SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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M.C.G.
Jason Miller
Brodsky & Company

v. (29014)

Her Majesty the Queen (Man.)
Heather Leonoff
A.G. of Manitoba

FILING DATE 15.1.2002

Robert Leblanc
Martin Vauclair

c. (29013)

Sa Majesté la Reine (Qué.)
Pierre Sauvé
P.G. du Québec

DATE DE PRODUCTION 4.1.2002

Her Majesty the Queen
Jamie C. Klukach
A.G. for Ontario

v. (29015)

Peter Fraser (Ont.)
David Tanovich
Pinkofsky Lockyer

FILING DATE 4.1.2002

Richard Carter, et al.
Shelley A. Senior
King & Senior

v. (29012)

The Town Council of the Town of Pasadena, et al. (Nfld.)
Margaret Hepditch
Poole, Althouse, Thompson & Thomas

FILING DATE 7.1.2002

Steven Potter, et autre
Guy Bertrand
Guy Bertrand & Associés

c. (29016)

Le Procureur général du Québec, et autre (Qué.)
Jean-Yves Bernard
Bernard Roy & Associés

DATE DE PRODUCTION 11.1.2002

Chateau Lafleur Development Corporation, et al.
Joel E. Fichaud, Q.C.
Patterson Palmer

v. (29020)

Maritime Telegraph and Telephone Company, et al. (N.S.)
Michael Dunphy, Q.C.
Cox Hanson O'Reilly

FILING DATE 11.1.2002

Andrew Scott Hayden
David W. Scott, Q.C.
Borden Ladner Gervais

v. (29018)

Her Majesty the Queen, et al. (F.C.)
Anne-Marie Lévesque
A.G. of Canada

FILING DATE 14.1.2002

N21 301 931 Captain C. Langlois
Lieutenant-Colonel D. Couture
National Defence Headquarters

v. (29021)

Her Majesty the Queen (C.M.A.)
Lieutenant-Colonel Benoit Pinsonneault
Office of the Judge Advocate General

FILING DATE 14.1.2002

Kevin H. Grotheim
Richard W. Danyliuk
McDougall Gauley

v. (29009)

Her Majesty the Queen (Sask.)
Dean Sinclair
A.G. for Saskatchewan

FILING DATE 15.1.2002

Yvon Descôteaux
Yvon Descôteaux

c. (29008)

Barreau du Québec (Qué.)
Patrick de Niverville
Boisvert, de Niverville, Carignan

DATE DE PRODUCTION 16.1.2002

Emilia M. Collins
Emilia M. Collins

v. (29022)

Director of Assessment, et al. (N.S.)
Randall R. Duplak, Q.C.
A.G. of Nova Scotia

FILING DATE 16.1.2002

FWS Joint Sports Claimants Inc.
Gregory A. Piasetzki
Piasetzki & Nenniger

v. (28993)

Border Broadcasters Inc., et al. (F.C.)
Randall J. Hofley
Stikeman Elliott

FILING DATE 18.1.2002

Profac Facilities Management Services Inc.
Joel Richler
Blake, Cassels & Graydon

v. (29010)

FM One Alliance Corporation, et al. (F.C.)
Milos Barutciski
Davies Ward Phillips & Vineberg

FILING DATE 21.1.2002

George Sutherland
Irwin Koziebrocki, Esq.

v. (29028)

Her Majesty the Queen (Ont.)
Trevor Shaw
A.G. for Ontario

FILING DATE 15.1.2002

Integral Energy & Environmental Engineering Limited
Alan J. McConnell
Burstall Winger

v. (29026)

Stukwerkers Havenbedrijf n.v. (Alta.)
Donald J. Chernichen, Q.C.
Burnet Duckworth & Palmer

FILING DATE 17.1.2002

University Health Network (formerly Toronto General Hospital, Toronto Western Hospital and Ontario Cancer Institute, c.o.b. as Princess Margaret Hospital)
Bernie McGarva
Aird & Berlis

v. (29027)

Her Majesty the Queen in Right of Ontario (by her representative, the Minister of Finance) (Ont.)
Lynn Tosolini
Ministry of Finance

FILING DATE 18.1.2002

JANUARY 28, 2002 / LE 28 JANVIER 2002

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

Jean-Guy Pelland

c. (28785)

Sa Majesté la Reine (Crim.)(Ont.)

NATURE DE LA CAUSE

Droit criminel — Vol qualifié — Utilisation d'une arme à feu — Détermination de la peine — Appel de la sentence — Délai d'appel — Requête en prorogation de délai pour interjeter appel auprès d'une cour d'appel — *Code criminel*, L.R.C., ch. C-46, par. 678(2) — La Cour d'appel a-t-elle erré en droit dans son application et l'interprétation des critères établissant l'atteinte aux droits et libertés qu'accorde la *Charte canadienne des droits et libertés*? — La Cour d'appel a-t-elle erré en droit et en fait en concluant que le demandeur ne pouvait pas fournir d'explications adéquates pour justifier le délai pour interjeter l'appel de sentence du juge de première instance?

HISTORIQUE PROCÉDURAL

Le 13 avril 1992 Cour de justice de l'Ontario (Division provinciale) (Stone j.c.j.o.)	Demandeur condamné à 18 ans d'emprisonnement après avoir plaidé coupable à trois chefs de vol qualifié et deux chefs d'utilisation d'une arme à feu
Le 4 juillet 2001 Cour d'appel de l'Ontario (Labrosse, Charron et Sharpe jj.c.a.)	Demande de prorogation du délai pour interjeter appel de sa sentence rejetée
Le 20 septembre 2001 Cour suprême du Canada	Demande d'autorisation d'appel déposée
Le 15 novembre 2001 Cour suprême du Canada	Requête en prorogation de délai pour signifier une demande d'autorisation d'appel déposée

Daniel Asante-Mensah

v. (28867)

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

NATURE OF THE CASE

Canadian Charter - Criminal - Criminal Law - Trespass - Accused offering taxi services on airport property without permit - Airport authority issues Notice under *Trespass to Property Act* prohibiting accused from attending at airport for any purpose - Accused ignores Notice and continues activities - Airport Inspectors attempt arrest - Accused leaves after attempted arrests - Accused convicted at trial of escaping lawful custody and on appeal for assault while resisting arrest - Whether prohibiting attendances at airport for any purpose engages s. 7 of the *Charter* - Whether Notice violates right to life, liberty and security of the person in a manner not consistent with principles of fundamental justice.

PROCEDURAL HISTORY

May 8,1996 Ontario Court (General Division) (Hill J.)	Conviction on two counts of escaping lawful custody; Acquittals on assault while resisting arrest, assault with a weapon, dangerous driving and one count of escaping lawful custody
October 1, 2001 Court of Appeal for Ontario (Goudge, MacPherson and Sharpe JJ.A.)	Appeal from convictions dismissed; Appeal from acquittals allowed in part and conviction entered for assault while resisting arrest
October 30, 2001 Supreme Court of Canada	Notice of Appeal as of Right filed
December 6, 2001 Supreme Court of Canada	Application for leave to appeal filed

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**The Crown in Right of Alberta and Jim Dixon,
Public Service Commissioner of Alberta**

v. (28834)

Audrey Allen, William Bentley, Faye Chorney, B.C. Desai, Po Y. Fok, Cynthia Formaniuk, Larry Fraser, Cecile Gartner, George Gordon, Joseph Huba, Allen Jones, James Kocyba, Sai-Bon Lee, Patrick Malcolmson, Donald Maltais, Harold Matheson, Robert Osokin, Christine Ostanoski, George Parsons, Beverly Peterson, Satwant Rakhra, Alfred Richards, Robert Roseberg, Fernando Raul Sherpenisse, Duane Sears, Volesh Shaikh, Normin Simpson, Robin Sundstrum, Christine Vaillancourt, Donna Vanderbrink, Daniel Warkentin, Edward Waud and Nyuk-Ken Wong (Alta.)

NATURE OF THE CASE

Procedural law - Labour law - Courts - Jurisdiction - Motion to strike out originating notice of motion for want of jurisdiction on part of court - Collective agreement and subsequent letter of intent - Letter of intent by union and employer settling dispute - Letter of intent providing that parties "address" differences and providing that it not part of collective agreement - Whether exclusive model jurisdiction of *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, applicable - Whether settlement of a grievance claim generates a right to sue - Whether letter of intent providing for settlement mechanism.

PROCEDURAL HISTORY

May 5, 1999 Court of Queen's Bench of Alberta (Gallant J.)	Applicant's motion to strike out Respondent's action, granted; Respondent's action for severance pay, stayed
June 29, 2001 Court of Appeal of Alberta (Côté [*dissenting*], Berger and Wittmann JJ.A.)	Appeal allowed; motion to strike out action, dismissed
September 27, 2001 Supreme Court of Canada	Application for leave to appeal filed

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

Ernest Caron

v. (28783)

Her Majesty The Queen (F.C.)

NATURE OF THE CASE

Canadian Charter - Civil - Civil Rights - Prisons - Whether Court of Appeal erred in not considering *Charter*; Whether Court of Appeal erred in not considering procedural irregularities by respondent and intervention of trial judge.

PROCEDURAL HISTORY

July 15, 1999 Federal Court of Canada (Trial Division) (Nadon J.)	Action for illegal detention dismissed
May 30, 2001 Federal Court of Appeal (Desjardins, Létourneau and Noël JJ.A.)	Appeal dismissed
September 6, 2001 Supreme Court of Canada	Applications for extension of time to apply for leave to appeal and for leave to appeal filed

Saskatoon Board of Police Commissioners and Chief Dave Scott

v. (28847)

Saskatoon City Police Association and Saskatchewan Labour Relations Board (Sask.)

NATURE OF THE CASE

Statutes - Interpretation - Administrative Law - Jurisdiction - Labour Relations Board finds unfair labour practice based on refusal to arbitrate whether a grievance is arbitrable - Whether persons occupying special positions in society and bound by a statutory code of conduct that exists to protect the public have dishonesty going to the root of their job function dealt with by a statutory discipline process or as a labour relations grievance - Impact court decisions on points of law should have on questions before administrative tribunals.

PROCEDURAL HISTORY

May 11, 2000 Saskatchewan Labour Relations Board (Gray, chairperson and Hodgson and Ottenson, members)	Applicant Board ordered to arbitration
October 31, 2000 Court of Queen's Bench of Saskatchewan (Laing J.)	Application to set aside decision dismissed
July 9, 2001 Court of Appeal for Saskatchewan (Bayda, Vancise and Sherstobitoff JJ.A.)	Appeal dismissed
October 1, 2001 Supreme Court of Canada	Application for leave to appeal filed

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Yvon Descoteaux

c. (28786)

Barreau du Québec (Qué.)

NATURE DE LA CAUSE

Procédure - Appel - La Cour d'appel a-t-elle erré en ne suspendant pas les procédures dans le cas où une décision attendue de la Cour suprême du Canada pourrait avoir une incidence sur le litige devant elle? - La Cour d'appel a-t-elle erré en n'acceptant pas la remise de l'audition du 20 juin 2001? - La Cour d'appel a-t-elle erré en rejetant la demande pour permission d'en appeler?

HISTORIQUE PROCÉDURAL

Le 31 mai 1999 Cour du Québec (Falardeau j.c.q.)	Demandeur déclaré coupable des infractions prévues au par. 133(c) de la *Loi sur le Barreau* et à l'article 188 du *Code des professions*
Le 3 février 2000 Cour supérieure du Québec (Boilard j.c.s.)	Appels rejetés
Le 20 juin 2001 Cour d'appel du Québec (Michaud j.c.a.)	Requête pour permission d'appeler rejetée
Le 19 septembre 2001 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Quno Corporation (Formerly Quebec and Ontario Paper Company Ltd.)

v. (28729)

CIGNA Insurance Company of Canada (Que.)

NATURE OF THE CASE

Commercial Law – Insurance – Claim for firefighting costs incurred following an assessment by the "*Société de conservation de la Côte-Nord*" – Whether the trial judge manifestly erred in holding that the Applicant "voluntarily assumed liability" for fire fighting expenses? – Whether the trial judge failed tot consider the issue of the statutory impositions and the Respondent's commitment to protect the Applicant for "... liability imposed upon the insured by ... statute"? – Whether the trial judge and the Court of Appeal erred in denying indemnity to the Applicant under the terms of the Comprehensive General Liability policy issued by the Respondent?

PROCEDURAL HISTORY

April 29, 1998 Superior Court of Quebec (Picard J.)	Applicant's action against Respondent dismissed
May 17, 2001 Court of Appeal of Quebec (Otis, Forget and Rochon [*ad hoc*] JJ.A.)	Appeal dismissed
August 7, 2001 Supreme Court of Canada	Application for leave to appeal filed

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

Ken Cunningham and Golden Spotlight Banquet Hall

v. (28682)

728920 Ontario Ltd., 80 Wellesley Street East Limited, 275924 Ontario Ltd., Jorvay Investments Limited, operating under the name of Albion 27 Plaza, Earl Grossman and Saul Schwartz, executor of the real estate of George Vankey (Ont.)

NATURE OF THE CASE

Property law - Landlord tenant - Evidence - Whether the Applicants' trial was fair - Whether Court of Appeal treated the Applicants fairly and considered relevant evidence.

