

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

This Bulletin is published at the direction of the Registrar and is for general information only. It is not to be used as evidence of its content, which, if required, should be proved by Certificate of the Registrar under the Seal of the Court. While every effort is made to ensure accuracy, no responsibility is assumed for errors or omissions.

Ce Bulletin, publié sous l'autorité du registraire, ne vise qu'à fournir des renseignements d'ordre général. Il ne peut servir de preuve de son contenu. Celle-ci s'établit par un certificat du registraire donné sous le sceau de la Cour. Rien n'est négligé pour assurer l'exactitude du contenu, mais la Cour décline toute responsabilité pour les erreurs ou omissions.

Subscriptions may be had at \$200 per year, payable in advance, in accordance with the Court tariff. During Court sessions it is usually issued weekly.

Le prix de l'abonnement, fixé dans le tarif de la Cour, est de 200 \$ l'an, payable d'avance. Le Bulletin paraît en principe toutes les semaines pendant les sessions de la Cour.

The Bulletin, being a factual report of recorded proceedings, is produced in the language of record. Where a judgment has been rendered, requests for copies should be made to the Registrar, with a remittance of \$10 for each set of reasons. All remittances should be made payable to the Receiver General for Canada.

Le Bulletin rassemble les procédures devant la Cour dans la langue du dossier. Quand un arrêt est rendu, on peut se procurer les motifs de jugement en adressant sa demande au registraire, accompagnée de 10 \$ par exemplaire. Le paiement doit être fait à l'ordre du Receveur général du Canada.

CONTENTS**TABLE DES MATIÈRES**

Applications for leave to appeal filed	227 - 229	Demandes d'autorisation d'appel déposées
Applications for leave submitted to Court since last issue	230 - 242	Demandes soumises à la Cour depuis la dernière parution
Oral hearing ordered	-	Audience ordonnée
Oral hearing on applications for leave	-	Audience sur les demandes d'autorisation
Judgments on applications for leave	243 - 257	Jugements rendus sur les demandes d'autorisation
Judgment on motion	-	Jugement sur requête
Motions	258 - 261	Requêtes
Notices of appeal filed since last issue	-	Avis d'appel déposés depuis la dernière parution
Notices of intervention filed since last issue	-	Avis d'intervention déposés depuis la dernière parution
Notices of discontinuance filed since last issue	-	Avis de désistement déposés depuis la dernière parution
Appeals heard since last issue and disposition	262 - 266	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	-	Jugements rendus sur les appels en délibéré
Rehearing	-	Nouvelle audition
Headnotes of recent judgments	-	Sommaires des arrêts récents
Agenda	-	Calendrier
Summaries of the cases	-	Résumés des affaires
Notices to the Profession and Press Release	-	Avis aux avocats et communiqué de presse
Deadlines: Appeals	267	Délais: Appels
Judgments reported in S.C.R.	-	Jugements publiés au R.C.S.

**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Philippe Vigneault

Christian Lachance
Des Longchamps, Bourrasse & Trudeau

c. (29574)

Sa Majesté la Reine (Qué.)

Hélène DesParois
P.G. du Québec

DATE DE PRODUCTION 17.1.2003

Chambre des notaires du Québec

Manon Talbot
Talbot Charbonneau

c. (29575)

Yves Dugas (Qué.)

Yves Dugas

DATE DE PRODUCTION 17.1.2003

James Blair Down

Charles F. Willms
Fasken Martineau DuMoulin

v. (29576)

**Interclaim Holdings Limited and the
Co-petitioners listed in Schedule "B" to the
Petitions (B.C.)**

Robert W. Grant
Heenan Blaikie

FILING DATE 20.1.2003

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

Donald Pearson, et al.

David A. Klein
Klein Lyons

v. (29578)

Boliden Limited, et al. (B.C.)

Elliot M. Myers
Bull, Housser & Tupper

FILING DATE 20.1.2003

Michael Pochay

Michael Pochay

v. (29550)

The Commissioner of Corrections Canada (Ont.)

