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**APPLICATIONS FOR LEAVE TO DEMANDES D'AUTORISATION
APPEAL FILED D'APPEL PRODUITES**

-
William Sean Quick
Sheldon Goldberg

v. (23757)

Her Majesty The Queen (B.C.)
Bruce Johnstone
Counsel for the A.G. of B.C.

FILING DATE 17.1.1994

Melvin Darnell Engerdahl
Sheldon Goldberg

v. (23758)

Her Majesty The Queen (B.C.)
Wendy Rubin
Counsel for the A.G. of B.C.)

FILING DATE 17.1.1994

Regional Assessment Commissioner et al.
Edward L. Gladu, Q.C.
Lang Michener

v. (23904)

Donald Graham et al. (Ont.)
William F. Burrows, Q.C.

Nelligan/Power

FILING DATE 20.1.1994

Christopher Correia

P.G. Lister, Q.C.
Lister & Assoc.

v. (23920)

Her Majesty The Queen (Alta.)

J. Watson
A.G. of Alberta

FILING DATE 14.1.1994

Rosemary Nobert

Lorne W. Scott, Q.C.
Singleton Urquhart MacDonald

v. (23952)

Her Majesty The Queen (Alta.)

Peter W.L. Martin, Q.C.
Agent for Alberta Justice

FILING DATE 13.1.1994

Réjeanne Brault

Johanne Denis
Delorme & Denis

c. (23953)

Gérald Fontaine (Qué.)

Yvon Robichaud
Robichaud, Guertin & Assoc.

DATE DE PRODUCTION 14.1.1994

Alouette Amusements Canada Inc.

Jacques Larochelle

c. (23954)

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

Pierre Zemaitis
Veillette & Assoc.

DATE DE PRODUCTION 18.1.1994

Andre Tousignant
Robert Lemieux

c. (23955)

Sa Majesté La Reine (Qué.)
James Rondeau
Subs. procureur général

DATE DE PRODUCTION 11.1.1994

Donald Gordon Butchart
Clayton C. Ruby
Ruby & Edwardh

v. (23956)

Her Majesty The Queen (Ont.)
Catherine A. Cooper
Min. of the A.G.

FILING DATE 21.1.1994

International Lottery Distributors Inc. et al.
William R. Murray

v. (23958)

The Government of Manitoba et al. (Man.)
Thompson, Dorfman, Sweatman

FILING DATE 11.1.1994

Millstream Enterprises Ltd.
William N. Fritz
Fritz Lail Dougans & Shirreff

v. (23959)

Corporation of the City of New Westminster (B.C.)
David M. Twining
Guild, Yule & Co.

FILING DATE 14.1.1994

La Compagnie Minière Québec Cartier

Claude Larose
Lavery, de Billy

c. (23960)

Les Métallurgistes Unis d'Amérique, Local 6869 (Qué.)

André Gauthier
Gauthier, Nepveu, Leblanc & Brouillette

DATE DE PRODUCTION 20.1.1994

Insurance Corp. of British Columbia

Mark M. Skorah
Harper Grey Easton

v. (23961)

Eric Michael Petersen (B.C.)

Val J. LeBlanc

FILING DATE 21.1.1994

Thalayasingam Sivakumar

Lorne Waldman

v. (23962)

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

John C. Tait, Q.C.
Dep. A.G. of Canada

FILING DATE 4.1.1994

No. 100 Sail View Ventures Ltd.

Gary S. Snarch
Snarch & Allen

v. (23965)

Janwest Equities Ltd. (B.C.)

Harvey J. Grey, Q.C.
Harper Grey Easton

FILING DATE 18.1.1994

Michaela Valentova Baron

Chantal Perreault

Leduc, LeBel

c. (23967)

Tommy Karas et al. (Qué.)

France Rochon

Brissette, St-Jacques, Trépanier, Lamarre

DATE DE PRODUCTION 2.2.1994

Henri-Paul Loubier

c. (23969)

Sa Majesté La Reine (Qué.)

Jacques Tardif

Subs du procureur général

DATE DE PRODUCTION 19.1.1994

Garfield Wheatle

Susan Mulligan

v. (23970)

Her Majesty The Queen (Ont.)

Eric Siebenmorgen

A.G. of Ont.

FILING DATE 20.1.1994

Eugene Bekar

Michael J. Kierans

v. (23971)

Patricia Jean Bekar (B.C.)

Paul M. Pakenham

Hope Heinrich

FILING DATE 24.1.1994

Regina

Robert A. Mulligan

Office of Crown Counsel

v. (23972)

R.H.J. (B.C.)
David N. Lyon

FILING DATE 24.1.1994

Her Majesty The Queen in right of Ontario et al.
T.C. Marshall, Q.C.
Min. of the A.G.

v. (23973)

Antonio Prete (Ont.)
Chris G. Paliare
Gowling, Strathy & Henderson

FILING DATE 24.1.1994

Rajendra Kumar
Edmund G. Dorchester
Taylor Bardal & Dorchester

v. (23975)

Her Majesty The Queen (B.C.)
Robert J. Climie
Min. of the A.G.

FILING DATE 26.1.1994

Safwat Milad
Emilio Binavince
Grant Binavince Dawn

v. (23976)

Naguib Milad (Ont.)
W.A. Derry Millar
Weir & Foulds

FILING DATE 28.1.1994

Les Laboratoires Nordic Inc.
Robert Dulude, c.r.
Coutu & Assoc.

c. (23977)

Rock Gagnon et al. (Qué.)
Marc Savoie

Fournier, Demers

DATE DE PRODUCTION 31.1.1994

Canadian Union of Postal Workers

Paul J.J. Cavalluzzo

Cavalluzzo, Hayes & Shilton

v. (23989)

Canada Labour Relations Board et al. (F.C.A.)(Ont.)

FILING DATE 8.2.1994

Gilles Riendeau

c. (23902)

Economical Compagnie mutuelle d'assurance (Qué.)

Favreau Beauchesne Doré St-Onge & Fiset

DATE DE PRODUCTION 8.2.1994

Harbanse Singh Doman

Marvin R.V. Storrow, Q.C.

Blake, Cassels & Graydon

v. (23979)

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

Joseph J. Arvay, Q.C.

Arvay Finlay

FILING DATE 31.1.1994

Marcy Lucinda Bateman et al.

Barry R. Morrison, Q.C.

Clark, Drummie & Co.

v. (23980)

Dr. Daniel Doiron et al. (N.B.)

Donald Gillis, Q.C.

Gilbert, McGloan, Gillis

FILING DATE 28.1.1994

Joan Desloges

Peter J. Bishop
Bishop, Brooker

v. (23981)

Canadian Kennel Club (Ont.)