PROCEDURAL HISTORY

May 21, 1997 Ontario Court of Justice (Lax J.)	Applicants' claim for wrongful termination of lease dismissed; Respondent 728920 Ontario Ltd.'s counterclaim for arrears of rent granted
February 19, 2001 Court of Appeal for Ontario (Finlayson, Carthy and Austin JJ.A.)	Appeal dismissed
May 18, 2001 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

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Dorothy A. Huyck, Robert B. Lyman and Margaret M. Lyman (on behalf of a number of Residents in Musqueam and Salish Parks)

v. (28718)

The Musqueam Indian Band, and Assessor for the Musqueam Indian Band (F.C.)

NATURE OF THE CASE

Administrative law - Jurisdiction - Waiver of reasonable apprehension of bias - Whether a party before an administrative tribunal can waive a reasonable apprehension of bias implicating the tribunal's impartiality - Whether such waiver can occur in the face of deliberate concealment of the circumstances giving rise to the bias.

PROCEDURAL HISTORY

May 5, 2000 Federal Court of Canada, Trial Division (Nadon J.)	Application for judicial review of a decision of the Musqueam Indian Band Board of Review dismissed
May 7, 2001 Federal Court of Appeal (Desjardins, Isaac, Malone JJ.A.)	Appeal dismissed
August 7, 2001 Supreme Court of Canada	Application for leave to appeal filed

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Duncan & Craig, Exelby & Partners Ltd.

v. (28828)

West Edmonton Mall Property Inc., WEM Holdings Inc., 218703 Alberta Ltd., 298936 Alberta Ltd., 342322 Alberta Ltd., 298926 Alberta Ltd., ABNR Equities Corp., ALFAM Properties Corp., Bahman Ghermezian, Raphael Ghermezian, Eskander Ghermezian, Nader Ghermezian and Triple Five Properties Inc. (Alta.)

NATURE OF THE CASE

Commercial law - Bankruptcy - Conflict of Interest - Respondents sought order removing applicant Duncan & Craig as solicitors for applicant Exelby & Partners Ltd., trustee in bankruptcy, claiming conflict of interest - Whether the application of the test for solicitor conflict of interest requires clarification - Whether the application of solicitor conflict of interest law in the specific context of bankruptcy and more generally in circumstances where confidential information is compellable requires consideration and clarification.

PROCEDURAL HISTORY

May 16, 2000 Court of Queen's Bench of Alberta (Quinn, Registrar)	Applicant Duncan & Craig, Barristers & Solicitors restrained from acting for the Applicant Trustee in Bankruptcy, Exelby & Partners Ltd
December 12, 2000 Court of Queen's Bench of Alberta (Watson J.)	Respondents' application for order removing Applicant Duncan & Craig as solicitors for Applicant Exelby & Partners, dismissed
February 14, 2001 Court of Appeal of Alberta (Picard J.A.)	Leave to appeal granted and order of chambers judge stayed until appeal heard
September 14, 2001 Court of Appeal of Alberta (McFadyen, Hunt and Hembroff JJ.A.)	Appeal allowed, Applicant Duncan & Craig enjoined from acting for Applicant Exelby & Partners Ltd.
September 27, 2001 Supreme Court of Canada	Application for leave to appeal filed

Edith Lorraine Lennard and Joseph Lennard

v. (28810)

Arlie Elaine Durant (B.C.)

NATURE OF THE CASE

Procedural law - Summary judgment - Torts - Motor vehicles - Whether the Court of Appeal correctly applied the standard of appellate review to the summary application finally disposing of the instant proceeding - Whether an objective standard of care taking the particular circumstances of the defendant as actually known by the defendant at the time of the accident was appropriate in the instant case.

PROCEDURAL HISTORY

April 5, 2000 Supreme Court of British Columbia (Stromberg-Stein J.)	Respondent's action for damages for negligence dismissed
June 29, 2001 Court of Appeal for British Columbia (Southin [dissenting], Hollinrake and Mackenzie JJ.A.)	Appeal allowed; new trial ordered
September 24, 2001 Supreme Court of Canada	Application for leave to appeal filed

JANUARY 31, 2002 / LE 31 JANVIER 2002

28772 **Donna Louise Barrow - v. - Her Majesty the Queen** (Ont.) (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 - Elements of the offence - Whether the offence of living on the avails of prostitution requires an element of parasitism - What type of conduct constitutes parasitism

PROCEDURAL HISTORY

June 5, 1998 Ontario Court of Justice (General Division) (Pardu J.)	Convictions: living on the avails of prostitution (3 counts); attempting to procure illicit sexual intercourse (2 counts); attempting to procure someone to become a prostitute (2 counts); breach of probation (1 count)
June 8, 2001 Court of Appeal for Ontario (Abella, Rosenberg and Goudge JJ.A.)	Appeal allowed in part
September 7, 2001 Supreme Court of Canada	Application for leave to appeal filed

28733 **George Manship, of 205 St. George St., Moncton, New Brunswick, acting in his own right and under the business name and style of Gentleman's Massage Club and Manship Holdings Ltd., a body corporate under the laws of the Province of New Brunswick - v. - City of Fredericton, a municipal corporation** (N.B.) (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

Municipal law - Zoning - Adult entertainment use not included in Municipal plan or as a permitted use in zoning area - Inclusion of use to be achieved through amendment of By-law - Whether the Municipal Plan conformed with the general principles of delegated legislation - Whether the *Community Planning Act*, R.S.N.B. 1973, c. C-12, authorizes municipalities to regulate adult entertainment uses within their territorial limits by way of resolution and not by-law.

PROCEDURAL HISTORY

October 22, 1999	Respondent's application for an order requiring Applicants

Court of Queen's Bench of New Brunswick (McLellan J.)	to cease using 560 Queen Street as an adult entertainment establishment, granted
May 16, 2001 Court of Appeal of New Brunswick (Daigle C.J.N.B., Rice and Turnbull JJ.A.)	Appeal dismissed
August 14, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28747 **Susan A. Armstrong - v. - London Life Insurance Company, Lyn Marie Armstrong and Middlesex Condominium Corporation No. 130 and Parkside Management Limited - and between - Susan Alana Armstrong - v. - London Life Insurance Company** (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

Property law - Real property - Applicant purchaser of condominium unit - Unit found to have several deficiencies - Applicant suing for (1) fraudulent misrepresentation on the part of the Respondents Armstrong and London Life; (2), in the alternative, negligent misrepresentation of the Respondents; (3) breach of authority; and, (4) the remedy of recission or damages or both - Whether the issues raised by the Applicant were largely fact driven - Whether an erroneous "clear" estoppel certificate or even an estoppel certificate setting out contemplated litigation and/or deficiencies are of no consequence for a vendor and the purchaser is nonetheless bound by the principle of *caveat emptor* - Whether deficiencies known to a vendor but not disclosed to a purchaser are overcome by the vendor relying upon the principle of *caveat emptor* - Whether deficiencies known to a vendor but not disclosed to a purchaser does not amount to fraudulent misrepresentation - Whether appropriate for a trial judge to reach a conclusion (finding) that on the balance of probabilities his conclusion (finding) is correct notwithstanding the fact that the evidence is otherwise.

PROCEDURAL HISTORY

September 13, 1999 Ontario Superior Court of Justice (Flinn J.)	Applicant's action for recission of the agreement, damages and alternate relief, dismissed; judgement for Respondent London Life Insurance Company in the amount of $241,117.03; other Respondents' cross-claims dismissed
May 28, 2001 Ontario Court of Appeal (Austin, Rosenberg and Goudge JJ.A.)	Appeal dismissed; cross-appeal dismissed
August 15, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28754 **Regatta Plaza Limited, Acharya Holdings Limited, Arvind Acharya, Vipin Acharya and Pradip J. Joshi - v. - Standard Trust Company (in liquidation) and The Bank of Nova Scotia** (Nfld.) (Civil)

CORAM: Gonthier, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs to Standard Trust Company.

La demande d'autorisation d'appel est rejetée avec dépens en faveur de Standard Trust Company.

NATURE OF THE CASE

Commercial law - Banks and banking operations - Guaranty - Letters of credit or guarantee - Fraud exception - Bank providing letter of guarantee to Trust Company - Trust Company presenting Bank with written demand for payment and certifying that payment had been requested from customer - Bank alleging that certification was false as no demand had been made of customer - Trial judge dismissing Trust Company's claim - Court of Appeal allowing Trust Company's appeal - Whether Court of Appeal's decision is inconsistent with other Canadian decisions concerning letters of credit - Whether Court of Appeal's decision represents a trend in Canadian appeal decisions in favour of a substantial compliance rule concerning letters of credit.

PROCEDURAL HISTORY

August 17, 1998 Supreme Court of Newfoundland (Trial Division) (Barry J.)	Respondent Bank of Nova Scotia's application for dismissal of Respondent Standard Trust Company's claim allowed; Respondent Standard Trust Company's cross-application for summary judgment dismissed
May 28, 2001 Supreme Court of Newfoundland (Court of Appeal) (Gushue, O'Neill and Cameron JJ.A.)	Appeal allowed; judgment granted to Respondent Standard Trust Company in the sum of $300,000
August 23, 2001 Supreme Court of Canada	Application for leave to appeal filed

28814 **Walter J. Gregory - v. - Aetna Life Insurance Company of Canada** (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 - Insurance - Disclosure - Lapsed disability insurance policy reinstated without written application - Non-disclosure of lack of income and health matters - Whether reinstated policy voidable if insured failed to disclose that he had no income when he sought reinstatement - Whether insured is subject to a duty to disclose facts material to insurability if insurer waives receipt of a written application for reinstatement - Whether Court of Appeal's judgment places undue and unrealistic burden on insured persons.

PROCEDURAL HISTORY

March 3, 1999 Superior Court of Justice (Brennan J.)	Claim for disability benefits allowed
June 18, 2001 Court of Appeal for Ontario (Laskin, Sharpe and Simmons JJ.A.)	Appeal allowed
September 17, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28586 **Provincial Drywall Supply Limited - v. - The Toronto-Dominion Bank** (Man.) (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 - Creditor and debtor - Builders' liens - Contractor's banker holding an assignment of book debts - Bank collecting book debts on contractor's insolvency - Contractor owing money to Applicant supplier - Applicant claiming that money collected by Bank impressed with trust under Builder's Lien Act - Applicant also claiming costs of litigation from Bank in pursing moneys owed - Effectiveness of trust principles when used in a commercial context to establish priorities among creditors including Canada's banks and other financial institutions - When do the duties of constructive trustee expire - When, if not in the present case, do substantive or institutional as opposed to remedial constructive trust principles apply - What are the principles and policies upon which equitable compensation or damages should be assessed in a true trust situation - Whether Court of Appeal erred by failing to restore to the Applicant what was lost as a result of the Bank's alleged breach of trust and by failing to have due or any regard to the policy of deterrence.

PROCEDURAL HISTORY

October 15, 1999 Court of Queen's Bench of Manitoba (Barkman J.)	Judgment for the Applicant in the sum of $669,542.52 plus interest of 5% from the date of judgment
March 13, 2001 Court of Appeal of Manitoba (Scott C.J.M., Huband and Philp JJ.A)	Appeal allowed; trial judgment set aside; judgement for the Applicant in the sum of $37,102.37; cross-appeal dismissed
May 10, 2001 Supreme Court of Canada	Application for leave to appeal filed

28764 **Lafarge Canada Inc. - v. - Bertrand & Frère Construction Company Limited, Bernard Alie, Royal Aubin, Rachelle Aubin, Gilles Barrette, Nicole Barrette, Ronald Beaudoin, Louise Beaudoin, Armand Bédard, Lise Bédard, Francis Beks, Marcel Bissonnette, Maurice Boudrias, Richard Boudrias, Jacques Bouvier, Christine Bouvier,, Sylvain Brazeau, Micheline Brazeau, Fernand Carrière, Marcel Carrière, Lucie Carrière, Herbert Chew, Chirley Chew, Alain Delorme, Suzie Delorme, Louis Demers, Elaine Touzin, Christian Denis, Danielle Duranceau Denis, Gilles Desrosiers,, Guy Duchesne, Claire Duchesne, Bernard Durocher, Patricia Durocher, Richard Durocher, Lyne Durocher, Wilhelm Hack, Jana Hack, Douglas Harvey, Judith Harvey, Ross Higginson, Serge Lachaine, Yvon Laliberté, Hélène Laliberté, François Lalonde, Nicole Lalonde, Jacques, B. Lalonde, Léopold Leduc, Royal Leduc, Délima Leduc, André Pilon, Claire Pilon, Louis Portelance, Claude Robitaille, Danielle Robitaille, Jean-Yves Séguin, Claire Séguin, Jacques Simard, Monique Simard, Raymond Tessier, Ginette Tessier, Pierre Timbers, Carole Timbers, John Tollis, Eva Tollis, Raymond Chabot Inc., Trustee in Bankruptcy of the estate of Gilles Turpin, a bankrupt, Noëlla Bissonnette, Albert Besner, Martine Besner, Gaétan Bougie, Raymond Bougie, Jacqueline Boulianne, Alan Burns, Rhéaume Champagne, Karolina Despotovitch, Ed Dimo, Danielle Duplantie, Alain Duval, Lucie Charbonneau, Aurèle Galipeau, Marjolaine Dubord, Michel Goulet, Kurt Hungerbuehler, Gérard Lalonde, Madeleine Leduc, Gaston Rozon, Murielle Rozon, Joe Vaillancourt, Nicole Thibault, Prescott Condiminium Corporation No. 2, Hubert Séguin, Lucienne Séguin, Corporation of the Village of L'Orignal, Roger Parisien, Marguerite Parisien, Lise St-Denis, Bronwen Williams, Michel Barbarie, Louise Barbarie,, André Roy, Nathalie Pilon, Michel Lamoureux, Yves Boulet, Susan Labelle, Claudette Denis, Richard Desjardins, William A. Kothe, Helene Kothe, Pierre Larocque, Lori Larocque, Ronnie G. Leduc, Michèle F. Leduc, Serge Meconse, Teresa C. Meconse,, Serge Pilon, Monique Pilon, Gérard Théorêt, Diane Théorêt, Capri Realties Limited, Gary O'Neill, Lillian O'Neill, Roland A. Carrière, Lise Alie, Mary Beks, Gisèle St-Onge, Sergine Carrière, Line Desrosiers, Johanne Higginson, Rachelle Lachaine,, Ida Lalonde, Carole Lamoureux, Jeanne Leduc, Cheryl Portelance, Pricewaterhouse Coopers Inc., Trustee in Bankruptcy of the Estates of Alice Arshoun and Gabriel Ashroun, bankrupts, James Baxter, Janice Baxter, Daniel Boudrias, Reinelle Boudrias, Marcel Côté, Lucie Côté, Marc Lalande, Joanne Lalande-Martel, Richard Lessard, Karyn Lissa Lessard, Jean-Claude Martin, Madeleine Martin, Daniel Page, Carole Page, Christian Pigeon, Hélène Pigeon, Jean-Bernard Saumure, Diane Saumure, Ronald Smith, Sylvia Smith, Richard Witham, Shirley Witham, Anne-Marie McDonell, Gerald McDonell, Jacques Marcil, Francine Marcil, Roger Levesque, Madeleine Levesque, Bernard Pilon, Frances Pilon, Louise Tremblay - and - Roger Duval, Bruno Rioux, Luc Seguin, Lynn Danis Seguin - and - Ontario New Home Warranty Program, Johanne Stoesz, Frank Webber, Susan Webber, Gilles Martineau, Gérard Charbonneau, Elizabeth Charbonneau, Mario Charlebois, Sylvie Charlebois, Guylaine Joly, Luc Joly, Richard Lalande, Nicole Benard Lalande,, Sergue Chartrand, Suzanne Chartrand, Robert Brunet, Christine Brunet, Frank McKenna, Benoit Burroughs, Sylvie**