Jeff Anderson
A.G. of Canada

FILING DATE 23.1.2003

Holly Big Canoe, Inquiry Officer

William S. Challis
Information and Privacy Commissioner/
Ontario

v. (29572)

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

Luba A. Kowal
A.G. for Ontario

FILING DATE 24.1.2003

Her Majesty the Queen

Peter P. Rosinski
Public Prosecution Service

v. (29579)

Bernard Edgar Moore (N.S.)

Philip J. Star
Pink Nickerson Star

FILING DATE 24.1.2003

Zurich Insurance Company

Steven Stieber
Stieber Berlach Gibbs

v. (29577)

686234 Ontario Limited (Ont.)

John A. Campion
Fasken Martineau DuMoulin

FILING DATE 27.1.2003

**St. James-Assiniboia Teachers' Association of the
Manitoba Teachers' Society**

Mel Myers, Q.C.
Myers Weinberg

v. (29581)

St. James-Assiniboia School Division (Man.)

Kristin Gibson
Aikins, MacAulay & Thorvaldson

FILING DATE 27.1.2003

**Her Majesty the Queen in Right of the province
of Alberta as represented by the Minister of
Infrastructure (formerly the Minister of Public
Works, Supply and Services)**

Gavin S. Fitch
Rooney Prentice

v. (29580)

Thor William Nilsson (Alta.)

Brian Kaliel
Cobertt Smith Bresee

FILING DATE 28.1.2003

House of Commons, et al.

Neil Finkelstein
Blake, Cassels & Graydon

v. (29564)

Satnam Vaid, et al. (F.C.)

Satnam Vaid

FILING DATE 31.1.2003

**La Compagnie d'assurance générale Kansa
International, et autre**

Réjean Lizotte
Desjardins Ducharme Stein Monast

c. (29573)

Corporation de la Ville de Hawkesbury (Qué.)

Jean Bélanger
Lavery, de Billy

DATE DE PRODUCTION 31.1.2003

Benjamin Krela, et autre

Marzia Frascadore
Gowling Lafleur Henderson

c. (29567)

Sulzer Medica AG, et autres (Qué.)

Douglas C. Mitchell
Irving Mitchell & Associates

DATE DE PRODUCTION 3.2.2003

Raynald Jean

François Marchand
Daignault & Associés

c. (29582)

Ville de Val-Bélair (Qué.)

Roger Pothier
Pothier Delisle

DATE DE PRODUCTION 3.2.2003

W.L. Gore & Associates, Inc.

George E. Fisk
Blake Cassels & Graydon

v. (29583)

David Goldfarb (F.C.)

Joan Clark, Q.C.
Ogilvy Renault

FILING DATE 3.2.2003

FEBRUARY 10, 2003 / LE 10 FÉVRIER 2003

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

Steve Brian Ewanchuk

v. (29460)

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

NATURE OF THE CASE

Criminal Law (Non Charter) - Sentencing - Whether Court of Appeal erred in assessing fitness of the sentence - Whether courts below failed to take into account and give appropriate weight to the unique circumstances particular to this case - Whether courts below erred in refusing a conditional sentence.

PROCEDURAL HISTORY

October 20, 2000 Court of Queen's Bench of Alberta (Moore J.C.Q.B.A.)	Applicant sentenced to one year imprisonment
April 19, 2002 Court of Appeal of Alberta (Russell J.A., Rawlins J. [<i>ad hoc</i>] and Verville J. [<i>ad hoc</i>])	Respondent's appeal allowed: Applicant sentenced to two years less a day imprisonment; Applicant's cross-appeal dismissed
November 18, 2002 Supreme Court of Canada	Application for leave to appeal filed

Deloitte & Touche Inc. (formerly Arthur Andersen Inc.)

v. (29459)

Artisan Corporation (Sask.)

NATURE OF THE CASE

Commercial law - Mechanics' liens - General liens - Statutes - Interpretation - Respondent registering builders' lien pursuant to *The Builders' Lien Act*, S.S. 1984-85-86, c. B-7.1 - Whether chambers judge erred in holding that Respondent had a valid general lien pursuant to s. 29 of Act - Whether a general lien can attach the property of third parties who do not have an interest in all improved properties covered by the lien - Whether the question of entitlement to a general lien is a threshold determination for application of the relevant lien legislation, thereby requiring a strict statutory interpretation.