Elana Levinson
Kerzner, Papazian, MacDermid

FILING DATE 31.1.1994

Claude Saint-Laurent

Christian Desrosiers
Desrosiers, Turcotte, Groulx

v. (23982)

M. le juge Michel Héту et al. (Qué.)

DATE DE PRODUCTION 4.2.1994

Hugh Vincent Lunn
David A. Haas

v. (23983)

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

Office of the Judge Advocate General

FILING DATE 7.2.1994

Chang-Jie Chen
Constance Nakatsu

v. (23984)

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

John C. Tait
Dept. of Justice

FILING DATE 3.2.1994

v. (23891)

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

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Defence - Trial - Appeals - Complainant sexually assaulted by Applicant and two co-accused - Whether the trial judge misdirected the jury on the issue of consent - Whether the trial judge erred in refusing to leave to the jury the defence of honest but mistaken belief in consent - Whether the Court of Appeal erred in its application of s. 265(3) of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in ruling that the trial judge's instructions on the issue of consent would not have confused the jury but would have merely made it clear to them that it was necessary for them to find that the complainant's consent was real - Whether the Court of Appeal erred in ruling that there was nothing which supported or would give "an air of reality" to the defence of honest but mistaken belief in consent - Whether the Court of Appeal erred in applying a high standard for the availability of the defence of honest but mistaken belief in consent and breached the Applicant's rights under ss. 7 and 11(d) of the *Charter*.

PROCEDURAL HISTORY

January 22, 1992
Ontario Court of Justice (General Division)
(Locke J.)

Conviction: One count of sexual assault

December 8, 1993
Court of Appeal for Ontario (Brooke, Carthy and against sentence allowed
Galligan J.J.A.)

Appeal against conviction dismissed; Appeal

January 13, 1994
Supreme Court of Canada

Application for leave to appeal filed

Gordon Tempelaar

v. (23909)

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

NATURE OF THE CASE

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

PROCEDURAL HISTORY

April 30, 1992
Ontario Court of Justice (Moore J.)

Conviction: Sexual Assault

May 7, 1992
Ontario Court of Justice (Moore J.)

Sentence: 30 months imprisonment

July 14, 1993
Court of Appeal for Ontario
(Houlden, Tarnopolsky and Krever, JJ.A.)

Appeal against conviction and sentence dismissed

December 16, 1993
Supreme Court of Canada

Application for leave to appeal filed

Ernest A. Hawrish

v. (23898)

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

NATURE OF THE CASE

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

PROCEDURAL HISTORY

September 6, 1991
Court of Queen's Bench of Saskatchewan
(Grotsky J.)

Conviction: 1 count of theft; 2 counts of fraud

October 14, 1993
Court of Appeal for Saskatchewan
(Cameron, Wakeling and Jackson JJ.A.)

Appeal against conviction dismissed

December 13, 1993
Supreme Court of Canada

Application for leave to appeal filed

Ranjit Gill

v. (23903)

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

NATURE OF THE CASE

Criminal law - Offences - Defence - Evidence - Second degree murder - Intoxication - Defence of provocation - Whether the test for provocation stipulated in s. 232(2) of the *Criminal Code* involves

an objective or a subjective test - Whether the trial judge ought to have instructed the jury to take into consideration the Applicant's cultural background, his relationship with the deceased and intoxication in determining whether the Applicant acted on the sudden and before there was time for his passion to cool.

PROCEDURAL HISTORY

November 24, 1988
Supreme Court of British Columbia
(Murray J.)

Conviction: Second degree murder

May 28, 1992
Court of Appeal for British Columbia
(Seaton, Toy and Rowles, JJ.A.)

Appeal dismissed

December 10, 1993
Supreme Court of Canada

Application for an extension of time filed

December 15, 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**

Fred Harvey

v. (23968)

**Attorney General for New Brunswick
Minister of Municipalities, Culture and Housing,
Dennis Cochrane and Hazen Myers (N.B.)**

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil rights - Right to vote and to be qualified for membership in a legislative assembly - Whether that portion of s. 119(c) of the *Elections Act*, R.S.N.B. 1973, c. E-3, which purports to disqualify a person who is convicted of having committed a corrupt or illegal practice, during the five years following his conviction, from being elected to or sitting in the legislative assembly is a reasonable limit within the meaning of s. 1 of the *Charter* to the rights guaranteed in s. 3 of the *Charter* - Whether that portion of s. 119(c) of the *Elections Act* which, in the case of a person convicted of having committed a corrupt or illegal practice who at the date of conviction has been elected to the legislative assembly, purports to vacate his seat from the time of such conviction is a reasonable limit within the meaning of s. 1 of the *Charter* to the rights guaranteed in s. 3 of the *Charter* - Whether those portions of s. 119 which are inconsistent with the *Charter* are severable from the remaining portions of the section.

PROCEDURAL HISTORY

March 9, 1993
Court of Queen's Bench

Application allowed in part: S. 119 of the *Elections Act* declared inconsistent in part with

(Dickson J.) the *Charter*

November 10, 1993 Appeal dismissed and cross-appeal allowed
Court of Appeal
(Rice [dissenting], Ayles and Ryan JJ.A.)

January 10, 1994 Application for leave to appeal filed
Supreme Court of Canada

Rodolfo Pacificador

v. (23792)

Republic of the Philippines (Ont.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

October 5, 1992 Warrant of committal issued
Ontario Court of Justice (General Division) (Watt
J.)

February 5, 1993 Application for writ of *habeas corpus* with
Ontario Court of Justice (General Division) *certiorari* dismissed
(German J.)

July 29, 1993 Appeal dismissed
Court of Appeal for Ontario
(Lacourcière, Goodman and Doherty JJ.A.)

November 28, 1993 Application for leave to appeal filed
Supreme Court of Canada

Scottish & York Insurance Co. Limited and

Victoria Insurance Company of Canada

v. (23841)

**Co-Operators General Insurance Company and Frank J. Csar,
Liquidator of Security Casualty Company and George Ayton (Ont.)**

NATURE OF THE CASE

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

PROCEDURAL HISTORY

June 19, 1992 Supreme Court of Ontario (Roberts J.)	Applicants' application to add Her Majesty the Queen as a party defendant dismissed
October 4, 1993 Court of Appeal for Ontario (Galligan, Labrosse and Arbour JJ.A.)	Appeal dismissed
December 2, 1993 Supreme Court of Canada	Application for leave to appeal filed

**Tom Strickland, on behalf of himself and all members of
the Association of Professional Engineers of
Saskatchewan employed by the Saskatchewan Institute
of Applied Science and Technology**

v. (23864)

**Ralph Ermel, on behalf of himself and all members of
the S.G.E.U. SIAST academic bargaining unit and**

Saskatchewan Institute of Applied Science and Technology (Sask.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

May 6, 1992 Court of Queen's Bench of Saskatchewan (Wright J.)	Applicants' action dismissed
September 29, 1993 Court of Appeal for Saskatchewan (Wakeling, Gerwing and Sherstobitoff JJ.A.)	Appeal dismissed
December 7, 1993 Supreme Court of Canada	Application for leave to appeal filed

**David Deshane and Dorothy Deshane on behalf of all
persons entitled pursuant to the *Family Law Reform
Act*, and the said Dorothy Deshane**

v. (23870)

Deere & Company (Ont.)