Burroughs, Don Mercer, Kathy Mercer, Cameron McCormick, Janice McCormick, Rodrigue Boulay, Vanessa Tveitane, Steven Kurz, Rona Kurz, Pierre Lalonde, Claire Lacroix, Drew Thomas Gibson, Steve Hegedus Jr., Donna Kelly Hegedus, Gerard Janssen, Marie Therese Jannsen, Sylvain Dicaire, Suzanne Dicaire, Jacques Labelle, Michel Lecompte, Danielle Lecompte, Alain Secours, Betty Ann Secours,, Lorraine St. Jean Carrière, Jack Deragon, Suzanne Scott, Chantal Saucier, Alan Matthews, Janet Matthews, Prescott Condominium Corporation No. 5, Marcel Brazeau, Francine Langelier, - and - Chubb Insurance Company of Canada, General Accident Assurance Company, Canadian General Insurance Company, Royal Insurance Company and Guardian Insurance Company (Ont.) (Civil)(28764)

CORAM: Gonthier, Major and Binnie JJ.

The application for leave to appeal is dismissed with costs on a party-and-party basis to the Respondents, Bertrand & Frère Construction Company Limited, Bernard Alie, Royal Aubin, Rachelle Aubin, Gilles Barrette, Nicole Barrette, Ronald Beaudoin, Louise Beaudoin, Armand Bédard, Lise Bédard, Francis Beks, Marcel Bissonnette, Maurice Boudrias, Richard Boudrias, Jacques Bouvier, Christine Bouvier,, Sylvain Brazeau, Micheline Brazeau, Fernand Carrière, Marcel Carrière, Lucie Carrière, Herbert Chew, Chirley Chew, Alain Delorme, Suzie Delorme, Louis Demers, Elaine Touzin, Christian Denis, Danielle Duranceau Denis, Gilles Desrosiers,, Guy Duchesne, Claire Duchesne, Bernard Durocher, Patricia Durocher, Richard Durocher, Lyne Durocher, Wilhelm Hack, Jana Hack, Douglas Harvey, Judith Harvey, Ross Higginson, Serge Lachaine, Yvon Laliberté, Hélène Laliberté, François Lalonde, Nicole Lalonde, Jacques, B. Lalonde, Léopold Leduc, Royal Leduc, Délima Leduc, André Pilon, Claire Pilon, Louis Portelance, Claude Robitaille, Danielle Robitaille, Jean-Yves Séguin, Claire Séguin, Jacques Simard, Monique Simard, Raymond Tessier, Ginette Tessier, Pierre Timbers, Carole Timbers, John Tollis, Eva Tollis, Raymond Chabot Inc., Trustee in Bankruptcy of the estate of Gilles Turpin, a bankrupt, Noëlla Bissonnette, Albert Besner, Martine Besner, Gaétan Bougie, Raymond Bougie, Jacqueline Boulianne, Alan Burns, Rhéaume Champagne, Karolina Despotovitch, Ed Dimo, Danielle Duplantie, Alain Duval, Lucie Charbonneau, Aurèle Galipeau, Marjolaine Dubord, Michel Goulet, Kurt Hungerbuehler, Gérard Lalonde, Madeleine Leduc, Gaston Rozon, Murielle Rozon, Joe Vaillancourt, Nicole Thibault, Prescott Condiminium Corporation No. 2, Hubert Séguin, Lucienne Séguin, Corporation of the Village of L'Orignal, Roger Parisien, Marguerite Parisien, Lise St-Denis, Bronwen Williams, Michel Barbarie, Louise Barbarie,, André Roy, Nathalie Pilon, Michel Lamoureux, Yves Boulet, Susan Labelle, Claudette Denis, Richard Desjardins, William A. Kothe, Helene Kothe, Pierre Larocque, Lori Larocque, Ronnie G. Leduc, Michèle F. Leduc, Serge Meconse, Teresa C. Meconse,, Serge Pilon, Monique Pilon, Gérard Théorêt, Diane Théorêt, Capri Realties Limited, Gary O'Neill, Lillian O'Neill, Roland A. Carrière, Lise Alie, Mary Beks, Gisèle St-Onge, Sergine Carrière, Line Desrosiers, Johanne Higginson, Rachelle Lachaine,, Ida Lalonde, Carole Lamoureux, Jeanne Leduc, Cheryl Portelance, Pricewaterhouse Coopers Inc., Trustee in Bankruptcy of the Estates of Alice Arshoun and Gabriel Ashroun, bankrupts, James Baxter, Janice Baxter, Daniel Boudrias, Reinelle Boudrias, Marcel Côté, Lucie Côté, Marc Lalande, Joanne Lalande-Martel, Richard Lessard, Karyn Lissa Lessard, Jean-Claude Martin, Madeleine Martin, Daniel Page, Carole Page, Christian Pigeon, Hélène Pigeon, Jean-Bernard Saumure, Diane Saumure, Ronald Smith, Sylvia Smith, Richard Witham, Shirley Witham, Anne-Marie McDonell, Gerald McDonell, Jacques Marcil, Francine Marcil, Roger Levesque, Madeleine Levesque, Bernard Pilon, Frances Pilon, Louise Tremblay, Roger Duval, Bruno Rioux, Luc Seguin, Lynn Danis Seguin, Ontario New Home Warranty Program, Chubb Insurance Company of Canada, Canadian General Insurance Company, and Royal Insurance Company.

La demande d'autorisation d'appel est rejetée avec dépens sur la base partie-partie aux intimés, Bertrand & Frère Construction Company Limited, Bernard Alie, Royal Aubin, Rachelle Aubin, Gilles Barrette, Nicole Barrette, Ronald Beaudoin, Louise Beaudoin, Armand Bédard, Lise Bédard, Francis Beks, Marcel Bissonnette, Maurice Boudrias, Richard Boudrias, Jacques Bouvier, Christine Bouvier,, Sylvain Brazeau, Micheline Brazeau, Fernand Carrière, Marcel Carrière, Lucie Carrière, Herbert Chew, Chirley Chew, Alain Delorme, Suzie Delorme, Louis Demers, Elaine Touzin, Christian Denis, Danielle Duranceau Denis, Gilles Desrosiers,, Guy Duchesne, Claire Duchesne, Bernard Durocher, Patricia Durocher, Richard Durocher, Lyne Durocher, Wilhelm Hack, Jana Hack, Douglas Harvey, Judith Harvey, Ross Higginson, Serge Lachaine, Yvon Laliberté, Hélène Laliberté, François Lalonde, Nicole Lalonde, Jacques, B. Lalonde, Léopold Leduc, Royal Leduc, Délima Leduc, André Pilon, Claire Pilon, Louis Portelance, Claude Robitaille, Danielle Robitaille, Jean-Yves Séguin, Claire Séguin, Jacques Simard, Monique Simard, Raymond Tessier, Ginette Tessier, Pierre Timbers,

Carole Timbers, John Tollis, Eva Tollis, Raymond Chabot Inc., Syndic de faillite de Gilles Turpin, un failli, Noëlla Bissonnette, Albert Besner, Martine Besner, Gaétan Bougie, Raymond Bougie, Jacqueline Boulianne, Alan Burns, Rhéaume Champagne, Karolina Despotovitch, Ed Dimo, Danielle Duplantie, Alain Duval, Lucie Charbonneau, Aurèle Galipeau, Marjolaine Dubord, Michel Goulet, Kurt Hungerbuehler, Gérard Lalonde, Madeleine Leduc, Gaston Rozon, Murielle Rozon, Joe Vaillancourt, Nicole Thibault, Prescott Condiminium Corporation No. 2, Hubert Séguin, Lucienne Séguin, Corporation du Village de L'Orignal, Roger Parisien, Marguerite Parisien, Lise St-Denis, Bronwen Williams, Michel Barbarie, Louise Barbarie,, André Roy, Nathalie Pilon, Michel Lamoureux, Yves Boulet, Susan Labelle, Claudette Denis, Richard Desjardins, William A. Kothe, Helene Kothe, Pierre Larocque, Lori Larocque, Ronnie G. Leduc, Michèle F. Leduc, Serge Meconse, Teresa C. Meconse,, Serge Pilon, Monique Pilon, Gérard Théorêt, Diane Théorêt, Capri Realties Limited, Gary O'Neill, Lillian O'Neill, Roland A. Carrière, Lise Alie, Mary Beks, Gisèle St-Onge, Sergine Carrière, Line Desrosiers, Johanne Higginson, Rachelle Lachaine,, Ida Lalonde, Carole Lamoureux, Jeanne Leduc, Cheryl Portelance, Pricewaterhouse Coopers Inc., Syndic de faillite de Alice Arshoun et Gabriel Ashroun, faillis, James Baxter, Janice Baxter, Daniel Boudrias, Reinelle Boudrias, Marcel Côté, Lucie Côté, Marc Lalande, Joanne Lalande-Martel, Richard Lessard, Karyn Lissa Lessard, Jean-Claude Martin, Madeleine Martin, Daniel Page, Carole Page, Christian Pigeon, Hélène Pigeon, Jean-Bernard Saumure, Diane Saumure, Ronald Smith, Sylvia Smith, Richard Witham, Shirley Witham, Anne-Marie McDonell, Gerald McDonell, Jacques Marcil, Francine Marcil, Roger Levesque, Madeleine Levesque, Bernard Pilon, Frances Pilon, Louise Tremblay, Roger Duval, Bruno Rioux, Luc Seguin, Lynn Danis Seguin, Ontario New Home Warranty Program, Chubb Insurance Company of Canada, Canadian General Insurance Company, et Royal Insurance Company.

NATURE OF THE CASE

Torts - Negligence - Procedural law - Judgments and orders - Whether trial judge under duty to give reasons that address issues framed by parties and, in particular, address losing party's arguments in connection with those issues so as to explain why they have been rejected.

PROCEDURAL HISTORY

April 17, 2000 Ontario Superior Court of Justice (Roy J.)	Applicant and Respondent Bertrand held jointly and severally liable for judgment in amount of $16,870,331.41
May 31, 2001 Court of Appeal for Ontario (Labrosse, Feldman and Sharpe JJ.A.)	Appeal dismissed; cross-appeals of Bertrand and Alie Homeowners dismissed, except as settled
August 27, 2001 Supreme Court of Canada	Application for leave to appeal filed

28704 **Coralie Perkins-Aboagye - v. - Christopher William Kerrigan, also known as Jeff Douglas McCorkell, Shaun M. Cooper, Quick Business Services Inc. and its Affiliates** (Ont.) (Civil)

CORAM: Gonthier, Major and Binnie JJ.

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

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

NATURE OF THE CASE

Procedural law - Actions - Civil procedure - Whether the Superior Court of Justice erred in law by allowing a Master and not a judge to hear the Applicant's motion - Whether the Superior Court of Justice erred in upholding Master Beaudoin's endorsement.