PROCEDURAL HISTORY

November 7, 2001
Court of Queen's Bench of Saskatchewan
(Kraus J.)

Respondent's lien declared valid

September 18, 2002
Court of Appeal for Saskatchewan
(Vancise, Gerwing and Jackson JJ.A.)

Appeal dismissed

November 18, 2002
Supreme Court of Canada

Application for leave to appeal filed

Robert Kenneth Hartshorne

v. (29531)

Kathleen Mary Mildred Hartshorne (B.C.)

NATURE OF THE CASE

Family law - Division of property - Marriage agreement - Parties electing separate property regime in marriage agreement - Wife giving up career to raise family - Whether marriage contract unfair - Whether Court of Appeal erred in applying the same test for fairness to the marriage agreement as would be applied to a separation agreement - Whether Court of Appeal erred in reapportioning the parties' assets in a manner which gave no effect to the marriage agreement, or to the express intention of the parties that the appellant would retain the assets he held prior to the marriage - *Family Relations Act*, R.S.B.C. 1996, c. 128, s. 65(1)

PROCEDURAL HISTORY

February 28, 2001
Supreme Court of British Columbia
(Beames J.)

Marriage agreement set aside: family property shares reapportioned

October 28, 2002
Court of Appeal of British Columbia
(Rowles, Huddart and Thackray [*dissenting*] JJ.A.)

Appeal dismissed

December 27, 2002
Supreme Court of Canada

Application for leave to appeal filed

**Cumberland Asset Management, Berner & Company Inc., Global Securities Corporation,
Peel Brooke Inc., Inukshuk Resources Inc., Robert N. Granger and Adrian M.S. White**

v. (29395)

Deloitte & Touche Inc., Interim Receiver of Anvil Range Mining Corporation and Anvil Mining Properties Inc., Cominco Ltd., Department of Indian Affairs and Northern Development, Yukon Territorial Government, Ross River Dena Council (Ont.)

NATURE OF THE CASE

Commercial Law - Receivership - Insolvency - Procedural Law - Costs - Whether *Companies Creditors Arrangement Act* can be used to approve liquidation of the assets of an insolvent company on behalf of only secured creditors - How federal government department's secured claim against assets of insolvent company should be affected by federal government's right to recover environmental remediation funds from other sources - How unsecured creditors' alternate plan of arrangement to maintain and protect corporation should have had been valued - Whether costs award an error.

PROCEDURAL HISTORY

May 7, 2001 Ontario Superior Court of Justice (Farley J.)	Secured creditors' motion to approve Plan of Arrangement granted
July 5, 2002 Court of Appeal for Ontario (Morden, Borins and Feldman J.)	Appeal by unsecured creditors dismissed
September 30, 2002 Supreme Court of Canada	Application for leave to appeal filed

Normand Cléroux

c. (29350)

Procureur général du Canada (C.F.)

NATURE DE LA CAUSE

Droit administratif - Compétence - Contrôle judiciaire - Recours - Grievs accusant l'intimé de harcèlement, complot, traitement préférentiel, bris de carrière, d'avoir imposé des audiences de genre militaires et injustes et d'abus de pouvoir - Compétence des tribunaux sur griefs réglés à l'arbitrage selon convention collective.