NATURE OF THE CASE

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

PROCEDURAL HISTORY

October 10, 1990 Ontario Court of Justice (General Division) (Hawkins J.)	Applicants' action allowed
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October 1, 1993
Court of Appeal for Ontario
(Dubin C.J.O., Lacourcière [dissenting] and
Galligan J.J.A.)

Appeal allowed

November 30, 1993
Supreme Court of Canada

Application for leave to appeal filed

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

Sa Majesté La Reine

c. (23906)

Renaud Charbonneau (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Infractions - Preuve - Conduite avec facultés affaiblies et avec un taux d'alcoolémie supérieur à 80 milligrammes par 100 millilitres de sang - La Cour d'appel du Québec a-t-elle erré en droit en affirmant qu'un écart de 22 milligrammes d'alcool par 100 millilitres de sang entre deux résultats d'analyse constitue, à lui seul, une preuve contraire au sens de l'article 258(1) du *Code criminel*?

HISTORIQUE PROCÉDURAL

Le 17 mai 1991
Cour du Québec, chambre criminelle
et pénale (Gobeil, J.C.Q.)

Acquittement: 1) Conduite avec facultés affaiblies; 2) conduite avec un taux d'alcoolémie supérieur à 80 mg par 100 ml de sang

Le 25 octobre 1991
Cour supérieure du Québec
(Jourdain J.C.S.)

Déclaration de culpabilité: Conduite avec un taux d'alcoolémie supérieur à 80 mg d'alcool par 100 ml de sang;
Arrêt des procédures: Conduite avec facultés affaiblies;

Le 19 octobre 1993
Cour d'appel du Québec (LeBel, Gendreau et
Rousseau-Houle, J.J.C.A.)

Appel accueilli

Le 15 décembre 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

A.J.L.

v. (23919)

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

NATURE OF THE CASE

Criminal law - Statutes - Young offenders - Offences - Evidence - Interpretation - Possession of stolen property - Whether the Court of Appeal erred in law in distinguishing the applicability of this Court's decision in *R. v. Terrence*, [1983] 1 S.C.R. 357, and inferring the necessary control for the Applicant under s. 4(3) of the *Criminal Code* - Whether evidence of flight can amount to evidence of common knowledge and consent as required by s. 4(3)(b) of the *Criminal Code*.

PROCEDURAL HISTORY

March 29, 1993 Provincial Court of Alberta, Youth Division (Witten, P.C.J.)	Conviction: Possession of stolen property over \$1000
November 1, 1993 Court of Appeal of Alberta (Foisy, Stratton and Trussler, J.J.A.)	Appeal dismissed
December 7, 1993 Supreme Court of Canada (LaForest J.)	Motion to extend time to file an application for leave to appeal to December 7, 1993, granted
December 7, 1993 Supreme Court of Canada	Application for leave to appeal filed

C.C.

v. (23920)

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

NATURE OF THE CASE

Criminal law - Statutes - Young offenders - Offences - Evidence - Interpretation - Possession of stolen property - Whether the Court of Appeal erred in law in distinguishing the applicability of this Court's decision in *R. v. Terrence*, [1983] 1 S.C.R. 357, and inferring the necessary control for the Applicant under s. 4(3) of the *Criminal Code* - Whether evidence of flight can amount to evidence of common knowledge and consent as required by s. 4(3)(b) of the *Criminal Code*.

PROCEDURAL HISTORY

March 29, 1993 Provincial Court of Alberta, Youth Division (Witten, P.C.J.)	Conviction: Possession of stolen property over \$1000
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November 1, 1993
Court of Appeal of Alberta
(Foisy, Stratton and Trussler, JJ.A.)

Appeal dismissed

December 14, 1993
Supreme Court of Canada
(LaForest J.)

Motion to extend time to file an application for
leave to appeal to December 14, 1993, granted

December 14, 1993
Supreme Court of Canada

Application for leave to appeal filed

Gilles Riendeau

c. (23902)

Economical Compagnie Mutuelle d'Assurance (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Action - Appel - Rejet d'appel - Assurance - Incendie - Action en réclamation d'une indemnité d'assurance suite aux dommages causés à une maison et à son contenu lors d'une incendie rejetée - Appel interjeté par une personne qui n'est pas représentée - Appel irrégulièrement formé - Requête pour rejet d'appel accueillie.

HISTORIQUE PROCÉDURAL

Le 17 février 1993
Cour supérieure du Québec
(Mercure j.c.s.)

Action en réclamation d'une indemnité
d'assurance contre l'intimée, l'assureur

Le 9 septembre 1993
Cour d'appel du Québec
(Tourigny, Baudouin et Chamberland jj.c.a.)

Requête de l'intimée pour rejet d'appel accueillie

Le 9 décembre 1993
Cour suprême du Canada

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

Réal Roy et Clément Roy

c. (23918)

La Corporation municipale de St-Jules, cté Beauce (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Appel - La Cour d'appel aurait-elle dû considérer la requête introductive d'instance des demandeurs aux fins de l'appel prévu à l'art. 44.2 de la *Loi sur l'expropriation*, L.R.Q. 1977, ch. E-24? - Critères applicables concernant la requête pour permission spéciale d'appeler prévue à l'art. 523 du *Code de procédure civile*, L.R.Q. 1977, ch. C-25 - "Impossibilité d'agir plus tôt" - En quoi les demandeurs n'ont pas réussi devant la Cour d'appel à établir les conditions prévues à l'art. 523? - *Cité de Pont Viau c. Gauthier Mfg. Ltd.*, [1978] 2 R.C.S. 516.

HISTORIQUE PROCÉDURAL

Le 6 avril 1993
Cour supérieure du Québec
(Gervais j.c.s.)

Requête pour contester le droit de l'intimée à l'expropriation rejetée

Le 7 juin 1993
Cour d'appel du Québec
(Bisson j.c.q., Rousseau-Houle
et Delisle jj.c.a.)

Requête pour rejet d'appel accueillie

Le 1er novembre 1993
Cour d'appel du Québec
(Bisson j.c.q., LeBel et Otis jj.c.a.)

Requête pour permission spéciale d'appeler rejetée

Le 31 décembre 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

JUDGMENTS ON APPLICATIONS FOR LEAVE

JUGEMENTS RENDUS SUR LES DEMANDES D'AUTORISATION

FEBRUARY 10, 1994 / LE 10 FÉVRIER 1994

23684 *La compagnie minière Lamaque Ltée - c. - Le sous-ministre de l'énergie et des ressources du Québec* (Qué.)

