principale. Toutefois, le par. 163.1(4) du *Code criminel* n'est pas justifié dans la mesure où il s'applique, premièrement, à la possession d'écrits ou de représentations créés par l'accusé seul et conservés par ce dernier exclusivement pour son usage personnel, et deuxièmement, à la possession de tout enregistrement visuel créé par l'accusé ou dans lequel ce dernier figure, qui ne représente aucune activité sexuelle illégale et qui est conservé par l'accusé exclusivement pour son usage personnel. Les juges L'Heureux-Dubé, Gonthier et Bastarache répondraient par l'affirmative.

3. Le paragraphe 163.1(4) du *Code criminel*, L.R.C. 1985, ch. C-46, contrevient-il à l'art. 7 de la *Charte canadienne des droits et libertés*?

Réponse Oui.

4. S'il contrevient à l'art. 7 de la *Charte canadienne des droits et libertés*, le par. 163.1(4) du *Code criminel*, L.R.C. 1985, ch. C-46, constitue-t-il une limite raisonnable prescrite par une règle de droit, dont la justification peut se démontrer dans le cadre d'une société libre et démocratique, aux fins de l'article premier de la *Charte*?

Réponse Oui, en ce qui concerne son application principale. Toutefois, le par. 163.1(4) du *Code criminel* n'est pas justifié dans la mesure où il s'applique, premièrement, à la possession d'écrits ou de représentations créés par l'accusé seul et conservés par ce dernier exclusivement pour son usage personnel, et deuxièmement, à la possession de tout enregistrement visuel créé par l'accusé ou dans lequel ce dernier figure, qui ne représente aucune activité sexuelle illégale et qui est conservé par l'accusé exclusivement pour son usage personnel. Les juges L'Heureux-Dubé, Gonthier et Bastarache répondraient par l'affirmative.

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## WEEKLY AGENDA

## ORDRE DU JOUR DE LA SEMAINE

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**AGENDA for the weeks beginning February 12 and February 19, 2001.**  
**ORDRE DU JOUR pour les semaines commençant les 12 février et 19 février 2001.**

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<u>Date of Hearing/ Date d'audition</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
2001/02/12	Motions / Requêtes
2001/02/13	Dwayne W. Hynes v. Her Majesty the Queen (Nfld.) (Criminal) (As of Right / By Leave) (27443)
2001/02/15	Ian Vincent Golden v. Her Majesty the Queen (Ont.) (Criminal) (By Leave) (27547)
2001/02/19	Tom Dunmore, et al. v. Attorney General for the Province of Ontario, et al. (Ont.) (Civil) (By Leave) (27216)
2001/02/20	Mattel Canada Inc., et al. v. Her Majesty the Queen, et al. (FC) (Civil) (By Leave) (27174)
2001/02/21	Werner Patek, et al. c. Sa Majesté la Reine (Qué.) (Criminelle) (De plein droit) (27817)
2001/02/23	Eric Arthur Berntson v. Her Majesty the Queen (Sask.) (Criminal) (As of Right) (27896)

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**NOTE:**

This agenda is subject to change. Hearing dates should be confirmed with 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.

27443

*Dwayne W. Hynes v. Her Majesty The Queen*

*Canadian Charter of Rights and Freedoms* - Criminal law - Procedure - Whether a judge or justice presiding at a preliminary inquiry is a court of competent jurisdiction for the purposes of an application under section 24(1) of the *Canadian Charter of Rights and Freedoms* to exclude evidence under s. 24(2) of the *Charter*.

The Appellant was charged with having committed offences under s. 220 of the *Criminal Code* (causing death by criminal negligence), s. 252(1)(b) (failure to stop at an accident scene) and s. 255(3) (impaired driving). In the process of a preliminary inquiry held into the charges, *voir dire*s took place to determine the admissibility of the testimony of some Crown witnesses. During the *voir dire*s, questions were raised whether any of the Appellant's *Charter* rights or freedoms had been violated by police in obtaining evidence in respect of the charges. Specifically, the issue was the admissibility of all statements alleged to have been made by the Appellant to investigating officers of the Royal Canadian Mounted Police at a time when the Appellant was detained by the police.

An application was made to the presiding justice on the preliminary inquiry, who was a judge of the Provincial Court of Newfoundland, for a declaration that he, sitting in that capacity, constituted "a court of competent jurisdiction" under s. 24(1) of the *Charter* to exercise discretion under s. 24(2), in respect of *Charter* violations, and if such were established, to decide whether to exclude Crown evidence. The justice dismissed the Appellant's application on the basis that he did not constitute a court of competent jurisdiction while filling that role.

A further application in the nature of *certiorari* and *mandamus*, to direct the preliminary inquiry justice to conduct the inquiry, was taken before a judge of the Trial Division. The application judge found that the authorities, specifically those emanating from the Supreme Court of Canada, precluded him from acceding to the Appellant's request and he dismissed the application. A majority of the Court of Appeal also dismissed the application.