PROCEDURAL HISTORY

December 14, 2000 Superior Court of Justice (McKinnon J.)	Applicant's motion and case management motion both dismissed; Respondents' cross-motion to strike Applicant's statement of claim granted, fresh statement of claim to be filed within 30 days
February 20, 2001 Superior Court of Justice (Beaudoin, Master)	Respondents' motion to strike out portions of fresh statement of claim granted; statement of defence to be served within 14 days of receipt of costs
March 15, 2001 Superior Court of Justice (Aitken J.)	Applicant's motions to set aside and amend Master Beaudoin's order and uphold the noting in default of the Respondents dismissed: noting in default set aside; costs to be paid before statement of defence needs to be delivered
April 12, 2001 Superior Court of Justice (Valin J.)	Motion for leave to appeal to Divisional Court dismissed
May 3, 2001 Superior Court of Justice (Manton J.)	Applicant's motion dismissed; action against Respondents stayed until Applicant has paid all costs
August 2, 2001 Supreme Court of Canada	Application for leave to appeal and motion for extension of time filed

28856 **J.J.M. - v. - Her Majesty the Queen** (Man.) (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 - Young offenders - Adjournment ordered - Application for certiorari to quash informations - Whether the Court of Appeal erred in law in failing to maintain the best interests of the child as a primary consideration, implicitly contrary to *The Young Offenders Act* and explicitly contrary to Article 3.1 of the *United Nations Convention on the Rights of the Child* - Whether the Court of Appeal erred in law in finding that there was unreviewable jurisdiction in the Youth Court to entertain proceedings against the Applicant in a manner inconsistent with the rights assured to him under the *United Nations Convention on the Rights of the Child.*

PROCEDURAL HISTORY

June 21, 2001 Court of Queen's Bench of Manitoba (Keyser J.)	Applicant's motion for an order of *certiorari* to quash informations issued pursuant to s. 24.2(9) of the *Young Offenders Act* dismissed
September 14, 2001 Court of Appeal of Manitoba (Philp, Kroft and Monnin JJ.A.)	Appeal dismissed
October 17, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28744 **Downtown Eatery (1993) Ltd., The Landing Strip Inc., The Landing Restaurant Inc., The Landing Restaurant (1993) Limited, Downtown Eatery Limited, Best Beaver Management Inc. (Ontario Corporation No. 971712), Best Beaver Management Inc. (Ontario Corporation No. 1042788), Twin Peaks Inc., Herman Grad and Ben Grosman - v. - Joseph Alouche** (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

Procedural law - Labour law - Judgments and orders - Master and servant - Respondent employee found to be wrongfully dismissed - Employing company one of several in seamless group of companies - Applicant a company not named in original suit - Applicant suing individual respondent for funds seized pursuant to judgment - Company named in original suit without assets - Employee counterclaiming to recover from other companies not sued in original action - Whether abuse of process applicable - Whether common employer doctrine applicable - Whether oppression remedy can be used by contingent creditor - Whether Court of Appeal erred in failing to apply the abuse of process doctrine to preclude a finding of liability for the corporate Applicants - Whether Court of Appeal erred in holding that the test for common employer status was to be determined based on the relationship between the corporate Applicants, rather than on whether an employment relationship existed between each of the corporate Applicants and the Respondent - Whether Court of Appeal erred in failing to consider the business judgment rule and other limitations in the determination of an oppression remedy claim - Whether Court of Appeal erred in concluding that want of probity or fair dealing on the part of the defendant is not a necessary ingredient in an oppression remedy claim.

PROCEDURAL HISTORY

March 3, 2000 Superior Court of Justice	Respondent's counterclaim seeking enforcement of

(Campbell J.)	damages award for wrongful dismissal granted against Applicant "Best Beaver Management Inc.", dismissed
May 22, 2001 Court of Appeal for Ontario (McMurtry C.J.O., Borins and MacPherson JJ.A.)	Appeal allowed: Respondent entitled to recover damages in amount of $59,906.76 from Applicants
August 20, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28504 **Charlie Pinteric - v. - People's Bar and Eatery Limited, Ermioni Chialtas also known as Mary Chialtas and Jim Chialtas also known as Jimmy Chialtas** (Ont.) (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

Commercial Law - Contracts - Partnership - Judgment at trial that there had been a breach of an agreement to form a partnership - Judgment on appeal that one of the respondents was not liable for that breach - Whether respondent liable.

PROCEDURAL HISTORY

April 19, 1999 Superior Court of Ontario (Dunnet J.)	Applicant awarded damages
February 9, 2001 Court of Appeal for Ontario (Catzman, Doherty and Simmons JJ.A.)	Appeal by Mary Chialtis allowed; Appeals by other respondents dismissed
April 10, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28497 **The Cook's Road Maintenance Association on behalf of itself and all other owners of lands in Lots 9 and 10, Concession 1, Township of Marmora, County of Hastings, and Lots 8 and 9, Concession 1,Township of Belmont, County of Peterborough and obtaining access to their properties on the North Shore of Crowe Lake by way of a road known as Cook's Road - v. - Crowhill Estates** (Ont.) (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

Property Law - Real property - Cottage roads - Access to seasonal residence from municipal public roadways is only by non-municipal road crossing parcel of land - Cottagers enjoy unimpeded access for approximately forty years until land sold - New owner impedes access - Settlement agreement fails to resolve dispute - Whether road is a public road or an access road.

PROCEDURAL HISTORY

April 19, 1999 Ontario Court (General Division) (Panet J.)	Declaration that road is a public road
February 7, 2001 Court of Appeal for Ontario (McMurtry C.J.O., Borins and Feldman JJ.A.)	Appeal allowed, action dismissed, matter remitted to order injunction to enforce settlement agreement
April 9, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28770 **The Corporation of the City of Sudbury - v. - Union Gas Limited** (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 - Contracts - Municipal law - Municipal corporations - Public utilities - Interpretation of franchise agreement between municipality and distributor of natural gas - Whether municipality entitled to acquire ownership of gas distribution system by virtue of expiration of 20 year term of franchise - Whether Court of Appeal erred in failing to consider factual matrix in interpreting contract - Whether ordinary rules of interpretation apply to a regulated contract or to municipal by-laws

PROCEDURAL HISTORY

April 10, 2000 Ontario Superior Court of Justice (Molloy J.)	Application for declaration that Applicant has right to acquire Respondent's gas distribution system allowed; Respondent's cross-application dismissed
June 6, 2001 Court of Appeal for Ontario (Morden, Moldaver and Goudge JJ.A.)	Respondent's appeal and cross-appeal allowed; Application dismissed
August 31, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28791 **1185740 Ontario Limited - v. - The Minister of National Revenue and The Attorney General of Canada** (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

Administrative law - Procedural fairness - Applicant holding licence to operate duty free shop - Minister of National Revenue amending licence to prohibit selling of duty and tax free fuel - Circumstances under which exercise of discretionary power constitutes "policy decision" allowing for "relaxed requirement" for procedural fairness - Whether investor in Canada should be denied certain procedural rights because its interests are purely economical - Whether it is open to a Minister to make a decision by simply adopting a recommendation of his officials without actually considering the views and evidence put forward by those detrimentally affected by the decision.

PROCEDURAL HISTORY

April 25, 2001 Federal Court of Canada (Trial Division) (Reed J.)	Applicant's application for judicial review of a decision of the Minister of National Revenue dismissed
June 12, 2001 Federal Court of Appeal (Desjardins, Linden and Malone JJ.A.)	Appeal dismissed
September 10, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28784 **John Dykun - v. - James H. Odishaw, Joseph P. Brumlik and Vivian R. Stevenson** (Alta.) (Civil)

CORAM: Gonthier, Major and LeBel 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 - Whether Court of Appeal erred in law in dismissing the Applicant's appeal - Whether Court of Appeal of Alberta erred in law in failing to rule on the omission of Wittmannn J.A. to address the issue of the waiver of Rules 594 and 596 of the *Alberta Rules of Court* - Whether Court of Appeal of Alberta erred in law in ordering the Applicant to first obtain leave of a Chief Justice to commence any pleadings - Whether Statement of Claim was frivolous and vexatious - Whether Court of Appeal of Alberta erred in law in ruling that the allegation of conspiracy was previously litigated and the principle of *res judicata* was applicable - Whether Court of Appeal erred in stating that Rule 505(6) had not been complied with.

PROCEDURAL HISTORY

July 27, 2000 Court of Queen's Bench of Alberta (Lee J.)	*Inter alia*, Applicant's action dismissed; Statement of Claim struck out; Applicant ordered to deposit $ 20,000.00 as security for costs
December 20, 2000 Court of Appeal of Alberta (Wittmannn J.A.)	Applicant ordered to pay security for costs in the amount of $11,500.00 failing which appeal to be dismissed
June 22, 2001 Court of Appeal of Alberta (McClung, McFayden and Picard JJ.A.)	Applicant's application to appeal order of Wittmann J.A. dismissed; injunction issued prohibiting Applicant from bringing further proceedings unless certain conditions met
September 19, 2001 Supreme Court of Canada	Application for leave to appeal filed

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28820 **John Correia, Kathy Correia and J.C. Auto Mobile - v. - William Roland Danyluk - and between - John Correia, Kathy Correia and J.C. Auto Mobile - v. - Troy James Keller Arnyco Oilfield Services Ltd.** (Alta.) (Civil)

CORAM: Gonthier, Major and LeBel JJ.

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

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

NATURE OF THE CASE

Procedural law - Actions - Direction for trial of an issue - Chambers judge refusing to grant declaration that a valid and binding settlement agreement had been reached between the parties - Court of Appeal reversing that decision - Whether Court of Appeal erred in holding that "a principal's incapacity, unknown to a third party, will still bind the principal as against the third party" - Whether Court of Appeal erred in holding that chambers judge had no discretion and ought to

have enforced settlement agreement "if, on the undisputed facts, the chambers judge was persuaded that a settlement had been reached, and if he was certain of its terms".

PROCEDURAL HISTORY

April 22, 1999 Court of Queen's Bench of Alberta (Binder J.)	Respondents' application for a declaration that the settlement agreement reached with the Applicants was valid and binding dismissed
April 12, 2001 Court of Appeal of Alberta (McFadyen, Hunt and Berger JJ.A.)	Appeal allowed
September 17, 2001 Supreme Court of Canada	Application for leave to appeal filed

21.1.2002

Before / Devant: GONTHIER J.

Motions for leave to intervene **Requêtes en autorisation d'intervention**

BY/PAR: Elementary Teachers' Federation of Ontario;
British Columbia Civil Liberties Association;
Evangelical Fellowship of Canada, the Archdiocese of Vancouver, the Catholic Civil Rights League and the Canadian Alliance for Social Justice and Family Values Association;
Families in Partnership;
Canadian Civil Liberties Association;
Board of Trustees of School District No. 34 (Abbotsford);
EGALE Canada Inc.

IN/DANS: James Chamberlain, et al.

v. (28654)

The Board of Trustees of School District #36 (Surrey) (B.C.)

GRANTED / ACCORDÉES

UPON APPLICATION by the Elementary Teachers' Federation of Ontario, the British Columbia Civil Liberties Association, the Evangelical Fellowship of Canada, the Archdiocese of Vancouver, the Catholic Civil Rights League and the Canadian Alliance for Social Justice and Family Values Association, the Families in Partnership, the Canadian Civil Liberties Association, the Board of Trustees of School District No. 34 (Abbotsford), and EGALE Canada Inc., for leave to intervene in the above appeal;

AND HAVING READ the material filed ;

IT IS HEREBY ORDERED THAT:

1. The motion for leave to intervene of the applicant Elementary Teachers' Federation of Ontario is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

2. The motion for leave to intervene of the applicant British Columbia Civil Liberties Association is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

3. The motion for leave to intervene of the applicants Evangelical Fellowship of Canada, the Archdiocese of Vancouver, the Catholic Civil Rights League and the Canadian Alliance for Social Justice and Family Values Association is granted and the applicants shall be entitled to serve and file a joint factum not to exceed 30 pages in length.

4. The motion for leave to intervene of the applicant Families in Partnership is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

5. The motion for leave to intervene of the applicant Canadian Civil Liberties Association is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

6. The motion for leave to intervene of the applicant Board of Trustees of School District No. 34 (Abbotsford) is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

7. The motion for leave to intervene of the applicant EGALE Canada Inc. is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

The request to present oral argument is deferred to a date following receipt and consideration of the written arguments of the parties and the interveners.

The interveners shall not be entitled to adduce further evidence or otherwise to supplement the record of the parties.

Pursuant to Rule 18(6) the interveners shall pay to the appellants and respondent any additional disbursements occasioned to the appellants and respondent by the interventions.

21.1.2002

Before / Devant: GONTHIER J.

Motion to strike out **Requête en radiation**

James Chamberlain, et al.

v. (28654)

The Board of Trustees of School District #36 (Surrey)
(B.C.)

DISMISSED / REJETÉE

UPON APPLICATION by the respondent for an order striking out portions of the affidavits filed in support of the applications for leave to intervene of EGALE Canada Inc. and the Elementary Teachers' Federation of Ontario;

AND HAVING READ the material filed ;

IT IS HEREBY ORDERED THAT:

The respondent's motion to strike is dismissed. There shall be no order as to costs.

21.1.2002

Before / Devant: THE REGISTRAR

Miscellaneous motion **Autre requête**

Commission des droits de la personne et des droits de la jeunesse

c. (28402)

Maksteel Québec Inc., et al. (Qué.)

GRANTED / ACCORDÉE La requête pour déposer le mémoire de l'appelante dans son état actuel malgré l'absence de numération en marge sur certaines pages est accordée.

22.1.2002

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the respondent's book of authorities **Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine de l'intimée**

Howard Burke

v. (28546)

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

GRANTED / ACCORDÉE Time extended to January 7, 2002.

22.1.2002

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the respondent's response **Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimé**

Levesque Beaubien Geoffrion Inc.

v. (28990)

Allan T. Barakett (N.S.)

GRANTED / ACCORDÉE Time extended to Februrary 18, 2002.