CORAM: Le Juge en chef et les juges L'Heureux-Dubé et Sopinka

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE OF THE CASE

Taxation - Assessment - Statutes - Interpretation - Respondent assessing Applicant and disallowing hedging losses claimed under "operating expenses of the mine" - Applicant's motion to cancel assessment dismissed by the Provincial Court - Whether the Court of Appeal erred in interpreting s. 8 of the *Mining Duties Act* - Whether the Court of Appeal erred in determining that the hedging losses incurred by the Applicant do not qualify as operating expenses of the mine within the

meaning of s. 8 of the *Act* - Whether the Court of Appeal erred in refusing to apply to the *Act* the case law dealing with other taxation statutes which have held that hedging transactions, in particular, losses associated thereto form part of the operating expenses of an enterprise thereby taking a functional and contextual approach to the issue in litigation.

23721 Canadian Pacific Limited - v. - Her Majesty the Queen in right of Ontario (Crim.) (Ont.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Environment law - *Canadian Charter of Rights and Freedoms* - Constitutional law - Statutes - Interpretation - Division of powers - Railways - Applicant acquitted on charges of discharging or permitting the discharge of an environmental contaminant, smoke, contrary to s. 13(1)(a) of the Ontario *Environmental Protection Act* - Whether provincial legislation in respect of the protection and conservation of the environment applies to federal works and undertakings - Whether s. 13(1)(a) of the *Act* applies in respect of acts performed by an interprovincial railway to maintain its right-of-way - Whether a challenge to the constitutional validity of legislation on the ground that the legislation is so vague as to infringe the fundamental rights guaranteed by s. 7 of the *Charter* is to be determined only on facts specific to the case before the court - Whether s. 13(1)(a) of the *Act* is so vague as to infringe s. 7 of the *Charter*.

23748 Her Majesty the Queen - v. - Nathen Bernshaw (Crim.) (B.C.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Procedural law - Legislation - Interpretation - Evidence - Respondent convicted of having care and control of a motor vehicle while "over .08" - Whether the Court of Appeal erred by reading into s. 254(2) of the *Criminal Code* a requirement that a peace officer either ascertain when a subject consumed his last drink of alcohol or wait for a period of fifteen minutes before administering an approved screening device test - Whether the Court of Appeal erred in ruling that unless a peace officer either ascertains when a driver consumed his last drink of alcohol or waits at least fifteen minutes before administering an approved screening device test, then he cannot rely on a fail reading on the approved screening device test in making a breathalyser demand under s. 254(3) of the *Criminal Code* - Whether the Court of Appeal erred in ruling, contrary to the decision in *Rilling v. The Queen*, [1976] 2 S.C.R. 183, that the results of an analysis of breath samples performed with an approved breathalyser instrument are automatically inadmissible in evidence if

the Crown has not proved that the officer who made the demand for breath samples had reasonable and probable grounds as set out in s. 254(3) of the *Criminal Code*.

23711 Clifford Crawford - v. - Her Majesty the Queen (Crim.) (Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Pre-trial procedure - Applicant and co-accused convicted of second degree murder - Applicant cross-examined by counsel for the co-accused on his failure to give a statement to the police - Whether the Court of Appeal erred in holding that the cross-examination of the Applicant on his failure to give a statement to the police by counsel for the Applicant's co-accused and the failure of the trial judge to instruct the jury to disregard that cross-examination did not violate his pre-trial right to silence protected in s. 7 of the *Charter*.

23739 Mayfield Investments Ltd. operating as the Mayfield Inn - v. - Gillian Stewart, Keith Stewart and Stuart David Pettie - and between - Gillian Stewart and Keith Stewart - v. - Mayfield Investments Ltd. operating as the Mayfield Inn and Stuart David Pettie (Alta.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The applications for leave to appeal are granted.

Les demandes d'autorisation d'appel sont accordées.

NATURE OF THE CASE

Torts - Damages - Negligence - Standard of care - Extent of liability - Causation - Respondent Gillian Stewart injured in motor vehicle accident following party at dinner theatre operated by the Applicant and attended by the Respondents - Respondent Pettie driving while intoxicated - Action in damages against the Applicant allowed - Liability to the public for service of liquor - Policy considerations in relation to the duty of care - Increased risk as proof of causation.

23772 Her Majesty the Queen - v. - Harriet Renae Giesecke (Crim.) (Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Trial - Evidence - Respondent and co-accused tried together for murder of Respondent's husband - Intercepted communication between Respondent and co-accused's ex-girlfriend, who agreed to interception, admitted into evidence - Respondent convicted of first degree murder and co-accused acquitted - Whether the Court of Appeal erred in concluding that the closing address to the jury by defence counsel for the co-accused was such that it resulted in a "miscarriage of justice" and denied the Respondent a fair trial - Whether the Court of Appeal erred in concluding that the Applicant was prohibited from tendering the evidence of the consensually intercepted private communications even though the Court expressly refrained from determining the admissibility of that evidence under s. 24(2) of the *Charter*.

23815 *Lawrence Hibbert - v. - Her Majesty the Queen* (Crim.) (Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal Law - Offences - Defence - Jury trial - Duress - Whether the trial judge erred in instructing the jury that duress operated as a defence by negating the common intention required for party liability - Whether the trial judge erred in instructing the jury that duress was negated by the availability of a "a safe avenue of escape" - Whether the trial judge erred in failing to instruct the jury that the "fact" of a "safe avenue of escape" was to be determined by reference to the Applicant's actual state of mind.

23813 *Kwong Hung Chan - v. - The Minister of Employment and Immigration* (B.C.) (F.C.A.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Immigration - Statutes - Interpretation - Convention refugee status - Fear of persecution - "Particular social group" - Whether the Federal Court of Appeal's failure to follow established

precedent in *Cheung* (1993), 102 D.L.R. (4th) 214, has created conflicting diverting authorities defining the parameters of "particular social group".

23786 *Her Majesty the Queen - v. - Timothy Lawrence Houlahan* (Crim.) (Man.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Evidence - Co-accused counsel's submission to the jury - Charge to the jury - Whether the Court of Appeal erred in granting the Respondent a new trial based on the fact that the joint trial had resulted in a miscarriage of justice to the Respondent caused by the cumulative effect of counsel for the co-accused in his address to the jury commenting unfavourably on the Respondent's failure to testify and the trial judge's error in his charge in overstating the Crown's theory.

23843 *Her Majesty the Queen - v. - Bevin Bervmary McIntosh* (Crim.) (Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Statutes - Interpretation - Defence - Respondent charged with second degree murder but convicted of manslaughter - Whether the Court of Appeal erred in its interpretation of ss. 34(2) and 35 of the *Criminal Code* - Whether the Court of Appeal erred in concluding that one who provokes an assault or is an initial aggressor may avail himself of the defence set out in s. 34(2) of the *Criminal Code* - Whether the Court of Appeal erred in holding that the trial judge erred in advising the jury that s. 35 of the *Criminal Code* defines the nature and scope of the force which a person may use to defend himself after he has provoked an assault on himself and the steps which he must take before the force used in response can be justified - Whether the Court of Appeal erred in not applying s. 686(1)(b)(iii).