Origin of the case:	Newfoundland
File No.:	27443
Judgment of the Court of Appeal:	July 2, 1999
Counsel:	David C. Day Q.C. for the Appellant Wayne Gorman Q.C. for the Respondent

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27443

*Dwayne W. Hynes c. Sa Majesté la Reine*

*Charte canadienne des droits et libertés* - Droit criminel - Procédure - Le juge qui préside l'enquête préliminaire est-il un tribunal compétent aux fins d'une demande fondée sur le par. 24(1) de la *Charte canadienne des droits et libertés* pour exclure un élément de preuve en application du par. 24(2) de la *Charte*?

L'appelant a été accusé d'avoir commis des infractions prévues à l'art. 220 du *Code criminel* (le fait de causer la mort par négligence criminelle), à l'al. 252(1)b) (défaut d'arrêter lors d'un accident) et au par. 255(3) (conduite avec capacité affaiblie). Au cours de l'enquête préliminaire sur les infractions, des voir-dire ont été tenus pour déterminer l'admissibilité du témoignage de certains témoins à charge. Durant les voir-dire, des questions ont été soulevées quant à savoir si la police avait porté atteinte à des droits et libertés que la *Charte* garantit à l'appelant lors de l'obtention d'éléments de preuve relatifs aux infractions. Plus particulièrement, la question litigieuse concernait l'admissibilité de l'ensemble des déclarations qu'aurait faites l'appelant aux enquêteurs de la Gendarmerie royale du Canada lorsqu'il était détenu par la police.

Une demande a été présentée au juge qui présidait l'enquête préliminaire, qui était un juge de la cour provinciale de Terre-Neuve, en vue d'obtenir un jugement déclaratoire statuant que le juge, siégeant en cette qualité, constituait «un tribunal compétent» au sens du par. 24(1) de la *Charte* pour exercer le pouvoir discrétionnaire prévu au par. 24(2), relativement aux violations de la *Charte*, et, si cela était établi, une décision sur la question de savoir s'il convenait d'exclure la preuve soumise par le ministère public. Le juge a rejeté la demande de l'appelant au motif qu'il ne constituait pas un tribunal compétent à ce titre.

Une autre demande sollicitant une ordonnance de la nature d'un *certiorari* et d'un *mandamus* qui aurait enjoint le juge qui présidait l'enquête préliminaire de tenir l'enquête a été soumise à un juge de la Section de première instance. Celui-ci a conclu que la jurisprudence, en particulier celle de la Cour suprême du Canada, l'empêchait de faire droit à la demande de l'appelant et a rejeté la demande. La Cour d'appel à la majorité a également rejeté la demande.

Origine:	Terre-Neuve
N° du greffe:	27443
Arrêt de la Cour d'appel:	2 juillet 1999
Avocats:	David C. Day c.r. pour l'appelant Wayne Gorman c.r. pour l'intimée

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27547

*Ian Vincent Golden v. Her Majesty The Queen*

*Canadian Charter of Rights and Freedoms* - Criminal law - Whether the Court of Appeal erred in concluding that the strip search of the Appellant did not violate section 8 of the *Charter* - If the strip search of the Appellant violated section 8 of the *Charter*, would the admission of the evidence bring the administration of justice into disrepute under section 24(2) of the *Charter*?

The Toronto police had an operation underway involving a number of officers in an area where drug trafficking was known to take place. A police officer using a telescope was located in an unoccupied building approximately 70 feet across the street from a sandwich shop (the “shop”). He had a clear view into the shop and could see what went on there. He witnessed two transactions in which people went into the shop, receiving from the Appellant a white substance. The officer saw the Appellant take the substance out of his hand with the thumb and forefinger and give it to the others. He believed that it was cocaine. After the second transaction, he transmitted to other members of the team a description of the Appellant. Constable Ryan (“Ryan”), with his partner, Constable Powell (“Powell”), entered the shop and arrested the Appellant.

Ryan patted down the Appellant, looked in his pockets and found nothing. Ryan and his partner then opened a door leading to the basement and brought the Appellant there and continued the search. Ryan pulled back the Appellant’s pants and underwear. Looking down, he saw some clear plastic wrap between the Appellant’s buttocks as well as a white substance within the wrap (the “package”). The Appellant was flexing the muscles of his buttocks in order to prevent the officers from retrieving the package. On the landing at the top of a flight of stairs there was some physical interaction between the Appellant and the officers, particularly officer Ryan, who testified that the Appellant pushed him at one point and that he almost went down the stairs. Ryan thereupon pushed the Appellant against the wall face-first. There being concern that the landing was not a safe place in which to continue to search, and not wishing to go down a flight of steps, the officers brought the Appellant into the store. They excluded the patrons from the shop and secured the premises. The sole employee present remained in the shop. In a back area of the shop they had the Appellant bend over a table. From the street, it would have been possible to see only one of the Appellant’s legs. The officers once again tried to retrieve the package. The Appellant was still using his muscles in such a way as to hold onto it. The Appellant then accidentally defecated. Powell found some yellow dish gloves in the shop which he put on. He then succeeded in retrieving the package.

The Appellant was convicted of possession of a narcotic for the purpose of trafficking. His application to have evidence excluded pursuant to ss. 8 and 24 of the *Charter* was denied. The Court of Appeal for Ontario dismissed the Appellant’s appeal of his conviction and sentence.