23.1.2002

Before / Devant: MAJOR J.

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

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

Kevin H. Grotheim

v. (29009)

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

GRANTED / ACCORDÉE Time extended to January 15, 2002, *nunc pro tunc*.

23.1.2002

Before / Devant: ARBOUR J.

Further order on motion for leave to intervene

Autre ordonnance sur une requête en autorisation d'intervention

BY/PAR: Société Radio-Canada, La Presse Ltée, 3834310 Canada Inc., Groupe Transcontinental G.T.C. Ltée et Fédération professionnelle des journalistes du Québec

IN/DANS: André Prud'homme, et al.

c. (28117)

Fernand Prud'homme (Qué.)

GRANTED / ACCORDÉE

À LA SUITE D'UNE DEMANDE de la Société Radio-Canada, La Presse Ltée, 3834310 Canada Inc., Groupe Transcontinental G.T.C. Ltée et Fédération professionnelle des journalistes du Québec visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné et suite à l'ordonnance du 25 septembre 2001;

IL EST EN OUTRE ORDONNÉ que la plaidoirie des intervenantes soit limitée à quinze (15) minutes.

24.1.2002

Before / Devant: THE DEPUTY REGISTRAR

Motion to extend the time in which to serve and file the record, factum and book of authorities of the respondent Spar Aerospace Limited

Requête en prorogation du délai imparti pour signifier et déposer les dossier, mémoire et recueil de jurisprudence et de doctrine de l'intimée Spar Aerospace Limited

Hughes Communications Inc., et al.

v. (28070)

Spar Aerospace Limited, et al. (Que.)

GRANTED / ACCORDÉE Délai prorogé au 24 décembre 2001.

24.1.2002

Before / Devant: BINNIE J.

Further order on motions for leave to intervene

Autre ordonnance sur des requêtes en autorisation d'intervention

BY/PAR: Information Commissioner of Canada;
British Columbia Civil Liberties Association

IN/DANS: Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in his capacity as Minister of Justice, et al.

v. (28091)

Patricia Babcock, et al. (B.C.)

GRANTED / ACCORDÉES

UPON APPLICATION by the Information Commissioner of Canada and the British Columbia Civil Liberties Association for leave to intervene in the above appeal and pursuant to the order of June 18, 2001;

IT IS HEREBY FURTHER ORDERED THAT the said interveners are granted permission to present oral argument at the hearing of the appeal not to exceed the time allowed respectively to each of them as follows:

- Information Commissioner of Canada 15 minutes
- British Columbia Civil Liberties Association 15 minutes

25.1.2002

Before / Devant: THE DEPUTY REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine de l'appelant

David Scott Hall

v. (28223)

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

GRANTED / ACCORDÉE Time extended to January 17, 2002.

25.1.2002

Before / Devant: THE DEPUTY REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine de l'appelante

Her Majesty the Queen

v. (28457)

Minh Khuan Mac (Crim.)(Ont.)

GRANTED / ACCORDÉE Time extended to January 4, 2002.

25.1.2002

Before / Devant: THE DEPUTY REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer le recueil de jurisprudence et de doctrine de l'intimé

Her Majesty the Queen

v. (28457)

Minh Khuan Mac (Crim.)(Ont.)

GRANTED / ACCORDÉE Time extended to January 17, 2002, *nunc pro tunc*.

25.1.2002

Before / Devant: THE DEPUTY 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'appelant

ECU-Line N.V.

v. (28472)

Z.I. Pompey Industrie, et al. (F.C.)

GRANTED / ACCORDÉE Time extended to January 21, 2002, *nunc pro tunc*.

28.1.2002

Before / Devant: MAJOR J.

Miscellaneous motion

Autre requête

Brother Pascal Rowland, Brother Anthony Murphy, Brother Kieran Murphy and Brother J. Barry Lynch
St. Thomas More Collegiate Ltd. and John Burnell
Vancouver College Limited

v. (29000)

The Roman Catholic Archdiocese of Vancouver, represented by Most Rev. Adam Exner, on his own behalf and on behalf of all members of the Roman Catholic Archdiocese of Vancouver, et al. (B.C.)

and

Vancouver College Limited
St. Thomas More Collegiate Ltd.
Representative Counsel for the Charitable Objects of the Christian Brothers of Ireland
John Burnell

v. (27958)

The Christian Brothers of Ireland in Canada (in liquidation), et al. (Ont.)

GRANTED / ACCORDÉE The motion on behalf of the applicants for an order accepting the combined application for leave to appeal in Court File No. 29000 and application for reconsideration in Court File No. 27958 is granted.

23.1.2002

Glenda Doucet-Boudreau, et al.

v. (28807)

Attorney General of Nova Scotia (N.S.)

25.1.2002

CORAM: Major, Bastarache, Binnie, Arbour and LeBel JJ.

David Lloyd Neil

v. (28282)

Her Majesty the Queen (Alta.) (Crim.) (As of Right)

Nathan J. Whitling and Matthew Milne-Smith for the appellant.

James A. Bowron for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Jury verdict rendered convicting the Appellant of forgery, fabrication of evidence and obstruction of justice - Convictions registered - Several months later judicial stay of proceedings entered by trial judge - Whether the trial judge erred in finding that the Appellant's lawyer's conduct resulted in a violation of the Appellant's constitutional right to the effective assistance of counsel under ss. 7 and 11(*d*) of the *Charter* - Whether the trial judge erred in finding an abuse of process - Whether the trial judge erred in imposing a stay of proceedings as a remedy.

Nature de la cause:

Droit criminel - Le jury a trouvé l'appelant coupable de faux, fabrication de preuve et obstruction à la justice - Des déclarations de culpabilité ont été inscrites - Plusieurs mois plus tard, le juge de première instance a prononcé l'arrêt de la procédure - Le juge de première instance a-t-il commis une erreur en concluant que la conduite de l'avocat de l'appelant avait porté atteinte au droit constitutionnel de l'appelant à l'assistance efficace d'un avocat garanti par l'art. 7 et l'al. 11*d*) de la *Charte*? - Le juge de première instance a-t-il commis une erreur en concluant à l'abus de procédure? - Le juge de première instance a-t-il commis une erreur en ordonnant l'arrêt de la procédure à titre de réparation?

AGENDA for the weeks of February 11 and February 18, 2002.
CALENDRIER de la semaine du 11 février et de celle du 18 février 2002.

The Court will not be sitting during the weeks of February 4 and February 25, 2002.
La Cour ne siègera pas pendant les semaines du 4 février et du 25 février 2002.

Date of Hearing/ Date d'audition	Case Number and Name/ Numéro et nom de la cause
2002/02/11	Motions / Requêtes
2002/02/12	Sa Majesté la Reine c. Eric Lamy (Qué.) (Criminelle) (Autorisation) (28158)
2002/02/12	CIBC Mortgage Corporation c. Marcella Vasquez (Qué.) (Civile) (Autorisation) (27963)
2002/02/13	Valérie Tremblay c. Le Syndicat des employées et employés professionnels-les et de bureau, section locale 57 SIEPB, CTC-FTQ, et al. (Qué.) (Civile) (Autorisation) (27965)
2002/02/14	Novopharm Ltd., et al. v. The Wellcome Foundation Limited, et al. (FC) (Civil) (By Leave) (28287)
2002/02/18	Clayton Fensom, et al. v. Deryk J. Kendall, et al. (Sask.) (Civil) (By Leave) (28068)
2002/02/19	Family Insurance Corporation v. Lombard Canada Ltd. (B.C.) (Civil) (By Leave) (28093)
2002/02/20	Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in his capacity as Minister of Justice, et al. v. Patricia Babcock, et al. (B.C.) (Civil) (By Leave) (28091)
2002/02/21	Laura Bannon v. The Corporation of the City of Thunder Bay (Ont.) (Civil) (By Leave) (27985)

NOTE:

This agenda is subject to change. Hearings normally commence at 9:45 a.m. each day. Where there are two cases scheduled on a given day, the second case may be heard immediately after the first case, or at 2:00 p.m. Hearing dates and times should be confirmed with Registry staff at (613) 996-8666.

Ce calendrier est sujet à modification. Les audiences débutent normalement à 9h45 chaque jour. Lorsque deux affaires doivent être entendues le même jour, l'audition de la deuxième affaire peut avoir lieu immédiatement après celle de la première ou encore à 14h. La date et l'heure d'une audience doivent être confirmées auprès du personnel du greffe au (613) 996-8666.

28158 ***Her Majesty the Queen v. Éric Lamy***

Criminal law – Sexual assault with a weapon – *Criminal Code*, s. 2 ("weapon") and s. 272(1)(*a*) – Can the introduction of a stick into the vagina of a victim during a sexual assault be equated to the use of a weapon? – If so, is this a case of sexual assault with a weapon? – Did the Court of appeal err in law by finding that a person acquitted of an offence covered by s. 272(1)(*c*) of the *Code* cannot be found guilty under s. 272(1)(*a*) of the *Code*? - Was the Court of Appeal's decision to modify the sentence inconsistent with the principles set forth by the Supreme Court of Canada?

Around 9:30 p.m., on December 18, 1998, the victim left the Café-Bistrot des Artistes in Shawinigan-Sud with the respondent who was to accompany her to a bar – the Broadway – in Shawinigan, where she was supposed to meet some friends. On the way there, the Respondent invited her to his place saying he had [TRANSLATION] "a few little things to take care of" before accompanying her to the Broadway. Once inside his residence, the Respondent made advances that were rejected by the victim. A bit later, the Respondent insisted on undressing her and forced her to have sexual relations as well as penetrating her anally. At one point the Respondent introduced a stick into the victim's vagina.

According to the Respondent, the stick was actually a dildo that he used to masturbate the victim; he claimed that the stick was not used to threaten her, to intimidate her or to force her to have sexual relations.

The trial judge did not believe the Respondent's version and concluded that the introduction of the stick in itself constituted sexual assault with a weapon. Therefore he found the Respondent guilty of the offence specified by s. 272(1)(*a*) and sentenced him to a period of thirty-two months of imprisonment after taking into account time served. The Respondent was also found guilty of anal intercourse under s. 159(1) of the *Code* and sentenced to a concurrent term of twenty months. The Court of Appeal substituted a verdict of the lesser and included offence of sexual assault for the original one of sexual assault with a weapon, and reduced the sentence from thirty-two to twenty months.

Origin of the case:	Quebec
File No.:	28158
Judgment of the Court of Appeal:	Le 29 juin 2000
Counsel:	Jacques Mercier for the Appellant Yvan Braun for the Respondent

28158 ***Sa Majesté la Reine c. Éric Lamy***

Droit criminel - Agression sexuelle armée – *Code criminel*, art. 2 (“arme”) et sous-par. 272(1)*a*) - L’introduction d’un bâton dans le vagin de la victime lors d’une relation sexuelle forcée peut-elle être assimilée à l’utilisation d’une arme? - Dans l’affirmative, s’agit-il d’une agression sexuelle armée? - La Cour d’appel a-t-elle fait une erreur de droit en concluant qu’une personne acquittée de l’infraction visée au sous-par. 272(1)*c*) *C.cr.* ne pouvait être déclarée coupable de celle visée au sous-par. 272(1)*a*) *C.cr.*? - La Cour d’appel est-elle allée à l’encontre des principes énoncés par la Cour supreme du Canada en modifiant la peine imposée?

Vers 21h30, le 18 décembre 1998, la victime quitte le Café-Bistrot des Artistes à Shawinigan-Sud en compagnie de l’intimé qui devait la reconduire dans un bar – le Broadway – situé à Shawinigan, là où elle devait rejoindre des amis. Chemin faisant, l’intimé l’a invitée chez lui, au motif qu’il avait “quelques petites choses à faire” avant de la reconduire au Broadway. Une fois à l’intérieur de son domicile, l’intimé a fait des avances qui ont été repoussées par la victime. Un peu plus tard, l’intimé s’est fait plus insistant pour ensuite la déshabiller et la forcer à avoir des relations sexuelles et anales. À un moment, l’intimé a introduit un bâton dans le vagin de la victime.

Aux dires de l’intimé, le bâton était en fait un godemiché qu’il a utilisé pour masturber la victime ; il a prétendu que le bâton n’avait pas été utilisé pour la menacer, l’intimider ou la forcer à avoir une relation sexuelle.

Le juge du procès n’a pas cru la version de l’intimé et il a conclu que l’introduction *in se* du bâton constituait une agression sexuelle armée. Il a donc reconnu l’intimé coupable de l’infraction prévue au sous-par. 272(1)*a*) *C.cr.* et l’a condamné, en tenant compte de la période de détention préventive, à une peine de trente-deux mois d’emprisonnement. En outre, l’intimé a été trouvé coupable de relations sexuelles anales (par. 159(1) *C.cr.*) et été condamné à une peine d’emprisonnement concurrente de vingt mois. La Cour d’appel a substitué au verdict de culpabilité d’agression sexuelle armée un verdict de culpabilité de l’infraction moindre et incluse d’agression sexuelle simple et ramené la peine d’emprisonnement de trente-deux à vingt mois.

Origine:	Québec
N^{o} du greffe:	28158
Arrêt de la Cour d’appel:	Le 29 juin 2000
Avocats:	Me Jacques Mercier pour l’appelante Me Yvan Braun pour l’intimé

27963 ***CIBC Mortgage Corporation v. Marcella Vasquez***

Civil Code - Law of property - Immovables - Hypothecary loan - Interpretation - *Civil Code of Quebec*, S.Q. 1991, c. 64, art. 2778 (the "*C.C.Q.*") - In the case of a loan, whether expression "obligation secured by hypothec" refers not only to debtor's principle obligation but also to interest payable on borrowed capital.