23856 *Enoch Bempong - v. - Her Majesty the Queen* (Crim.) (Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Narcotics - Trial - Evidence - Applicant tried on an indictment charging him with the offences of conspiracy to import heroin and conspiracy to traffic in heroin - Applicant convicted of conspiracy to import heroin and verdict of acquittal directed on the charge of conspiracy to traffic in heroin - Whether the Court of Appeal erred in determining that the Applicant was not prejudiced by the fact that he was cross-examined by Crown counsel in relation to the charge of conspiracy to traffic, despite the subsequent directed verdict of acquittal in relation to that charge, and the lack of any cautionary instructions to the jury, directing them to disregard that evidence and/or to presume the Applicant to be innocent of those allegations - Whether the inference which the jury was asked to draw from the circumstances surrounding the delivery of the woman and the property to Agent Bell, was in law an invitation to the jury to engage in unlawful speculation - *Grdic v. The Queen*, [1985] 1 S.C.R. 810.

23878 D.M.S. - 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

Criminal law - Young offenders - First degree murder - Transfer to ordinary court - Application of s. 16 of the *Young Offenders Act*, R.S.C. 1985, c. Y-1 - Whether the Alberta Court of Appeal erred in imposing upon the Young Person the onus of establishing that he was unlikely to be involved in future acts of dangerousness - Whether the Court of Appeal erred in ignoring the findings of fact made by the Youth Court Judge that transfer of the Young Person was not necessary in the interests of protection of the public or rehabilitation of the Young Person - Whether the Court of Appeal ignored or misapprehended the evidence of the psychologist, and ignored the evidence of the psychiatrist whose report the Court requested prior to hearing the appeal - Whether the Court of Appeal erred in considering general deterrence as a relevant criterion in the balancing process required by s. 16(1.1) of the *Young Offenders Act*.

23796 C.A.S. - v. - J.F.T. and F.M.T. (B.C.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Family law - Adoption - Infants - Applicant consenting to private adoption of her child pursuant to *Child Welfare Act*, S.A. 1984, c. C-8.1 - Applicant seeking to revoke her consent without conforming to the *Child Welfare Act's* requirement of written notice within ten days -Whether Applicant's consent to adoption pursuant to the requirements of the *Child Welfare Act* was valid - Whether consent was revoked by oral notice - Whether the trial judge could vitiate the consent on the basis of equitable principles - Whether the Court of Appeal erred in finding that the best interest of the child was not to revoke the consent.

23715 *Anne Marie Mumford, an infant who sues by her mother and next friend Frances Mumford, and Frances Mumford v. Health Sciences Centre and Dr. Charles Ferguson - and - The St. Boniface General Hospital, Dr. David Grewar and Dr. Leonard Greenberg - and - Dr. Maurice C. Crocker and Dr. William Tweed - and - The St. Boniface General Hospital, Dr. Paraskevopoulos and Dr. L. Khan - and - Dr. Chubaty* (Man.)

CORAM: La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Torts - Negligence - Physicians and surgeons - Interpretation - Standard of care - Whether the Respondents were negligent in not diagnosing the child's illness which resulted in her undergoing two operations or, if they diagnosed the child properly, whether they were negligent in taking so long in doing so - Child permanently disabled following cardiac arrest during the second operation - Whether the Manitoba Court of Appeal erred in interpreting and applying the principle of law of causation as pertaining to medical malpractice cases, which principles were enunciated by this Court in the decision of *Farrell v. Snell*, [1990] 2 S.C.R. 311.

23696 *Seafarers' International Union of Canada v. Canada Labour Relations Board and Rowan Canada Ltd. and Attorney General of Nova Scotia* (F.C.A.)

CORAM: La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Constitutional law - Division of powers - Labour law - Certification - Statutes - Interpretation - Applicant applying for certification as bargaining agent for employees of offshore drilling platform located in offshore area as defined in the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* - Respondent company opposing application on the ground that Respondent Board has no jurisdiction because the *Trade Union Act* and not the *Canada Labour Code* is applicable pursuant to s. 157 of the *Implementation Act* - Applicant claiming that s. 157 of the *Implementation Act* is invalid - Whether the Federal Court of Appeal erred in concluding that s. 157 of the *Implementation Act* was a constitutional delegation of legislative authority - Whether the Federal Court of Appeal erred in applying *Furtney v. Her Majesty the Queen*, [1991] 3 S.C.R. 54 - Whether the Federal Court of Appeal erred in stating that s. 157(5) of the *Implementation Act* was severable from the rest of s. 157.

23734 *Eric Ralph Biddle v. Her Majesty the Queen* (Crim.) (Ont.)

CORAM: La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Pre-trial procedure - Jury selection - Selection of all-female jury - Operative jury selection provisions of the *Criminal Code* predating *R. v. Bain*, [1992] 1 S.C.R. 91 - Whether the Court of Appeal erred in holding that the use by the Crown of its stand-aside power to tailor the jury did not constitute an abuse of the jury selection process or create a reasonable apprehension of partiality - Interpretation of *R. v. Bain*.

23717 *Shaw Cable Systems (B.C.) Ltd. and Canadian Radio-Television and Telecommunications Commission v. British Columbia Telephone Co. and Telecommunications Workers' Union* (F.C.A.)

CORAM: La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is granted. The Canadian Radio-television and Telecommunications Commission is limited to a defence of its jurisdiction and clarification of the record.

La demande d'autorisation d'appel est accordée. Le Conseil de la radiodiffusion et des télécommunications canadiennes est limité à une défense de sa compétence et à une clarification du dossier.

NATURE OF THE CASE

Labour law - Labour relations - Collective agreement - Judicial review - Applicant CRTC requiring the Respondent Company to comply with its obligations to permit the Applicant Shaw and any other cable licensees to instal their own cable on the Respondent Company support structures -

Whether the Court of Appeal erred in concluding that the CRTC does not have the power to make an order to avoid the conferring of an undue preference by a telephone company if compliance with that order would require the company to violate its collective agreement - Whether the Court of Appeal erred in concluding that the jurisdiction of the CRTC pursuant to the *Railway Act* and the *National Telecommunications Powers and Procedures Act* is limited by the provisions of a collective agreement - Whether the Court of Appeal erred in finding that there were conflicting tribunal decisions that produced a patently unreasonable result - Whether the Court of Appeal erred in applying the test for determining the standard of judicial review pursuant to *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048 - Whether the powers of regulatory bodies and their ability to fulfil their statutory mandate can be restricted by private agreement.