Origin of the case:	Ontario
File No.:	27547
Judgment of the Court of Appeal:	September 23, 1999
Counsel:	David M. Tanovich for the Appellant Morris Pistyner for the Respondent

27547

*Ian Vincent Golden c. Sa Majesté la Reine*

*Charte canadienne des droits et libertés* - Droit criminel - La Cour d'appel a-t-elle commis une erreur en concluant que la fouille à nu de l'appelant ne portait pas atteinte à l'article 8 de la *Charte*? - Si la fouille à nu de l'appelant porte effectivement atteinte à l'article 8 de la *Charte*, l'admission de la preuve déconsidérerait-elle l'administration de la justice aux termes du paragraphe 24(2) de la *Charte*?

La police de Toronto menait une opération impliquant un certain nombre de policiers dans un district dans lequel on savait que le trafic de stupéfiants était chose courante. Équipé d'un télescope, un policier se trouvait dans un immeuble vacant à environ 70 pieds de l'autre côté de la rue où se situait une sandwicherie. Il voyait clairement dans la sandwicherie et pouvait voir ce qui s'y passait. Il a été témoin de deux transactions au cours desquelles deux personnes sont entrées dans la sandwicherie pour recevoir de l'appelant une substance de couleur blanche. Le policier a vu l'appelant saisir la substance dans sa main avec son pouce et son index et la donner aux autres. Le policier estimait qu'il s'agissait de cocaïne. Au terme de la seconde transaction, il a transmis aux autres membres de l'équipe une description de l'appelant. L'agent Ryan («Ryan») et son partenaire, l'agent Powell («Powell»), ont fait irruption dans la sandwicherie et ont mis l'appelant en état d'arrestation.

Ryan a effectué une fouille sommaire de l'appelant, a fouillé ses poches et n'y a rien trouvé. Ryan et son partenaire ont ensuite ouvert une porte menant au sous-sol et ils y ont emmené l'appelant pour continuer la fouille. Ryan a tiré sur le pantalon et les sous-vêtements de l'appelant et, dirigeant son regard vers le bas, il a aperçu un sachet en plastique transparent entre les fesses de l'appelant, de même qu'une substance blanche à l'intérieur du sachet (le «paquet»). L'appelant contractait ses muscles fessiers pour empêcher les policiers de recueillir le paquet. Il y a eu des contacts physiques sur la marche palière, au sommet de la volée de marches, entre l'appelant et les policiers, particulièrement entre l'appelant et l'agent Ryan, qui a témoigné que l'appelant l'avait poussé à un certain moment et qu'il a failli débouler les escaliers. Ryan a donc poussé l'appelant face première contre le mur. Préoccupés par le fait que la marche palière n'était pas un endroit sécuritaire pour continuer la fouille et ne souhaitant pas débouler les escaliers, les policiers ont emmené l'appelant dans le restaurant. Ils ont fait sortir les clients et se sont assurés que les lieux étaient sécuritaires. Le seul employé en poste est demeuré à l'intérieur du restaurant. Dans un endroit à l'arrière du restaurant, ils ont exigé que l'appelant se penche par-dessus une table. De la rue, il aurait été possible de ne voir qu'une jambe de l'appelant. Les policiers ont à nouveau tenté de saisir le paquet. L'appelant se servait encore de ses muscles de manière à retenir le paquet. L'appelant a par la suite déféqué involontairement. Powell a trouvé dans le restaurant des gants de vaisselle jaunes, qu'il a enfilés. Il a ensuite réussi à récupérer le paquet en question.

L'appelant a été déclaré coupable de possession de stupéfiant en vue du trafic. La demande qu'il a présentée pour faire exclure la preuve en application des articles 8 et 24 de la *Charte* a été rejetée. La Cour d'appel de l'Ontario a rejeté l'appel interjeté par l'appelant de sa déclaration de culpabilité et de sa peine.

Origine:	Ontario
N° du greffe:	27547
Arrêt de la Cour d'appel:	le 23 septembre 1999
Avocats:	David M. Tanovich pour l'appelant Morris Pistyner pour l'intimée



27216

*Tom Dunmore et al v. Attorney General for the Province of Ontario et al*

*Canadian Charter of Rights and Freedoms - Civil - Freedom of Association - Equality rights - Labour law - Labour relations - Unions - Collective bargaining - Sections 2(d) and 15(1) of the Canadian Charter of Rights and Freedoms - Whether the exclusion of agricultural workers from Ontario's statutory labour relations system violates their freedom of association under s. 2(d) of the Charter - Whether the enactment of legislation which directly or indirectly results in the limitation of a fundamental freedom, through the intermediary, of private power constitutes government action subject to review under the Charter - Whether the exclusion of agricultural workers from Ontario's statutory labour relations system violates their rights to equal protection and benefit of the law under s. 15(1) of the Charter - Whether discrimination on the basis of membership in a group defined by occupational status, in circumstances where that status is associated with disadvantage and powerlessness in society, may constitute discrimination on a ground analogous to the enumerated grounds in s. 15(1) of the Charter?*

In 1994, the Ontario Legislative Assembly adopted the *Agricultural Labour Relations Act, 1994*, S.O. 1994, c. 6 (the "ALRA"). Prior to this legislation, agricultural workers were excluded from the legislative framework governing trade unions and collective bargaining. Under the ALRA, agricultural workers were given the right to organize and bargain collectively. The ALRA recognized, however, certain special characteristics of the agricultural sector and prohibited strikes and lockouts, substituting in their place a dispute resolution process, the final stage of which was binding final offer selection by an arbitration board. In 1995, the ALRA was repealed pursuant to the adoption of the *Labour Relations and Employment Statute Law Amendment Act, 1995*, S.O. 1995, c. 1 (the "LRESLAA"). In addition to repealing the ALRA, the LRESLAA also provided that any agreements certified under the ALRA were terminated, as were any certification rights of trade unions. The net effect of the LRESLAA was to subject agricultural workers to the exclusion clause found in s. 3(b) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A.