The Appellant had consented a hypothecary loan to the Respondent for $40,800. The loan carried an annual interest rate of 11% and included monthly payments of $392.71 from June 1, 1986, to May 1, 1991; the balance of the loan was due on May 1, 1991; the amortization was for a 25-year period. The deed of loan contained a renewal clause that was exercised several times to arrive at a new term on October 30, 1997. The loan was secured by a hypothec on the immovable in co-ownership, which had been acquired by the Respondent with the proceeds of the loan.

Beginning on June 30, 1997, the Respondent failed to meet her obligations under the terms of the deed of loan. Since the Respondent continued to be in default, the Appellant served her a prior notice to exercise the hypothecary right of taking in payment; the prior notice had been published on October 24, 1997. At the time of registration of the notice, the Respondent had reimbursed the amount of $6860 on the borrowed capital.

The notice gave the Respondent a 60-day period to remedy her default. The Respondent did not surrender the immovable, remedy the default, or avail herself of the rights conferred by article 2779 *C.C.Q.* For these reasons, on January 19, 1998, the Appellant served her a motion for forced surrender and for taking in payment.

The Respondent contested the motion claiming that it should be dismissed on the ground that she had reimbursed more than half of the loan. The Superior Court dismissed the motion for taking in payment; the Court of Appeal upheld that decision.

Origin:	Quebec
Court File No.:	27963
Decision of the Court of Appeal:	April 10, 2000
Counsel:	Michel Deschamps for the Appellant Marie-Pierre Charland for the Respondent

27963 ***CIBC Mortgage Corporation c. Marcella Vasquez***

Code civil - Droit des biens - Immeubles - Prêt hypothécaire - Interprétation - *Code civil du Québec*, L.Q. 1991, ch. 64, art. 2778 (le « *C.c.Q.* ») - Dans le cas d'un prêt, l'expression « obligation garantie par hypothèque » réfère-t-elle, non seulement à l'obligation principale du débiteur, mais aussi à l'intérêt payable sur le capital emprunté?

L'appelante a consenti un prêt hypothécaire à l'intimée au montant de 40 800$. Le prêt portait intérêt au taux annuel de 11% et comportait des remboursements mensuels de 392,71$ du 1er juin 1986 au 1er mai 1991 ; le solde du prêt était exigible au 1er mai 1991 ; la période d'amortissement était de 25 ans. L'acte de prêt comportait une clause de renouvellement qui a été exercée à quelques reprises pour en arriver à un nouveau terme le 30 octobre 1997. Le prêt était garanti par une hypothèque sur l'immeuble en copropriété qui avait été acquis par l'intimée avec le produit du prêt.

À compter du 30 juin 1997, l'intimée a fait défaut de respecter ses obligations aux termes de l'acte de prêt. Puisque l'intimée continuait à être en défaut, l'appelante lui a signifié un préavis d'exercice du droit hypothécaire de prise en paiement ; le préavis a été publié le 24 octobre 1997. Au moment de l'inscription du préavis, l'intimée avait remboursé la somme de 6860$ sur le capital emprunté.

Le préavis accordait à l'intimée un délai de 60 jours pour remédier à ses défauts. L'intimée n'a pas délaissé l'immeuble, n'a pas remédié aux défauts et ne s'est pas prévalue des droits conférés par l'article 2779 *C.c.Q.* Pour ces raisons, la demanderesse lui a signifié une requête en délaissement forcé et en prise de paiement le 19 janvier 1998.

L'intimée a produit une contestation à l'encontre de la requête dans laquelle elle alléguait que cette requête devait être rejetée au motif qu'elle avait remboursé plus de la moitié du prêt. La Cour supérieure a rejeté la requête en prise en paiement; la Cour d'appel a confirmé cette décision.

Origine:	Québec
N° du greffe:	27963
Arrêt de la Cour d'appel:	Le 10 avril 2000
Avocats:	Me Michel Deschamps pour l'appelant Me Marie-Pierre Charland pour l'intimé

27965 ***Valérie Tremblay v. Le syndicat des employées et employés professionnels-les et al.***

Labour law - Collective agreement - Eligibility for wage retroactivity - Employer and employee - Is it contrary to the *Labour Code*, R.S.Q., c. C-27, to exclude a person who quit his or her job before a collective agreement was signed from the retroactive application of the wage provisions, in that this arbitrarily creates a distinct wage for the same work? - Is it contrary to ss. 19 and 46 of the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12? - Trade unions - Duty of representation - Civil liability in damages - By negotiating such an exclusion clause, was the union in breach of its duty to represent an employee?

Ms. Valérie Tremblay ("the Appellant") had been employed by the City of Montréal ("the City") as a lawyer since November 21, 1988. As such she was a member, from February 1990 on, of the certification unit of the Office and Professional Employees International Union, Local 57 OPEIU, CLC-FTQ ("the Union"). She paid her union dues in the prescribed form until she resigned from her position with the City on August 23, 1991.

On April 10, 1992, after the Appellant had left her employment with the City, a collective agreement was signed between the City and the Union. Article 24 of the collective agreement deals with the salary allocated to lawyers employed by the City. Clause 24.08 provides for a retroactive readjustment of salary scales covering the period from May 1, 1990 to April 30, 1993. The Appellant was employed by the City for a part of the period covered, from May 1, 1990 to August 23, 1991. She demanded that the City pay her the retroactive wage provided under the collective agreement, which in her case amounted to $10,355.21.

The City refused and denied her right to any retroactivity since, under one of its well-known policies, the City does not pay increases to employees who left their employment with the City prior to the date of implementation of a retroactivity clause. The Appellant had quit her job with the City prior to the date of execution of the collective agreement, so the City did not recognize her right to a retroactive readjustment of the salary earned while she was employed by it.

The Appellant, regarding their decision to exclude her from the right to a retroactive salary readjustment as illegal, unjustified, discriminatory and unreasonable, claimed $10,355.21 and interest jointly and severally from the City and the Union. She also claimed $5,000 from the Union in exemplary damages, alleging that it has breached its duty to represent her and protect her interests.

The Quebec Superior Court allowed the Appellant's action, ordered the Union to pay $11,176 as lost compensation and likewise ordered the Union and the City to pay $5,000 as exemplary damages. The Respondents appealed both these decisions. The Quebec Court of Appeal (Thibault J.A., dissenting in part), allowed their appeals.

Origin:	Quebec
Registry no.	27965
Court of Appeal decision:	April 11, 2000
Counsel:	Ms. Suzanne Côté and Mr. Patrick Girard, for the Appellant Mr. Pierre Gingras for the Respondent Union and Mr. Philippe Berthelet for the Respondent City

27965 ***Valérie Tremblay c. Le syndicat des employées et employés professionnels-les et al.***

Droit du travail - Convention collective - Admissibilité à une rétroactivité de salaire - Employeur et employé - Exclure une personne ayant quitté son emploi avant la signature d'une convention collective de l'application rétroactive des mécanismes salariaux est-il contraire au *Code du travail*, L.R.Q., ch. C-27, en ce que cela crée arbitrairement un salaire distinct pour un même travail? - Est-ce contraire aux art. 19 et 46 de la *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12? - Syndicats - Mandat de représentation - Responsabilité civile en dommages-intérêts - En négociant une telle clause d'exclusion, le syndicat manque-t-il à son devoir de représentation d'une salariée?

Depuis le 21 novembre 1988, M[e] Valérie Tremblay (« l'appelante ») est avocate à l'emploi de la Ville de Montréal (« la Ville »). En tant que telle, elle est membre, à partir de février 1990, de l'unité d'accréditation du Syndicat des Employées et Employés Professionnels-les et de bureau, section locale 57 SIEPB, CTC-FTQ (« le Syndicat »). Elle acquitte, en bonne et due forme, ses cotisations syndicales jusqu'à ce qu'elle démissionne de son poste à la Ville, le 23 août 1991.

Le 10 avril 1992, soit après que l'appelante ait quitté son emploi à la Ville, une convention collective intervient entre la Ville et le Syndicat. L'article 24 de la convention collective traite du salaire octroyé aux avocats à l'emploi de la Ville. La clause 24.08 prévoit un réajustement rétroactif des échelles salariales couvrant la période du 1[er] mai 1990 au 30 avril 1993. L'appelante était au service de la Ville pendant une certaine partie de la période visée, soit du 1[er] mai 1990 au 23 août 1991. Elle exige de la Ville qu'elle lui verse la rétroactivité salariale prévue par la convention collective, soit 10 355,21 $ dans son cas.

La Ville refuse et lui nie le droit à toute rétroactivité puisque, selon l'une de ses politiques bien connues, la Ville ne fait pas bénéficier des augmentations les salariés ayant quitté leur emploi à la Ville avant la date de mise en application d'une clause de rétroactivité. L'appelante ayant quitté son emploi à la Ville avant la date de signature de la convention collective, la Ville ne lui reconnaît pas le droit à un réajustement rétroactif du salaire gagné alors qu'elle était à l'emploi de la Ville.

Estimant que leur décision de l'exclure du droit à un réajustement salarial rétroactif est illégale, injustifiée, discriminatoire et abusive, l'appelante réclame de la Ville et du Syndicat, conjointement et solidairement, la somme de 10 355,21 $ avec intérêts. Elle réclame également du Syndicat la somme de 5000 $ à titre de dommages-intérêts exemplaires, alléguant que celui-ci a manqué au devoir qu'il avait de la représenter et de protéger ses intérêts.

La Cour supérieure du Québec accueille l'action de l'appelante, condamne le Syndicat à payer 11 176 $ à titre de rémunération perdue et condamne également le Syndicat et la Ville à payer 5000 $ à titre de dommages-intérêts exemplaires. Les intimés portent appel de ces deux décisions. La Cour d'appel du Québec, la juge Thibault étant dissidente en partie, accueille leurs pourvois.

Origine:	Québec
N[o] du greffe:	27965
Arrêt de la Cour d'appel:	Le 11 avril 2000
Avocats:	M[es] Suzanne Côté et Patrick Girard pour l'appelante M[e] Pierre Gingras pour le Syndicat intimé et M[e] Philippe Berthelet pour la Ville intimée

28287 ***Novopharm Ltd. et al. v. The Wellcome Foundation Limited et al.***

Property law - Statutes - Interpretation - Patents - Validity - Definition of and requirements for invention and inventorship - Joint inventorship - Whether a mere speculation constitutes patentable subject matter - Whether the patent claims were broader than the invention of the named inventors - Whether a material misrepresentation is in patent as not all joint inventors were named in patent.

In the early 1980s the Respondent Glaxo Wellcome Inc. (Glaxo) was testing compounds against mouse cell viruses that were similar to HIV and by July 1984 had began to test chemical candidates using a murine (mouse) retrovirus screen. The Glaxo scientists some time prior to November 16, 1984, had tested AZT which was a compound that had been synthesized in 1964 as a potential cancer treatment. Patent protection was never sought for AZT. On November 16, 1984, the Glaxo scientists discovered that AZT had completely eradicated the tested murine retroviruses. On November 19, 1984, Dr. Rideout, a Glaxo scientist listed on the patent, formed the idea that AZT could be used to treat HIV and the five Glaxo scientists listed as inventors met shortly after. In January 1985, Glaxo began to prepare its patent application. A draft patent application was completed February 6, 1985. It contained a complete description of a new use of the AZT compound, including dosage details. The draft application was virtually identical to the final patent application filed on March 16, 1985. On February 4, 1985, Glaxo sent the compound, identified only as compound S, for testing against the actual HIV virus at the National Institute of Health (NIH) by Drs. Broder and Mitsuya. Following positive test results, Glaxo submitted its patent application to the U.K. Patent Office, claiming a priority date of March 16, 1985. Glaxo filed its Canadian patent application on March 14, 1985, claiming a priority date of March 16, 1985, based on its earlier U.K. filing. On June 21, 1988, Glaxo was granted a Canadian patent. In both patents, only the five Glaxo scientists were named as inventors; Drs. Broder and Mitsuya were not named as co-inventors. On December 5, 1990, the Appellants Apotex Inc. and Novopharm Ltd. instituted an action in Canada for a declaration that Glaxo's patent was invalid and that their proposed generic AZT products would not infringe the patent.

On October 16, 1991, Glaxo commenced an action against Apotex, alleging, *inter alia*, that Apotex's proposed products infringed various claims in Glaxo's patent. On December 20, 1993, Glaxo commenced an action for infringement against Novopharm. The three actions were consolidated and heard together. The trial judge found that many of the claims contained in the patent were valid and concluded that the Appellants had infringed those claims. The Federal Court of Appeal allowed an appeal with respect to claims not restricted to the use of AZT but dismissed the appeals in all other respects.

Origin of the case:	Federal Court of Appeal
File No.:	28287
Judgment of the Court of Appeal:	December 4, 2000
Counsel:	Carol Hitchman/Warren Sprigings/Paula Bremner for the Appellant Novopharm H.B. Radomski/R. Naiberg/D.M. Scrimger for the Appellant Apotex Patrick Kierans/Peter Stanford for the Respondents Wellcome Foundation and Glaxo Wellcome

28287 ***Novopharm Ltd. et autres c. The Wellcome Foundation Limited et autres***

Droit des biens - Lois - Interprétation - Brevets - Validité - Définition et conditions d'une invention et de la qualité d'inventeur - Invention conjointe - Une simple hypothèse constitue-t-elle une matière brevetable? - Les revendications du brevet étaient-elles plus étendues que l'invention des inventeurs désignés? - Une déclaration inexacte importante se trouve-t-elle dans le brevet étant donné que les inventeurs conjoints n'étaient pas tous désignés dans le brevet?