23740 *Her Majesty the Queen in Right of the Province of New Brunswick, as represented by the Minister of Finance v. Coopers & Lybrand Ltd.* (N.B.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Statutes - Interpretation - Bankruptcy - Receivership - Respondent appointed interim receiver - Applicant bringing action for amount of provincial sales tax during the period of interim receivership - Whether the Court of Appeal erred in concluding that the provisions of the *Bankruptcy Act*, absolve an interim receiver from collecting or remitting provincial sales tax - Does the *Bankruptcy Act* allow for the distribution of the taxes collected to creditors of the bankrupt in preference to the province and without recourse by the Province against the receiver? - Did the Respondent act properly and within its mandate when it failed to ensure that trust money, in the form of sales tax, was segregated, accounted for and remitted to the Applicant? - Was the Respondent a "receiver" pursuant to s. 15.01(1) of the *Social Services and Education Tax Act*, R.S.N.B. 1973, c. S-10? - Was the Respondent a "vendor" for the purposes of the *Social Services and Education Tax Act*? - Did the Respondent breach the provisions of the *Social Services and Education Tax Act* and ss. 5, 7 and 26 of the *Revenue Administration Act*, S.N.B. 1983, c. R-10.22? - Did the Respondent have a duty as an officer appointed by the Court pursuant to the *Bankruptcy Act*.

23778 *Telecommunications Workers Union v. Canadian Radio-Television and Telecommunications Commission, Shaw Cable Systems (B.C.) Ltd. and British Columbia Telephone Co.* (F.C.A.)

CORAM: La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Labour law - Labour relations - Collective agreement - Judicial review - Respondent CRTC requiring the Respondent Company to comply with its obligations to permit the Respondent Shaw and any other cable licensees to instal their own cable on the Respondent Company support structures - Whether the Court of Appeal erred in concluding that the CRTC does not have the power to make an order to avoid the conferring of an undue preference by a telephone company if compliance with that order would require the company to violate its collective agreement - Whether the Court of Appeal erred in concluding that the jurisdiction of the CRTC pursuant to the *Railway Act* and the *National Telecommunications Powers and Procedures Act* is limited by the provisions of a collective agreement - Whether the Court of Appeal erred in finding that there were conflicting tribunal decisions that produced a patently unreasonable result - Whether the Court of Appeal erred in applying the test for determining the standard of judicial review pursuant to *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048 - Whether the powers of regulatory bodies and their ability to fulfil their statutory mandate can be restricted by private agreement - Whether the Court of Appeal erred in failing to declare that the Applicant was entitled to notice of the hearings before the CRTC concerning the "Support Structure Agreement" involving the Company and Shaw.

23783 *Timothy William MacKinlay, Bradford MacKinlay, Ghlee MacKinlay and Carrie MacKinlay v. Lulu Ellen MacKinlay* (N.S.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is dismissed with costs on a solicitor-client basis to be paid out of the estate.

La demande d'autorisation d'appel est rejetée avec dépens comme entre procureur et client à prélever sur la succession.

NATURE OF THE CASE

Property law - Wills - Whether a codicil executed by the testator revived his will which was revoked by his marriage - Sections 19 and 21 of the *Wills Act*, R.S.N.S. 1989, c. 505.

23784 *Manson Insulation Inc. and Crossroads Industries & Distributors Inc. v. Wallace Construction Specialties Ltd.* (Sask.)

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 - Torts - Contracts - Damages - Assessment - Tort of conspiracy - Whether the Court of Appeal erred in concluding that a simple breach of contract is actionable against the contractbreaker in conspiracy - Whether the Court failed to conclude that the agreement to breach the contract merged with the actual breach of contract, with the result that the appropriate damages for breach of contract were arbitrarily inflated - Whether the Court erred in permitting the general award and punitive award of damages for conspiracy to stand when the jury had already assessed a lesser amount for breach of contract - Whether the decision of the Court of Appeal distorts the distinction between contract and tort and the distinction between an action for breach of contract and an action for inducing breach of contract.

23773 Kobe Ter Neuzen v. Dr. Gerald Korn (B.C.)

CORAM: La Forest, Sopinka and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Torts - Negligence - Contracts - Damages - Physicians and surgeons - Sale - Applicant infected with HIV virus as a result of artificial insemination procedure performed by the Respondent - When are the general standards of liability for negligence applicable in a medical negligence case where it is alleged that, even if there is a common medical practice, the practice itself does not reflect the general standard of prudent and diligent conduct? - When can a jury find an approved practice negligent? - What is the standard of care expected of a medical practitioner who is practising in two overlapping and developing areas of medicine. Whether the Court of Appeal erred in overturning the verdict of a jury and finding there was no evidence to support the jury's finding of fact and ordering a new trial - When does the upper limit of non-pecuniary damages not apply in a personal injury action? - Is a doctor who supplies goods which injure a patient liable pursuant to common law contract principles or sale of goods legislation?

23650 Audrey Hill v. The Registrar, South Alberta Land Registration District (Alta.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier 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 - Statutes - Interpretation - Limitation of actions - Applicant claiming compensation from the Land Titles Assurance Fund following deprivation of land by the registration of another

person as owner of the land - When is a person deprived of an estate or interest in land entitled to compensation from the Fund - When does the six year limitation period start to run for a person seeking compensation from the Fund - Whether the discoverability rule as set out in *Central Trust v. Rafuse*, [1986] 2 S.C.R. 147, applies to the provisions of the *Land Titles Act*, R.S.A. 1980, c. LR-5, providing for compensation under the Land Titles Assurance Fund.

23345 *Le Procureur général du Québec, Régie des télécommunications du Québec et André Dufour et Jean-Marc Demers c. Téléphone Guèvremont Inc.* (Qué.)

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

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

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

NATURE DE LA CAUSE

Droit constitutionnel - Droit administratif - Partage des pouvoirs - Compétence - Interprétation - Jugement déclaratoire portant que la Régie n'a pas compétence sur l'intimée - L'entreprise de l'intimée constitue-t-elle une entreprise fédérale aux fins des articles 92(10)a) et 91(29) de la *Loi constitutionnelle de 1867*? - Demande d'autorisation d'appel incident pour que, dans l'éventualité où l'appel des appelants serait accueilli, le présent dossier soit retourné à la Cour supérieure du district de Québec afin qu'il soit statué sur les autres moyens de droit administratif que soulevait l'intimée dans sa procédure originale et qui n'ont pas fait l'objet d'une adjudication par les tribunaux d'instance inférieure.

23850/51 *Dans l'affaire de la liquidation de Les Coopérants, société mutuelle d'assurance-vie/Cooperants, Mutual Life Insurance Society et Firstcliff Development Inc. et als - ET - Raymond, Chabot, Fafard, Gagnon Inc., et Jean-Marie Bouchard, en sa qualité d'Inspecteur général des institutions financières du Québec, et als et Régie des rentes du Québec et Société canadienne d'indemnisation pour les assurances de personnes - ET ENTRE - Dans l'affaire de la liquidation de Les Coopérants, société mutuelle d'assurance-vie/Cooperants, Mutual Life Insurance Society et Firstcliff Development Inc. et als - ET - Raymond, Chabot, Fafard, Gagnon Inc., et Société canadienne d'indemnisation pour les assurances de personnes et als* (Qué.)

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

Les demandes d'autorisation d'appel sont rejetées avec dépens.