The Appellants are individual agricultural workers and union organizers and the United Food and Commercial Workers Union (the "UFCW"). The UFCW was established shortly after the enactment of the ALRA, and was certified as the bargaining agent for approximately 200 workers at the Respondent Highline Produce Limited mushroom factory farm in Leamington. During the period of the ALRA, the UFCW filed two further certification applications, one for the workers at the Respondent Kingsville Mushroom Farm Inc., and the other with respect to the workers at the Respondent, Fleming Chicks. Shortly after the repeal of the ALRA, the Appellants brought a constitutional challenge seeking an order striking down the LRESLAA on the ground that it infringed their rights under ss. 2(d) and 15(1) of the *Canadian Charter of Rights and Freedoms*. On December 9, 1997, the Appellants' application was dismissed by Sharpe J. of the Ontario Court (General Division). The Ontario Court of Appeal dismissed the Appellants' appeal from this decision.

Origin of the case:	Ontario
File No.:	27216
Judgment of the Court of Appeal:	January 26, 1999
Counsel:	Chris G. Paliare and Martin J. Doane for the Appellants Richard Stewart for the Respondent Attorney General Alan D'Silva for the Respondent Fleming Chicks

27216

*Tom Dunmore et al c. Procureur général de la province de l'Ontario et autres*

*Charte canadienne des droits et libertés - Droit civil - Liberté d'association - Droit à l'égalité - Droit du travail - Relations de travail - Syndicats - Négociations collectives - Al. 2d) et par.15(1) de la Charte canadienne des droits et libertés - L'exclusion des travailleurs agricoles du régime législatif de relations de travail de l'Ontario viole-t-elle leur liberté d'association prévue à l'al. 2d) de la Charte? L'édiction d'une loi qui porte directement ou indirectement atteinte à une liberté fondamentale par l'intermédiaire d'un pouvoir privé constitue-t-elle une action gouvernementale susceptible de révision en vertu de la Charte? - L'exclusion des travailleurs agricoles du régime législatif de relations de travail de l'Ontario viole-t-elle leur droit à la même protection et au même bénéfice de la loi prévu au par.15(1) de la Charte? - Une discrimination du fait de l'appartenance à un groupe défini par le statut professionnel, lorsque ce statut est synonyme de désavantage et de privation de pouvoir dans la société, peut-elle constituer une discrimination fondée sur un motif analogue à ceux énumérés au par. 15(1) de la Charte?*

En 1994, l'Assemblée législative de l'Ontario a adopté la *Loi de 1994 sur les relations de travail dans l'agriculture*, L.O. 1994, ch. 6 (la *LRTA*). Avant l'adoption de cette loi, les travailleurs agricoles étaient exclus du régime législatif régissant les organisations syndicales et les négociations collectives. La *LRTA* a conféré aux travailleurs agricoles le droit de s'organiser et de négocier collectivement. La *LRTA* a reconnu, toutefois, certaines caractéristiques spéciales relatives au secteur agricole et a interdit les grèves et les lock-out, les remplaçant par un mécanisme de règlement des différends qui menait à une dernière offre obligatoire choisie par un conseil d'arbitrage. En 1995, la *LRTA* a été abrogée à la suite de l'adoption de la *Loi de 1995 modifiant des lois en ce qui concerne les relations de travail et l'emploi*, L.O. 1995, ch. 1 (la *LMLRTE*). En plus de l'abrogation de la *LRTA*, la *LMLRTE* prévoyait également que les conventions collectives dont l'agent négociateur avait été accrédité aux termes de la *LRTA* prenaient fin, au même titre que les droits relatifs à l'accréditation syndicale. L'effet final de la *LMLRTE* a été de soumettre les travailleurs agricoles à la clause d'exclusion prévue à l'al. 3b) de la *Loi de 1995 sur les relations de travail*, L.O. 1995, ch. 1, annexe A.

Les appelants sont des travailleurs agricoles et des organisateurs syndicaux du Syndicat des travailleurs et travailleuses unis de l'alimentation et du commerce (le TUAC). Le TUAC a été établi peu après l'édiction de la *LRTA*, et a été accrédité en tant qu'agent négociateur d'environ 200 travailleurs de la ferme industrielle à champignons intimée, Highline Produce Limited, à Leamington. Lorsque la *LRTA* était en vigueur, le TUAC a déposé deux autres demandes d'accréditation, l'une pour les travailleurs de l'intimée, Kingsville Mushroom Farm Inc., et l'autre pour les travailleurs de l'intimée, Fleming Chicks. Peu après l'abrogation de la *LRTA*, les appelants ont contesté la validité constitutionnelle de la *LMLRTE* et ont sollicité une ordonnance d'annulation de celle-ci au motif qu'elle portait atteinte aux droits que leur garantissaient l'al. 2d) et le par. 15(1) de la *Charte canadienne des droits et libertés*. Le 9 décembre 1997, le juge Sharpe de la Cour de l'Ontario (Division générale) a rejeté la demande des appelants. La Cour d'appel de l'Ontario a rejeté l'appel que les appelants ont interjeté de cette décision.