Au début des années 1980, l'intimée Glaxo Wellcome Inc. (Glaxo) testait des composés contre des virus de cellules de souris qui étaient semblables au VIH et, en juillet 1984, elle avait commencé des tests sur des candidats chimiques à l'aide d'un écran rétroviral des muridés (les souris). Les scientifiques de Glaxo, un peu avant le 16 novembre 1984, avaient testé l'AZT, un composé qui avait été synthétisé en 1964 comme agent possible de traitement du cancer. La protection par brevet n'a jamais été demandée pour l'AZT. Le 16 novembre 1984, les scientifiques de Glaxo découvrirent que l'AZT avait complètement éradiqué les rétrovirus de muridés testés. Le 19 novembre 1984, le D^{r} Rideout, un scientifique de Glaxo mentionné sur le brevet, émit l'hypothèse que l'AZT pouvait être utilisé pour traiter le VIH, et les cinq scientifiques de Glaxo indiqués comme inventeurs se rencontrèrent peu après. En janvier 1985, Glaxo entreprit de rédiger sa demande de brevet. Un projet de demande fut complété le 6 février 1985. Il renfermait la description complète d'une nouvelle utilisation du composé AZT, y compris des détails posologiques. Le projet de demande était pour ainsi dire identique à la demande finale de brevet déposée le 16 mars 1985. Le 4 février 1985, Glaxo envoya le composé, désigné uniquement comme composé S, à l'Institut national de la santé (INH) pour qu'il soit testé sur le virus VIH réel par les D^{rs} Broder et Mitsuya. Après des résultats positifs, Glaxo présenta sa demande de brevet au Bureau des brevets du R.-U., revendiquant la date de priorité du 16 mars 1985. Glaxo a déposé sa demande de brevet canadien le 14 mars 1985, revendiquant la date de priorité du 16 mars 1985, compte tenu de sa demande antérieure déposée au R.-U. Le 21 juin 1988, un brevet canadien était accordé à Glaxo. Dans les deux brevets, seuls les cinq scientifiques de Glaxo étaient désignés comme inventeurs. Les D^{rs} Broder et Mitsuya n'étaient pas désignés comme inventeurs conjoints. Le 5 décembre 1990, les appelantes Apotex Inc. et Novopharm Ltd. engageaient au Canada une action pour obtenir une déclaration selon laquelle le brevet de Glaxo était invalide et selon laquelle leurs produits génériques proposés AZT ne porteraient pas atteinte au brevet.

Le 16 octobre 1991, Glaxo assignait Apotex en justice, affirmant notamment que les produits proposés d'Apotex portaient atteinte à diverses revendications contenues dans le brevet de Glaxo. Le 20 décembre 1993, Glaxo engageait contre Novopharm une action en contrefaçon. Les trois actions ont été regroupées et ont été instruites ensemble. Le juge du procès a estimé que plusieurs des revendications contenues dans le brevet étaient valides et il a conclu que les appelantes avaient porté atteinte à telles revendications. La Cour d'appel fédérale a accueilli un appel se rapportant aux revendications non limitées à l'utilisation de l'AZT, mais a rejeté les appels à tous autres égards.

Origine de l'affaire :	Cour d'appel fédérale
N^{o} du greffe :	28287
Arrêt de la Cour d'appel :	le 4 décembre 2000
Avocats :	M^{es}Carol Hitchman, Warren Sprigings et Paula Bremner, pour l'appelante Novopharm M^{es} H.B. Radomski, R. Naiberg et D.M. Scrimger, pour l'appelante Apotex M^{es} Patrick Kierans et Peter Stanford, pour les intimées Wellcome Foundation et Glaxo Wellcome

28068 ***Clayton Fensom et al. v. Deryk J. Kendall et al.***

Procedural Law - Torts - Statutes - Limitation of actions - Motor vehicle - Damages - Contracts - Whether the Saskatchewan Court of Appeal erred in finding that alternative limitation periods may apply in situations where an individual is injured while riding in a moving motor vehicle, but an implied contract of safe passage is found to exist where the injured party has paid a fee for transportation - Whether section 88 of *The Highway Traffic Act,* S.S.1986, c. H-3.1 bars in its entirety the cause of action identified in the Statement of Claim *Heredi v. Clayton Fensom and Trailways Transportation Group Inc.*

The Appellant, Fensom, was the operator of a Paratransit bus owned by the Appellant company, Trailways Transportation Group Inc. On March 31, 1994, the Appellant, Fensom, arrived at the plaintiff, Edna Heredi's home and was paid a fee to transport her to an appointment. He assisted her into the bus and placed one end of her crutch beneath her right shoulder and the other end against the interior wheel well of the bus. While the bus was in transit, the crutches jarred the plaintiff's right shoulder and caused her injury.

As a result of the injuries sustained, the plaintiff commenced legal action against both Appellants and the Respondents were retained as her legal counsel. A second legal action was later commenced by the plaintiff against the Respondents for breach of an implied term of their agreement concerning the exercise of due care, skill and diligence in the prosecution of her claim against the Appellants. The actions were heard jointly in the Court of Queen's Bench of Saskatchewan. The parties agreed to the quantum of damage but the matter of liability had to be determined. Scheibel J. held the damages were "occasioned by a motor vehicle" and therefore, the one year limitation period under the *Highway Traffic Act,* S.S. 1986, c. H-3.1 ("HTA") applied and the plaintiff's action was statute-barred.

On appeal, the Saskatchewan Court of Appeal affirmed the determination that the damages were "occasioned by a motor vehicle" and ruled the limitation period under the HTA would apply insofar as the action was one in tort and would not apply insofar as the action was one in contract.

Origin of the case:	Saskatchewan
File No.:	28068
Judgment of the Court of Appeal:	May 15, 2000
Counsel:	Timothy J. Macleod for the Appellant Thomas J. Schonhoffer for the Respondent

28068 ***Clayton Fensom et autre c. Deryk J. Kendall et autres***

Droit procédural - Délits - Lois - Prescription extinctive - Véhicule automobile - Dommages-intérêts - Contrats - La Cour d'appel de la Saskatchewan a-t-elle commis une erreur en jugeant que d'autres délais de prescription peuvent s'appliquer lorsqu'une personne se blesse dans un véhicule automobile en mouvement, tout en jugeant qu'il existe un contrat implicite de passage sécuritaire lorsque la personne blessée a payé un droit pour le transport? - L'article 88 du *Highway Traffic Act*, S.S.1986, ch. H-3.1, fait-il entièrement obstacle à la cause d'action indiquée dans la déclaration *Heredi c. Clayton Fensom and Trailways Transportation Group Inc.*?

L'appelant, Fensom, était l'exploitant d'un autobus de transport adapté appartenant à la société appelante, Trailways Transportation Group Inc. Le 31 mars 1994, l'appelant Fensom s'est présenté au domicile de la demanderesse, Edna Heredi, laquelle lui paya une redevance pour qu'il la transporte à un endroit où elle avait rendez-vous. Il l'aida à monter dans l'autobus et plaça une extrémité de sa béquille sous son épaule droite et l'autre extrémité contre la cage de roue intérieure de l'autobus. Alors que l'autobus était en mouvement, les béquilles heurtèrent l'épaule droite de la demanderesse et lui causèrent une blessure.

À la suite des blessures subies, la demanderesse assigna en justice les deux appelants, et elle demanda aux intimés de la représenter dans son action. Une deuxième action fut plus tard introduite par la demanderesse contre les intimés pour violation d'une condition implicite de leur entente concernant l'exercice d'un niveau de prudence, de compétence et de diligence dans les procédures engagées par elle contre les appelants. Les actions ont été instruites simultanément devant la Cour du banc de la Reine de la Saskatchewan. Les parties se sont entendues sur le montant des dommages-intérêts, mais la question de la responsabilité devait être déterminée. Le juge Scheibel a estimé que les dommages avaient été « occasionnés par un véhicule automobile » et par conséquent le délai de prescription d'un an prévu par le *Highway Traffic Act*, S.S. 1986, ch. H-3.1 (le « *HTA* ») s'appliquait, et l'action de la demanderesse était prescrite.

En appel, la Cour d'appel de la Saskatchewan a confirmé la conclusion selon laquelle les dommages avaient été « occasionnés par un véhicule automobile » et a indiqué que le délai de prescription prévu par le *HTA* s'appliquerait si l'action était une action délictuelle et ne s'appliquerait pas s'il s'agissait d'une action contractuelle.

Origine de l'affaire :	Saskatchewan
N° du greffe :	28068
Arrêt de la Cour d'appel :	le 15 mai 2000
Avocats :	M^e^ Timothy J. Macleod, pour l'appelant M^e^ Thomas J. Schonhoffer, pour l'intimé

28093 ***Family Insurance Corporation v. Lombard Canada Ltd.***

Commercial law - Insurance - Contract of indemnity - Primary and excess coverage - Group liability and homeowner's policies both containing excess insurance clauses limiting insurer's obligation to indemnify where other insurance available - Interpretation - Whether Court of Appeal erred in interpreting terms of competing insurance policies - Whether Court of Appeal erred in considering extrinsic evidence - Whether Court of Appeal erred in failing to give effect to the terms of the two policies, and particularly their "other insurance" clauses, such that Lombard would be held solely responsible or, in the alternative, both insurers should contribute, either by ratios based on their respective policy limits, or equally.

On March 18, 1996, a young woman was seriously injured in a fall from a horse. She sued Lesley Young, the owner of the stable, who was insured both by the Appellant under a homeowners/residential policy for up to $1 million; and by reason of her membership in the Horse Council of British Columbia, with the Respondent, Lombard Canada Inc., in a Comprehensive Business Policy, for an amount of up to $5 million. Although the wording of each was different, both policies purported to be "excess coverage" to other policies held by the insured. The question before the court was the effect of these competing clauses, which policy was engaged to provide coverage, and to what extent. Quantum of damages had been settled at $500,000.

The Appellant moved for an order that the Respondent was liable, or in the alternative, that liability be apportioned between the two insurers. The trial judge concluded that the excess coverage clauses cancelled each other out and that liability should be divided equally between the two parties. This decision was overturned on appeal, on the ground that when the surrounding circumstances were considered, it was clear that the Respondent was always intended to provide only excess coverage, unless it was the only insurer.

Origin of the case:	British Columbia
File No.:	28093
Judgment of the Court of Appeal:	May 31, 2000
Counsel:	Neo J. Tuytel and Jonathan L.S. Hodes for the Appellant James H. MacMaster and Donald B. Lebans for the Respondent

28093 ***Family Insurance Corporation c. Lombard Canada Ltd.***

Droit commercial - Assurance - Contrat d'indemnisation - Garantie de premier rang et assurance dite d'excédent - Police de responsabilité de base et police propriétaires occupants de base contenant toutes deux des clauses d'assurance dite d'excédent qui limitent l'obligation de l'assureur de verser une indemnité lorsqu'il existe une autre assurance - Interprétation - La Cour d'appel a-t-elle erré dans son interprétation des modalités des polices d'assurance concurrentes? - La Cour d'appel a-t-elle erré en tenant compte d'une preuve extrinsèque? La Cour d'appel a-t-elle erré en ne donnant pas effet aux modalités des deux polices et particulièrement à leurs clauses « autre assurance », de sorte que la société Lombard serait tenue seule responsable ou, subsidiairement, les deux assureurs devraient contribuer, chacun en proportion selon les limites contenues dans leurs polices respectives ou de façon égale.

Le 18 mars 1996, une jeune femme s'est infligé de graves blessures en tombant de cheval. Elle a poursuivi Lesley Young, la propriétaire de l'écurie, qui était assurée à la fois par l'appelante en vertu d'une police propriétaires occupants jusqu'à concurrence de 1 million $ et, en raison de son appartenance à la Horse Council of British Columbia, par la compagnie intimée Lombard Canada Inc., dans le cadre d'une police commerciale multirisques, jusqu'à concurrence de 5 millions $. Malgré un libellé différent, les deux polices étaient censées être une assurance dite d'excédent aux autres polices détenues par l'assurée. La question dont la cour était saisie portait sur l'effet de ces clauses concurrentes, à savoir quelle police devait fournir l'indemnité et dans quelle mesure. Le montant des dommages-intérêts avait été fixé à 500 000 $.

L'appelante a ensuite demandé une ordonnance portant que l'intimée était responsable ou, subsidiairement, que la responsabilité devait être répartie entre les deux assureurs. Le juge de première instance a conclu que les clauses d'assurance dite d'excédent s'annulaient l'une et l'autre et que la responsabilité devait être répartie également entre les deux parties. Cette décision a été modifiée en appel, pour le motif que, compte tenu des circonstances entourant l'affaire, il était clair que l'intimée avait toujours l'intention de fournir une assurance dite d'excédent, à moins d'être l'unique assureur.