The applications for leave to appeal are dismissed with costs.

NATURE DE LA CAUSE

Droit commercial - Droit des compagnies - Assurance - Liquidation - Créancier et débiteur - Créance prioritaire - Contrats de gestion de dépôts - Nature - Interprétation - Est-ce que certains contrats de gestion de dépôts des régimes enregistrés de retraite sont des polices visées par la priorité de l'article 161 (1) de la *Loi sur les liquidations*, L.R.C. 1985, c. W-11.

MOTIONS

REQUÊTES

28.1.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the case on appeal and the appellant's factum **Requête en prorogation du délai de signification et de production du dossier d'appel et du mémoire de l'appelant**

Alexander Krasniuk

v. (23808)

Her Majesty The Queen (Man.)

GRANTED / ACCORDÉE

28.1.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the respondents' factum **Requête en prorogation du délai de signification et de production du mémoire des intimés**

Edda Emilie Zeitel et al.

v. (22792)

Susan Diane Ellscheid et al. (Ont.)

GRANTED / ACCORDÉE Time extended to January 28, 1994 *nunc pro tunc*.

28.1.1994

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**

The Manufacturers Life Insurance Co.

v. (23901)

Marystown Shipyard Ltd. (Nfld.)

GRANTED / ACCORDÉE Time extended to January 31, 1994.

28.1.1994

Before / Devant: L'HEUREUX-DUBÉ J.

Motion to file certain additional evidence and Requête de production de certains éléments de materials relating to the Constitutional preuves et de documents supplémentaires questions relatifs aux questions constitutionnelles

Bruce Douglas Branch et al.

v. (22978)

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

GRANTED / ACCORDÉE

31.1.1994

Before / Devant: CORY J.

Motion on behalf of the appellant for an order: Requête au nom de l'appellant en vue d'obtenir 1. excluding affidavits and exhibits filed by une ordonnance: 1. excluant les affidavits et intervenir; 2. granting leave to file a reply pièces produits par l'intervenant; 2. en factum. autorisation de produire un mémoire en réplique.

Motion on behalf of the intervener for an order:

1. affirming affidavits and exhibits; 2. to file ten Requête au nom de l'intervenant en vue copies of affidavits and exhibits; 3. for d'obtenir une ordonnance: 1. confirmant les acceptance of memorandum of argument on affidavits et pièces produits; 2. de produire 10 leave to appeal over 20 pages; 4. for additional copies des affidavits et pièces; 3. en acceptation time to present oral argument d'un mémoire de demande d'autorisation de plus de 20 pages; 4. en prorogation du temps accordé pour la plaidoirie

William B. Henderson and Alan Pratt, for the appellant.

George Henry Howard

v. (22999)

Tim McCabe, for the respondent Her Majesty The Queen.

Her Majesty The Queen et al. (Ont.)

John Edmond, for the intervener A.G. of Canada.

Timothy Danson, for the intervener O.F.A.H.

Thomas Berger, Q.C., for the intervener United Indian Councils.

The following was ordered:

1. O.F.A.H. BE PERMITTED TO FILE a fresh evidence brief, namely the affidavits of J. Edward Hanna sworn October 4, 1993, along with exhibits 1, 17, 56 and 67, the supplementary affidavit of J. Edward Hanna sworn December 14, 1993, with exhibit A and the affidavit of Dale G. Miner sworn January 17, 1994, along with exhibits 1 to 6. The evidence of J. Edward Hanna is not to be considered as relevant to the issue of a new trial for the Appellant, that relief, not having been requested by either party;
2. O.F.A.H. BE PERMITTED TO FILE, as part of its fresh evidence brief, the affidavit of Robert J. Surtees sworn December 9, 1993, along with exhibits 1, 2 and 4, subject to counsel agreeing to the deletion, in the affidavit and exhibit 2 thereof, of expressions of material opinion which can reasonably be excised;
3. O.F.A.H. is GRANTED leave to file a 24 page factum by February 10, 1994, and to make a 15-minute oral argument at the hearing of the appeal;
4. the appellant is GRANTED leave to file a reply factum by February 17, 1994;
5. the Attorney General of Canada is GRANTED leave to intervene and to file a factum by February 10, 1994, and to make a 20-minute oral argument at the hearing of the appeal;
6. Costs of the motion are reserved to the panel hearing the appeal.

1.2.1994

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to state a constitutional question

Requête pour énoncer une question constitutionnelle

Stanley Gordon Johnson

v. (23593)

Her Majesty The Queen (N.S.)

GRANTED / ACCORDÉE

1. If the *Tobacco Tax Act*, R.S.N.S. 1989, c. 470, or 1. S'ils exigent que, lorsqu'agit à titre de détaillant, the *Tobacco Marking Regulations*, N.S. Reg. 51/91 un Indien inscrit ne vende, achète ou possède sur or administrative practice thereunder require that a une réserve indienne que le tabac qu'il a obtenu registered Indian, when acting as a retail vendor, directement ou par l'entremise d'un grossiste sell, purchase or possess on an Indian reserve only détenant un permis provincial, et qu'il ait un

tobacco obtained from or through a wholesaler contingent provincial ou paie à l'avance au holding a provincial wholesaler's permit, and that grossiste la taxe sur le tabac ou un montant he or she either possess a provincial quota or pay in équivalent, la *Tobacco Tax Act*, R.S.N.S. 1989, advance to the wholesaler the tobacco tax, or an ch. 470, ou le *Tobacco Marking Regulations*, N.S. equivalent amount, then are those enactments or Reg. 51/91 ou une pratique administrative adoptée practices constitutionally invalid, inapplicable ou en vertu de ces textes sont-ils inconstitutionnels, inoperative as being inapplicables ou inopérants du fait:

(a) indirect taxation; or

a) soit qu'ils constituent une imposition indirecte;

(b) inconsistent with s. 87 of the *Indian Act*, R.S.C., 1985, c. I-5; or

b) soit qu'ils sont incompatibles avec l'art. 87 de la *Loi sur les Indiens*, L.R.C. (1985), ch. I-5;

(c) inconsistent with the *Mi'kmaq Treaty of 1752*, particularly Clause 4, which provides that Mi'kmaq "shall have free liberty to bring for Sale ... [any]thing they shall have to sell" and "liberty to dispose thereof to the best advantage"?

c) ou qu'ils sont incompatibles avec le *Traité avec les Micmacs de 1752*, plus particulièrement avec sa clause 4 qui prévoit que les Micmacs [traduction] «ont la liberté de vendre [. . .] tout ce qu'ils ont à vendre» et la «liberté d'en disposer à leur avantage»?

1.2.1994

Before / Devant: SOPINKA J.

Motion to extend the time in which to serve and file a notice of appeal **Requête en prorogation du délai de signification et de production de l'avis d'appel**

Her Majesty The Queen

v. (23876)

Darryl Gordon Park (Alta.)

GRANTED / ACCORDÉE Time extended to February 11, 1994.