Origine:	Ontario
N° du greffe:	27216
Arrêt de la Cour d'appel:	26 janvier 1999
Avocats:	Chris G. Paliare et Martin J. Doane pour les appelants Richard Stewart pour l'intimé le procureur général Alan D'Silva pour l'intimée Fleming Chicks

27174

*Mattel Canada Inc. v. Her Majesty The Queen*

Taxation - Customs and excise - Royalties - What is the standard of review required in this review of the *Customs Act* “sale for export” and “subsequent proceeds” issues - Whether Court of Appeal erred in finding that the transaction value of the goods must be adjusted upward pursuant to the s. 48(5)(a)(v) “subsequent proceeds” provision because the royalty payments accrued to the vendor - Whether the Court of Appeal erred in finding that the payment of royalties by the Appellant to Licensor X was not made as “condition of sale”.

The Appellant corporation is part of the Mattel Group, which is headed by Mattel Inc. The Appellant acquires its goods through an ordering system controlled by Mattel Inc. Under that system, the goods ordered by the Appellant are invoiced by the manufacturer to Mattel Trading Company Limited, which then invoices Mattel Inc., which then invoices the Appellant. Title to the goods transfers at each stage, but the goods are shipped directly from Mattel Trading Company Limited to the Appellant, and the Appellant insures the goods from the moment they leave the factory. Invoices from Mattel Trading Company Limited and Mattel Inc. each reflect a mark-up for services and profit over the initial invoice from the manufacturer. Mattel Inc. is bound by contract to pay royalties for the right to manufacture or have manufactured, distribute or sell certain products, but the Appellant reimburses Mattel Inc. for those royalties by periodic payments.

In determining the transaction value of the items imported into Canada and the duty payable on those items, the Deputy Minister included the sums paid to Licensor X in the price paid or payable for the goods on the grounds that those sums were paid by the Appellant, directly or indirectly, as a condition of the sale of the goods for export to Canada. The Deputy Minister of National Revenue used the sale between Mattel Inc. and the Appellant to determine the transaction value respecting the reimbursements of licence fees paid by Mattel Inc. to the Master Licensors. The Appellant filed three appeals under s. 67 of the *Customs Act* from 11 decisions made by the Deputy Minister under s. 63(3) of the Act. At issue was the value of certain goods imported into Canada by the Appellant. Much of the information received by the Tribunal during the hearing was confidential.

The Canadian International Trade Tribunal found that, although it was true that the Act did not specify which transaction should be used for valuation purposes, the only sale for export in this case was between Mattel as vendor and the Appellant as purchaser. The manufacturers and Mattel Trading Company were not sufficiently independent from Mattel for true sales to have occurred between them. As a result, the Tribunal also found that ss. 49(5) and 50(2), which deal with two or more sales of identical or similar goods, were not relevant and dismissed the appeals on this issue. It further found that the payments were not made as a condition of the sale of the goods for export to Canada and that, on their reading of s. 48(5)(a)(iv), the royalties were not dutiable. The appeals were allowed on this issue.

The Deputy Minister of National Revenue appealed pursuant to s. 68 of the Act, and the Appellant cross-appealed. The Court of Appeal allowed the appeal in part, finding that the royalties were dutiable under s. 48(5)(a)(v), setting aside the Tribunal’s decision not to include the payments to the Master Licensors in the value for duty of the imported goods and reaffirming the Deputy Minister’s decision with respect to those payments. It dismissed the cross-appeal.

Origin of the case: Federal Court of Appeal

File No.: 27174

Judgment of the Court of Appeal: January 13, 1999

Counsel: Richard S. Gottlieb/Darrel H. Pearson/Jeffery D. Jenkins for the Appellant  
Morris Rosenberg for the Respondent

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27174

*Mattel Canada Inc. c. Sa Majesté la Reine*

Droit fiscal - Douanes et accise - Redevances - Quelle est la norme de contrôle applicable à l'examen des questions relatives à la « vente pour exportation » et au « produit subséquent » de la *Loi sur les douanes*? - La Cour d'appel a-t-elle commis une erreur en concluant que la valeur transactionnelle des marchandises devait être ajustée à la hausse aux termes de la disposition relative au « produit subséquent » du sous-al. 48(5)a(v) parce que les redevances doivent revenir au vendeur? - La Cour d'appel a-t-elle commis une erreur en concluant que les redevances versées par l'appelante au concédant de licence X n'ont pas été faites à titre de « condition de la vente »?