Origine :	Colombie-Britannique
N° du greffe :	28093
Arrêt de la Cour d'appel :	Le 31 mai 2000
Avocats :	M[es] Neo J. Tuytel et Jonathan L.S. Hodes pour l'appelante M[es] James H. MacMaster et Donald B. Lebans pour l'intimée

28091 ***The Attorney General of Canada on behalf of Her Majesty the Queen in right of Canada and in his capacity as Minister of Justice et al. v. Patricia Babcock et al.***

Procedural law - Evidence - Production and disclosure of documents - Privilege - Public interest immunity - Cabinet Confidentiality - Whether s. 39 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 is of no force or effect, in whole or in part, pursuant to s. 52 of the *Constitution Act, 1982* by reason of one or both of the preamble to and s. 96 of the *Constitution Act, 1867* - Whether the Court of Appeal erred in law in holding that public interest immunity under s. 39 of the *Canada Evidence Act* can be waived - Whether the Court of Appeal erred in law in holding that disclosure of one Cabinet confidence results in the loss of public interest immunity for all Cabinet confidences listed in a certificate under s. 39 of the *Canada Evidence Act*.

The Respondents are staff lawyers with the Federal Department of Justice in Vancouver. They commenced an action for damages for breach of contract and for breach of fiduciary duty in which it is alleged that the Appellants are in breach by paying staff lawyers in Toronto more than they are paid for the same work. The Appellants include the Treasury Board and the Attorney General of Canada on behalf of Her Majesty. The Appellants delivered a certificate issued by the Clerk of the Privy Council objecting to the disclosure of certain documents and any examination thereon pursuant to s. 39(1) of the *Canada Evidence Act* because they contain "information constituting confidences of the Queen's Privy Council for Canada." The Appellants sought to apply the certificate retroactively regarding some documents already produced, as well as prospectively for other documents and information.

The chambers judge dismissed the Respondent's application to compel production of the documents and to produce a Treasury Board representative. A majority of the Court of Appeal, Southin J.A. dissenting, allowed the appeal, and ordered the Appellants to produce all documents withheld under s. 39, and to produce a Treasury Board representative for examination thereon.

Origin of the case:	British Columbia
File No.:	28091
Judgment of the Court of Appeal:	June 6, 2000
Counsel:	David Sgayias Q.C. for the Appellants Richard R. Sugden Q.C. for the Respondents

28091 ***Le Procureur général du Canada, au nom de Sa Majesté la Reine du chef du Canada et en sa qualité de ministre de la Justice et autres c. Patricia Babcock et autres***

Droit procédural - Preuve - Production et communication de documents - Privilège - Immunité d'intérêt public - Document confidentiel du cabinet - L'article 39 de la *Loi sur la preuve au Canada*, L.R.C. (1985), ch. C-5, est-il invalide, en totalité ou en partie, au regard de l'art. 52 de la *Loi constitutionnelle de 1982*, en raison du préambule ou de l'art. 96 de la *Loi constitutionnelle de 1867*, ou en raison à la fois du préambule et de l'article 96? - La Cour d'appel a-t-elle erré en droit en jugeant que l'immunité d'intérêt public prévue par l'art. 39 de la *Loi sur la preuve au Canada* peut être abandonnée? - La Cour d'appel a-t-elle erré en droit en jugeant que la communication d'un document confidentiel du cabinet entraîne la perte de l'immunité d'intérêt public pour tous les documents confidentiels du cabinet énumérés dans un certificat délivré en vertu de l'art. 39 de la *Loi sur la preuve au Canada*?

Les intimés sont des avocats internes du ministère fédéral de la Justice à Vancouver. Ils ont introduit une action en dommages-intérêts pour rupture de contrat et pour violation d'une obligation fiduciaire, action dans laquelle il est allégué que les appelants commettent un manquement en payant les avocats du ministère à Toronto davantage qu'eux-mêmes ne sont payés pour le même travail. Les appelants sont le Conseil du Trésor et le Procureur général du Canada, au nom de Sa Majesté. Les appelants ont produit un certificat délivré par le greffier du Conseil privé, certificat dans lequel il est fait opposition à la communication de certains documents et à tout interrogatoire les concernant, en conformité avec le paragraphe 39(1) de la *Loi sur la preuve au Canada*, parce qu'ils renferment « des renseignements qui sont des renseignements confidentiels du Conseil privé de la Reine pour le Canada ». Les appelants ont tenté d'appliquer rétroactivement le certificat pour certains documents déjà produits, ainsi que prospectivement pour d'autres documents et renseignements.

Le juge des requêtes a rejeté la demande des intimés visant à forcer la production des documents et à faire témoigner un représentant du Conseil du Trésor. La majorité des juges de la Cour d'appel, (le juge Southin était dissident) a accueilli l'appel et ordonné aux appelants de produire tous les documents retenus en vertu de l'article 39 et de faire témoigner un représentant du Conseil du Trésor pour qu'il soit interrogé à propos de tels documents.

Origine de l'affaire :	Colombie-Britannique
N° du greffe :	28091
Arrêt de la Cour d'appel :	le 6 juin 2000
Avocats :	M^e David Sgayias, c.r., pour les appelants M^e Richard R. Sugden, c.r., pour les intimés

27985 ***Laura Bannon v. The Corporation of The City of Thunder Bay***

Statutes - Interpretation - Procedural law - Limitation of actions - Appeal - Torts - Negligence - Municipal law - Highways - Seriously injured woman failed to provide written notice of her claim within the statutorily required seven days. - Whether the Court of Appeal can substitute its own findings for the findings of fact of the trial judge.

On December 29, 1995, at about 1:30 a.m. the 47-year old Appellant left the home of her son where she had been babysitting to walk to her home. At the time she walked with a cane because of a knee replacement she had undergone in October of that year. The Appellant's son walked her part way home, and after he had left her, she moved from the street to the sidewalk. When she turned to see if her son was still in view, she stepped into a hole in the sidewalk which she later described as being an accumulation of unshovelled ice and snow. As a result of the fall the Appellant twisted her right leg and fractured her lower right femur just above the knee replacement. She was unable to get up until she was noticed by a passer-by and an ambulance was called to take her to a hospital emergency department. She underwent two hour surgery under general anaesthetic, which included the installation of an internal fixation device to stabilize the fracture. She remained in that hospital until January 11th or 12th until she was transferred to a convalescent home.

When the Appellant was visited in the hospital by her brother some time later, he suggested that she contact a lawyer to see if the City was responsible for her accident. Feeling that the Appellant was not acting like her normal self, he contacted his own lawyer on the matter. Notice of the accident was sent to the City on or about January 16, 1996 and the Appellant's action was commenced February 28, 1996, well within the three month limitation period. The Appellant brought an action in damages claiming that the Respondent City had been grossly negligent and relying upon section 284(4) of the *Municipal Act*, R.S.O. 1990, c. M 45 (the "*Act*"). The Respondent City claimed that the Appellant's action was statute barred by reason of her failure to give the seven day notice of her claim required under ss. 284(5) of the *Act*. The Appellant's position was that she had not been physically or mentally able to make the necessary decisions and arrangements to give notice to the City within the required period. Before the surgery and for a few days afterward the Appellant was given morphine, and after that she was switched to a strong oral painkiller Percocet. She continued on that medication until January 9th, when she was switched to Leritine. The Appellant's surgeon indicated that during the Appellant's stay in hospital she was given appropriate analgesics to relieve her pain and therefore she would not have been physically or mentally capable of giving notice to the Respondent within the first seven days of her accident.

The Superior Court of Justice held that the Appellant was physically and mentally incapable of complying with the notice requirements of section 284(5) of the *Act*, and that her action was therefore not statute barred. Kozak J. went on to find that the Respondent had been grossly negligent in maintaining the sidewalk. The issue of the quantum of the Appellant's damages was to be dealt with in a separate trial. The Respondent appealed that decision and the Court of Appeal for Ontario allowed the appeal.

Origin of the case:	Ontario
File No.:	27985
Judgment of the Court of Appeal:	April 26, 2000
Counsel:	W. Danial Newton for the Appellant Stephen J. Wojciechowski for the Respondent

27985 ***Laura Bannon c. La Corporation de la Ville de Thunder Bay***

Lois - Interprétation - Droit procédural - Prescription extinctive - Appel - Délits - Faute - Droit municipal - Routes - Une femme gravement blessée n'a pas donné avis écrit de sa réclamation dans le délai prescrit par la loi - La Cour d'appel peut-elle substituer ses propres conclusions aux conclusions de fait du juge du procès?

Le 29 décembre 1995, vers 1 h 30 du matin, l'appelante, âgée de 47 ans, quittait le domicile de son fils, où elle s'était occupée d'un enfant en bas âge, pour retourner chez elle à pied. À l'époque, elle se déplaçait à l'aide d'une canne en raison d'une opération au genou qu'elle avait subie en octobre de la même année. Le fils de l'appelante fit une partie du chemin avec elle et, après qu'il fit demi-tour, elle se dirigea de la rue vers le trottoir. Au moment de se retourner pour voir si son fils était encore en vue, elle chuta dans un trou sur le trottoir, qu'elle décrivit plus tard comme une accumulation de glace et de neige restée là. Par suite de la chute, l'appelante se tordit la jambe droite et se fractura le fémur inférieur droit, juste au-dessus du genou opéré. Elle fut incapable de se relever avant d'être remarquée par un passant, et une ambulance fut appelée pour son transport au service des urgences d'un hôpital. Elle a subi une chirurgie de deux heures, sous anesthésie générale, chirurgie au cours de laquelle on lui installa un dispositif de fixation interne pour stabiliser la fracture. Elle resta dans cet hôpital jusqu'au 11 ou 12 janvier, jusqu'à son transfert dans une maison de convalescence.

Lorsque l'appelante fut visitée à l'hôpital par son frère un peu plus tard, il lui conseilla de consulter un avocat pour voir si la Ville était responsable de son accident. Ayant l'impression que l'appelante n'avait pas un comportement normal, il consulta son propre avocat. Un avis de l'accident fut envoyé à la Ville le 16 janvier 1996 ou vers cette date, et l'action de l'appelante fut introduite le 28 février 1996, largement à l'intérieur du délai de prescription de trois mois. Dans son action en dommages-intérêts, l'appelante affirmait que la Ville intimée avait commis une faute lourde et elle invoquait le paragraphe 284(4) de la *Loi sur les municipalités*, L.R.O. (1990), ch. M 45 (la « *Loi* »). La Ville intimée prétendit que l'action de l'appelante était prescrite parce qu'elle n'avait pas donné un avis de sept jours de sa réclamation, comme l'y obligeait le paragraphe 284(5) de la *Loi*. La position de l'appelante était qu'elle n'avait pu, physiquement ou mentalement, prendre les décisions et arrangements nécessaires pour donner avis à la Ville dans le délai prévu. Avant la chirurgie et pendant quelques jours par la suite, l'appelante avait reçu de la morphine, et après cela on lui avait administré un puissant analgésique oral, le Percocet. Elle a continué de prendre ce médicament jusqu'au 9 janvier, puis on le remplaça par la Leritine. Le chirurgien de l'appelante a indiqué que, durant le séjour de l'appelante à l'hôpital, on lui avait administré les analgésiques nécessaires pour atténuer la douleur et qu'elle n'aurait donc pas été physiquement ou mentalement en mesure de donner avis à l'intimée durant les sept premiers jours qui avaient suivi l'accident.

La Cour supérieure de justice a jugé que l'appelante avait été physiquement et mentalement incapable de se conformer aux exigences de notification prévues par le paragraphe 284(5) de la *Loi*, et que son action n'était donc pas prescrite. Le juge Kozak a ensuite estimé que l'intimée avait commis une faute lourde dans l'entretien du trottoir. La question du montant des dommages-intérêts devant être versés à l'appelante allait être considérée dans un procès distinct. L'intimée a fait appel de ce jugement, et la Cour d'appel de l'Ontario a accueilli l'appel.

Origine de l'affaire :	Ontario
N° du greffe :	27985
Arrêt de la Cour d'appel :	le 26 avril 2000
Avocats :	M^e^ W. Danial Newton, pour l'appelante M^e^ Stephen J. Wojciechowski, pour l'intimée

DEADLINES: MOTIONS

BEFORE THE COURT:

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

Motion day	**:**	**February 11, 2002**
Service	:	January 21, 2002
Filing	:	January 25, 2002
Respondent	:	February 1, 2002

Motion day	**:**	**March 11, 2002**
Service	:	February 18, 2002
Filing	:	February 22, 2002
Respondent	:	March 1, 2002

DÉLAIS: REQUÊTES

DEVANT LA COUR:

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

Audience du	**:**	**11 février 2002**
Signification	:	21 janvier 2002
Dépôt	:	25 janvier 2002
Intimé	:	1 février 2002

Audience du	**:**	**11 mars 2002**
Signification	:	18 février 2002
Dépôt	:	22 février 2002
Intimé	:	1 mars 2002

DEADLINES: APPEALS

The Spring Session of the Supreme Court of Canada will commence April 15, 2002.

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 15 avril 2002.

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.

Veuillez 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.

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2001 -

OCTOBER - OCTOBRE

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

DECEMBER - DECEMBRE

S D	M L	T M	W M	T J	F V	S S
						1
2	**M 3**	**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					

- 2002 -

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	**M 14**	**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	**M 11**	**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	**M 11**	**12**	**13**	**14**	**15**	16
17	**18**	**19**	**20**	**21**	**22**	23
24/31	25	26	27	28	H 29	30

APRIL - AVRIL

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				

MAY - MAI

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	**M 13**	**14**	**15**	**16**	**17**	18
19	H 20	**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	**M 10**	**11**	**12**	**13**	**14**	15
16	**17**	**18**	**19**	**20**	**21**	22
23/30	24	25	26	27	28	29

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

M

H

18 sitting weeks / semaines séances de la cour
79 sitting days / journées séances de la cour
9 motion and conference days / journées requêtes, conférences
2 holidays during sitting days / jours fériés durant les sessions