4.2.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file an intervener's factum **Requête en prorogation du délai de signification et de production du mémoire d'un intervenant**

forme actuelle

Her Majesty The Queen

v. (23253)

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

GRANTED / ACCORDÉE

4.2.1994

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and Requête en prorogation du délai de
file a response signification et de production d'une réponse**

Barrys Limited

v. (23877)

Fisherman, Food and Allied Workers' Union et al.
(Nfld.)

GRANTED / ACCORDÉE

4.2.1994

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to adduce further evidence

**Requête pour produire d'autres éléments de
preuve**

Her Majesty The Queen

No one opposing the motion.

v. (23217)

Henry Johnson et al. (Ont.)

GRANTED / ACCORDÉE and the appeal is adjourned to allow parties additional time to respond.

8.2.1994

Before / Devant: THE 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**

Robert James S.

v. (23581)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE Time extended to February 3, 1994.

8.2.1994

Before / Devant: THE REGISTRAR

Motion to file a factum in its present form **Requête en production du mémoire dans sa forme actuelle**

Her Majesty The Queen in right of Canada et al.

v. (23361)

Reza (Ont.)

GRANTED / ACCORDÉE

8.2.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file a respondent's factum **Requête en prorogation du délai de signification et de production du mémoire d'un intimé**

Rejean Gagnon

v. (23445)

Tina Lucas et al. (Ont.)

GRANTED / ACCORDÉE Time extended to February 8, 1994.

**NOTICES OF APPEAL FILED SINCE AVIS D'APPEL PRODUITS DEPUIS
LAST ISSUE LA DERNIÈRE PARUTION**

27.1.1994

Her Majesty The Queen

v. (23978)

William John Dubazs (Alta.)

AS OF RIGHT

27.1.1994

Donald Lawrence Trotchie

v. (23987)

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

AS OF RIGHT

31.1.1994

Her Majesty The Queen

v. (23988)

John Michael Ferris (Alta.)

AS OF RIGHT

**APPEALS HEARD SINCE LAST APPELS ENTENDUS DEPUIS LA
ISSUE AND DISPOSITION DERNIÈRE PARUTION ET
RÉSULTAT**

2.2.1994

CORAM: The Chief Justice Lamer and L'Heureux-Dubé, Sopinka, McLachlin and Major JJ.

Alexander Lee Dickson

Marcel La Flamme, for the appellant.

v. (23580)

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

Judith Bowers, Q.C. and Robert Frater, for the respondent.

THE CHIEF JUSTICE (orally) -- This is an appeal LE JUGE EN CHEF (oralement) -- Le présent as of right. We are all of the view that the trial pourvoi est formé de plein droit. Nous sommes judge erred in the admission or the use of the tous d'avis que le juge du procès a commis une evidence of the previous sexual relationship erreur en admettant ou en utilisant la preuve des between the complainant and the appellant and that, rapports sexuels antérieurs entre la plaignante et under the circumstances of this case, the order by l'appelant, et que, dans les circonstances de la the Court of Appeal for a new trial was properly présente affaire, c'est à bon droit que la Cour made. d'appel a rendu une ordonnance de nouveau procès.

Accordingly the appeal is dismissed.

En conséquence le pourvoi est rejeté.

4.2.1994

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

Henri Daviault

Giuseppe Battista, pour l'appelant.

c. (23435)

Sa Majesté La Reine (Crim.)(Qué.)

Claude Provost, pour l'intimée.

EN DÉLIBÉRÉ / RESERVED

Nature de la cause:

Nature of the case:

Droit criminel - *Charte canadienne des droits et libertés* - Preuve - Défense - Intention - Intoxication *Freedoms* - Evidence - Defence - Intent - Extreme extrême - Agression sexuelle - Recevabilité - intoxication - Sexual assault - Admissibility - Infraction d'intention générale - Règle du précédent General intent offence - Rule of precedent - Est-ce que la preuve d'une intoxication extrême Whether proof of extreme intoxication, causing provoquant l'absence de l'intention minimale absence of minimum intent required for general requisite pour une infraction d'intention générale est intent offence, admissible in Canadian criminal recevable en droit criminel canadien? law.

4.2.1994

CORAM: Le juge en chef Lamer et les juges La Forest, Sopinka, Iacobucci et Major

Viateur Richardson

Ronald Godin, pour l'appelant.

c. (23413)

Sa Majesté La Reine (Crim.)(N.-B.)

Graham J. Sleeth, c.r., pour l'intimée.

LE JUGE EN CHEF (oralement) -- Nous sommes THE CHIEF JUSTICE (orally) -- We are all of
tous d'avis que, pour l'essentiel, les directives du the view that the judge's charge to the jury,
juge au jury, quoique susceptibles de critiques, ont although open to criticism, essentially succeeded
réussi à faire comprendre à ceux-ci les lois in making clear to them the applicable law, the
applicables, les faits pertinents, la théorie de la relevant facts, and the theory of the Crown and of
Couronne et de la défense de façon à nous the defence so that we can conclude that the
permettre de conclure que l'accusé a eu un procès accused had a fair and equitable trial. The judge
juste et équitable. C'est à tort que le juge a traité de erred in treating s. 231(3) as though it were an
l'article 231(3) comme s'il s'agissait d'une infraction independent offence. In view of the particular
autonome. Cependant, eu égard aux circonstances circumstances of the case, however, this error is
propres à l'espèce cette erreur est sans conséquence of no consequence and could not have had any
aucune et ne pouvait avoir aucun impact sur les impact on the jury's deliberations.
délibérations des jurés.

Ce pourvoi de plein droit est donc rejeté.

This appeal as of right is accordingly dismissed.

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

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AGENDA for the week beginning February 14, 1994.

ORDRE DU JOUR pour la semaine commençant le 14 février 1994.

Date of Hearing/ Case Number and Name/
Date d'audition NO. 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.

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

DEVANT LA COUR:

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:

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:

Motion day : March 7, 1994

Audience du : 7 mars 1994

Service : February 14, 1994
Filing : February 21, 1994
Respondent : February 28, 1994

Signification : 14 février 1994
Dépôt : 21 février 1994
Intimé : 28 février 1994

Motion day : May 2, 1994

Audience du : 2 mai 1994

Service : April 11, 1994
Filing : April 18, 1994
Respondent : April 25, 1994

Signification : 11 avril 1994
Dépôt : 18 avril 1994
Intimé : 25 avril 1994

Motion day : June 6, 1994

Audience du : 6 juin 1994

Service : May 16, 1994
Filing : May 23, 1994
Respondent : May 30, 1994

Signification : 16 mai 1994
Dépôt : 23 mai 1994
Intimé : 30 mai 1994

DEADLINES: APPEALS

DÉLAIS: APPELS

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

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

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:

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

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

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

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

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

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

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

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

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

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

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

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

- 1 -

- 3 -

- 5 -

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- 9 -

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- 13 -

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