La société appelante fait partie du groupe Mattel, dirigé par Mattel Inc. L'appelante acquiert ses marchandises au moyen d'un système de commandes, qui est contrôlé par Mattel Inc. En vertu de ce système, les marchandises commandées par l'appelante sont facturées par le fabricant à Mattel Trading Company Limited, qui facture Mattel Inc., qui à son tour facture l'appelante. Il y a transfert du titre relatif aux marchandises à chaque étape du processus, mais les marchandises sont expédiées par Mattel Trading Company Limited directement à l'appelante, qui les assure à compter du moment où elles quittent l'usine. Le montant facturé par Mattel Trading Company Limited et par Mattel Inc. comprend une majoration à l'égard des services ainsi qu'un profit par rapport à la facture initiale du fabricant. Mattel Inc. est tenue de verser des redevances pour avoir le droit de fabriquer ou de faire fabriquer, de distribuer et de vendre certains produits, mais l'appelante rembourse ces redevances à Mattel Inc. au moyen de paiements périodiques.

En déterminant la valeur transactionnelle des articles importés au Canada et le montant du droit à payer, le sous-ministre a comptabilisé les sommes versées au concédant de licence X dans le prix payé ou à payer pour les marchandises, étant donné qu'elles étaient acquittées par l'appelante directement ou indirectement en tant que condition de la vente des marchandises pour exportation au Canada. Le sous-ministre du Revenu national s'est fondé sur la vente conclue entre Mattel Inc. et l'appelante pour déterminer la valeur transactionnelle concernant le remboursement des droits de licence effectué par Mattel Inc. aux concédants de licences maîtresses. L'appelante a déposé trois appels, en vertu de l'art. 67 de la *Loi sur les douanes*, à l'encontre de 11 décisions prises par le sous-ministre en application du par. 63(3) de la Loi. Il s'agit de savoir la valeur de certaines marchandises importées au Canada par l'appelante. La plupart des renseignements dont disposait le Tribunal au cours de l'audience étaient de nature confidentielle.

Le Tribunal canadien du commerce extérieur a statué que, même s'il est vrai que la Loi ne précisait pas quelle transaction devait être utilisée pour les fins de l'évaluation, la seule vente pour exportation qui s'est produite en l'espèce a eu lieu entre Mattel, à titre de vendeur, et l'appelante, à titre d'acheteur. Les fabricants et Mattel Trading Company n'étaient pas suffisamment indépendants de Mattel pour que des transactions réelles aient été effectuées entre elles. En conséquence, le Tribunal a également conclu que les par. 49(5) et 50(2), qui traitent de deux ventes ou plus de marchandises identiques ou semblables, n'étaient pas pertinents et a rejeté les appels sur cette question. Il a en outre déclaré que les redevances n'ont pas été versées en tant que condition de la vente des marchandises pour exportation au Canada et qu'à la lumière de son interprétation du sous-al. 48(5)a(iv), les redevances ne sont pas passibles de droits de douane. Les appels ont été accueillis sur cette question.

Le sous-ministre du Revenu national a interjeté appel de la décision aux termes de l'art. 68 de la Loi et l'appelante a déposé un appel incident. La Cour d'appel a accueilli l'appel en partie, concluant que les redevances étaient passibles de droits de douane en vertu du sous-al. 48(5)a(v), annulant la décision du Tribunal de ne pas comptabiliser les redevances versées aux concédants de licences maîtresses dans la valeur en douane des marchandises importées et confirmant de nouveau la décision du sous-ministre à l'égard de ces redevances. La Cour d'appel a rejeté l'appel incident.

Origine:	Cour d'appel fédérale
N° du greffe:	27174
Arrêt de la Cour d'appel:	Le 13 janvier 1999
Avocats:	Richard S. Gottlieb/Darrel H. Pearson/Jeffery D. Jenkins pour l'appelante Morris Rosenberg pour l'intimée

27817

***Werner Patek and Alan Guttman v. Her Majesty the Queen***

Canadian Charter – Criminal law – Review of a wiretap authorization – Appeal – Paragraph 676(1)(a) of the *Criminal Code* – Did the Court of Appeal majority err in law in finding that the trial judge’s assessment of the evidence raised a question of law alone and by erroneously substituting its own assessment of the evidence?

The appellants were subject wiretap surveillance under three judicial authorizations. An initial authorization was issued in March 1995 on the evidence of the affidavit taken that day by a police officer; the other two authorizations were issued in May and July of the same year on the evidence of affidavits by two other officers. The first affidavit was drafted on the strength of information given to the police by an informant. The affiant stated he had reasonable and probable grounds to believe that a conspiracy to traffic in drugs would be committed. The affidavit stated that the informant was credible and had in the past provided information that proved positive and resulted in the arrest of a number of individuals and the seizure of narcotics. Following interceptions of communications, the appellants were charged with conspiracy to import drugs.

Just before trial, the appellants file a motion under sections 8 and 24(2) of the *Canadian Charter of Rights and Freedoms* to have the interceptions of private communications declared illegal. On December 3, 1996, Boisvert J. of the Court of Québec ruled that the wiretap interceptions violated section 8 of the Charter and that the evidence obtained as a result of these interceptions was not admissible under subsection 24(2) of the Charter. The respondent had no further evidence to present to the Court, so the judge acquitted the appellants of the charges against them.

On March 9, 2000 Chamberland and Deschamps J.J.A. of the Quebec Court of Appeal allowed the respondent’s appeal and ordered a new trial, Fish J.A. dissenting. On July 19, 2000, the appellants filed a notice of appeal as of right in the Supreme Court.

Origin: Quebec

Registry no.: 27817

Court of Appeal judgment: March 9, 2000

Counsel: Christian Desrosiers and Caude Girouard for the appellant Patek, Pierre Morneau for the appellant Guttman  
Claude Chartrand for the respondent

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27817

*Werner Patek et Alan Guttman c. Sa Majesté la Reine*

Charte canadienne - Droit criminel - Révision d'une autorisation d'écoute électronique - Appel - Paragraphe 676(1)a) du *Code criminel* - La majorité de la Cour d'appel a-t-elle erré en droit en concluant que l'appréciation de la preuve par le juge de première instance soulevait une question de droit seulement et en y substituant erronément sa propre appréciation de la preuve ?

Les appelants ont fait l'objet d'écoute électronique suite à trois autorisations judiciaires. Une première autorisation est émise en mars 1995 sur la foi de l'affidavit souscrit le même jour par un agent de police; les deux autres autorisations sont émises en mai et en juillet de la même année, sur la foi d'affidavits de deux autres agents. Le premier affidavit est rédigé sur la foi d'informations données aux policiers par un informateur. L'affiant y relate qu'il a des motifs raisonnables et probables de croire qu'un complot pour trafic de stupéfiants sera commis. Il indique que l'informateur est digne de foi et qu'il a, par le passé, fourni des renseignements qui se sont avérés positifs et ont permis l'arrestation de plusieurs individus et la saisie de stupéfiants. Suite aux interceptions de communication, les appelants sont accusés de complot pour importation de stupéfiants.

Juste avant le procès, les appelants présentent une requête en vertu des articles 8 et 24(2) de la *Charte canadienne des droits et libertés*, afin de faire déclarer illégales les interceptions de communication privée. Le 3 décembre 1996, le juge Boisvert de la Cour du Québec conclut que les interceptions d'écoute électronique constituent une violation de l'article 8 de la *Charte* et que les éléments de preuve obtenus suite à ces interceptions sont non recevables en vertu du paragraphe 24(2) de la *Charte*. L'intimée n'ayant pas d'autres preuves à offrir à la Cour, le juge acquitte les appelants des accusations portées contre eux.

Le 9 mars 2000, les juges Chamberland et Deschamps de la Cour d'appel du Québec accueillent le pourvoi de l'intimée et ordonnent la tenue d'un nouveau procès, le juge Fish étant dissident. Le 19 juillet 2000, les appelants déposent un avis d'appel de plein droit devant la Cour suprême.

Origine: Québec

N° du greffe: 27817

Arrêt de la Cour d'appel: Le 9 mars 2000

Avocats: Mes Christian Desrosiers et Caude Girouard pour l'appelant Patek, Me Pierre Morneau pour l'appelant Guttman  
Me Claude Chartrand pour l'intimée

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27896

*Eric Arthur Berntson v. Her Majesty The Queen*

Criminal law - Fraud - Claims for secretarial services and allowances of member of Legislative Assembly - Whether the trial judge erred in finding on the facts that a prohibited act had occurred which rendered the transactions fraudulent - Whether the trial judge erred in finding that there was evidence of *mens rea* on the part of the Appellant to find a conviction for fraud - Whether the trial judge erred in determining that a period of incarceration was required in view of the provisions contained in the *Criminal Code* concerning conditional sentences.

The Appellant, Senator Eric Berntson, was charged with one count of fraud contrary to s. 380(1)(a) of the *Criminal Code* and with one count of breach of trust by a public officer contrary to s. 122 of the *Criminal Code*. The charges were laid with respect to certain financial transactions and claims for secretarial allowances and expenses which took place while the Appellant was a member of the Saskatchewan Legislature and a cabinet minister. The indictment alleged the appellant defrauded the Department of Finance of the Government of Saskatchewan and provided a number of particulars of the alleged fraudulent acts.

The Appellant was acquitted of the charge of breach of trust and was convicted of fraudulently causing the Department of Finance to pay to him \$10,689 from the Constituency Office and Services Allowance, and \$31,046 from the Constituency Secretarial Allowance. He was sentenced to one year in prison, ordered to pay a surcharge of \$250 and to make restitution in the amount of \$41,735. On appeal, the majority of the Court of Appeal dismissed the appeal against conviction and sentence. Vancise J.A. dissenting would have allowed the appeal and directed a verdict of acquittal on the basis that the Crown had failed to prove beyond a reasonable doubt that the Appellant had the necessary *mens rea*. Given the decision of the majority on the conviction appeal, he would also have allowed the appeal against sentence and imposed a conditional sentence.

Origin of the case:	Saskatchewan
File No.:	27896
Judgment of the Court of Appeal:	April 28, 2000
Counsel:	Michael T. Megaw for the Appellant D. Murray Brown Q.C. for the Respondent

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27896

*Eric Arthur Berntson c. Sa Majesté la Reine*

Droit criminel - Fraude - Réclamations d'indemnités pour services de secrétariat d'un membre de l'assemblée législative - Le juge du procès a-t-il commis une erreur en concluant sur la base des faits qu'il y avait eu un acte interdit qui rendait les opérations frauduleuses? - Le juge du procès a-t-il commis une erreur en concluant qu'il y avait une preuve de *mens rea* qui permettait de déclarer l'appelant coupable de fraude? - Le juge du procès a-t-il commis une erreur en concluant qu'une période d'incarcération était obligatoire compte tenu des dispositions du *Code criminel* sur les peines d'emprisonnement avec sursis?

L'appelant, le sénateur Eric Berntson, a été accusé d'un chef de fraude, contrairement à l'al. 380(1)a) du *Code criminel*, et d'un chef d'abus de confiance par un fonctionnaire public, contrairement à l'art. 122 du *Code criminel*. Les accusations portent sur certaines opérations financières et sur des réclamations d'indemnités pour services de secrétariat et frais, faites lorsque l'appelant était membre de l'assemblée législative de la Saskatchewan et membre du cabinet. L'acte d'accusation allègue que l'appelant a fraudé le ministère des Finances de la Saskatchewan et fournit un certain nombre de détails sur les actes frauduleux reprochés.

L'appelant a été acquitté relativement à l'accusation d'abus de confiance et a été déclaré coupable d'avoir frauduleusement entraîné le ministère des Finances à lui verser une indemnité pour frais de bureau et services de secrétariat dans la circonscription de 10 689 \$ et une indemnité pour dépenses de secrétariat dans la circonscription de 31 046 \$. Il a été condamné à une peine d'emprisonnement d'un an et on l'a enjoint de verser une suramende compensatoire de 250 \$ et de restituer une somme de 41 735 \$. La majorité de la Cour d'appel a rejeté l'appel contre la déclaration de culpabilité et la peine. Le juge Vancise, en dissidence, était d'avis d'accueillir l'appel et il a ordonné un verdict d'acquiescement au motif que le ministère public n'avait pas établi hors de tout doute raisonnable que l'appelant avait la *mens rea* nécessaire. Compte tenu de la décision des juges majoritaires sur l'appel de la déclaration de culpabilité, il était également d'avis d'accueillir l'appel contre la peine et il a imposé une peine d'emprisonnement avec sursis.

Origine:	Saskatchewan
N° du greffe:	27896
Arrêt de la Cour d'appel:	28 avril 2000
Avocats:	Michael T. Megaw pour l'appelant D. Murray Brown c.r. pour l'intimée



## DEADLINES: MOTIONS

## DÉLAIS: REQUÊTES

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### BEFORE THE COURT:

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

**Motion day** : **March 12, 2001**  
**Service** : February 19, 2001  
**Filing** : February 23, 2001  
**Respondent** : March 2, 2001

### 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** : **12 mars 2001**  
**Signification** : 19 février 2001  
**Dépôt** : 23 février 2001  
**Intimé** : 2 mars 2001

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## DEADLINES: APPEALS

The Spring Session of the Supreme Court of Canada will commence April 17, 2001.

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

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

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

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

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

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

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

## DÉLAIS: APPELS

La session du printemps de la Cour suprême du Canada commencera le 17 avril 2001.

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

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

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

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

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

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

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



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**THE STYLES OF CAUSE IN THE PRESENT TABLE ARE THE STANDARDIZED STYLES OF CAUSE (AS EXPRESSED UNDER THE "INDEXED AS" ENTRY IN EACH CASE).**

**Judgments reported in [2000] 2 S.C.R. Part 2**

*Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 SCC 44

*Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, [2000] 2 S.C.R. 409, 2000 SCC 45

*R. v. Caouette*, [2000] 2 S.C.R. 271, 2000 SCC 41

*R. v. D.D.*, [2000] 2 S.C.R. 275, 2000 SCC 43

*R. v. Hamelin*, [2000] 2 S.C.R. 273, 2000 SCC 42

**LES INTITULÉS UTILISÉS DANS CETTE TABLE SONT LES INTITULÉS NORMALISÉS DE LA RUBRIQUE "RÉPERTORIÉ" DANS CHAQUE ARRÊT.**

**Jugements publiés dans [2000] 2 R.C.S. Partie 2**

*Blencoe c. Colombie-Britannique (Human Rights Commission)*, [2000] 2 R.C.S. 307, 2000 CSC 44

*Public School Boards' Assn. of Alberta c. Alberta (Procureur général)*, [2000] 2 R.C.S. 409, 2000 CSC 45

*R. c. Caouette*, [2000] 2 R.C.S. 271, 2000 CSC 41

*R. c. D.D.*, [2000] 2 R.C.S. 275, 2000 CSC 43

*R. c. Hamelin*, [2000] 2 R.C.S. 273, 2000 CSC 42

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SUPREME COURT OF CANADA SCHEDULE  
CALENDRIER DE LA COUR SUPREME

2000

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

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

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

- 2001 -

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

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

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

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

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

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

Sittings of the court:  
Séances de la cour:

Motions:  
Requêtes:

Holidays:  
Jours fériés:

M
H

18 sitting weeks / semaines séances de la cour

78 sitting days / journées séances de la cour

9 motion and conference days / journées requêtes, conférences

3 holidays during sitting days / jours fériés durant les sessions