HISTORIQUE PROCÉDURAL

Le 20 avril 2001 Cour fédérale du Canada (Pinard j.)	Requête pour radier déclaration du demandeur accordée: tribunal n'a pas compétence.
Le 10 juin 2002 Cour d'appel fédérale (Décary, Isaac and Evans jj.a.)	Appel rejeté
Le 12 septembre 2002 Cour suprême du Canada	Demandes d'autorisation d'appel et prorogation de délai déposées

Elizabeth Balanyk

v. (29423)

**The Greater Niagara General Hospital, Ontario Nurses' Association
and The Ontario Labour Relations Board (Ont.)**

NATURE OF THE CASE

Administrative law - Judicial review - Standard of review - Decision of Labour Relations Board - Labour law - Labour relations - Parties signing Minutes of Settlement to settle Applicant's grievance - Applicant repudiating Minutes of Settlement and taking legal actions against Respondents for 11 years - Applicant then seeking to enforce settlement - Whether Board properly exercised its discretion in refusing to enforce settlement - Whether Board considered proper factors in exercising its discretion

PROCEDURAL HISTORY

December 6, 1999
Ontario Labour Relations Board
(Cummings, Alternate Chair)

Applicant's application for an order enforcing a settlement entered into by her and the Respondents, the Hospital and the Association dismissed

March 25, 2002
Ontario Superior Court of Justice
(Farley, Haines and Epstein JJ.)

Application for judicial review dismissed

August 14, 2002
Court of Appeal for Ontario
(Carty, Larkin and Sharpe)

Application for leave to appeal dismissed

October 16, 2002
Supreme Court of Canada

Application for leave to appeal filed

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

Magnaflex Industries Inc.

v. (29448)

Victoria Park Avenue Associates Limited Partnership and Regentor IC Properties Inc. (Ont.)

NATURE OF THE CASE

Property law - Landlord tenant - Commercial lease - Parties signing proposal to lease containing clause obliging them to execute landlord's standard form of lease - Whether bad faith conduct of a party in a commercial transaction can constitute or have the same effect as a fundamental breach, when considered with breaches that are determined not to be fundamental

PROCEDURAL HISTORY

December 12, 2000
Ontario Superior Court of Justice
(Sutherland J.)

Respondents' action allowed; Applicant to pay Respondents \$64,056.92 in damages plus prejudgment interests in the amount of \$12, 678.73

September 11, 2002
Court of Appeal for Ontario
(McMurtry C.J.O., Abella and Moldaver JJ.A.)

Appeal dismissed

November 8, 2002
Supreme Court of Canada

Application for leave to appeal filed

**Karen L. Turner-Lienaux and
Smith's Field Manor Development Limited**

v. (29407)

Wesley G. Campbell (N.S.)

NATURE OF THE CASE

Commercial law – Fraud – Fiduciary duty – Disclosure – Equity contributions of individuals investing in development of retirement home partly in form of corporate loan – Applicants, also investors, believed investment was from personal resources – Whether failure to disclose the source of funds constitutes a material non-disclosure amounting to fraud and breach of a fiduciary duty – Whether investment funding met legal requirements to qualify as equity capital – Whether lower courts erred in finding no breach of fiduciary duty or fraud.

PROCEDURAL HISTORY

June 18, 2001
Supreme Court of Nova Scotia
(Hood J.)

Applicants' claims against respondent for breach of fiduciary duty, including allegations of criminal fraud, acquiescence in fraud or equitable fraud, dismissed.

August 16, 2002
Nova Scotia Court of Appeal
(Roscoe, Freeman and Cromwell JJ.A.)

Appeal partially allowed: on the issue regarding the effect of a promissory note; appeal on all other grounds dismissed.

October 10, 2002
Supreme Court of Canada

Application for leave to appeal filed.

January 14, 2003
Supreme Court of Canada

Motion to file supplementary material, filed.

Sinclair-Cockburn Insurance Brokers Limited

v. (29431)

Linda Anne Richards (Ont.)

- and -

Wiggins Mechanical Contractors and Rudolph Schrempf

NATURE OF THE CASE

Procedural law - Civil procedure - Actions - Pre-trial procedure - Stay of proceedings - Motion to stay part of Applicant's claims granted - Whether Court of Appeal erred in failing to reverse finding of motions judge that it was just and appropriate in all of circumstances to grant a stay - *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 106 - *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rule 21.01(3).

PROCEDURAL HISTORY

September 5, 2001
Ontario Superior Court of Justice
(Mesbur J.)

Motion to stay part of Applicant's claims granted

August 30, 2002
Court of Appeal for Ontario
(Laskin, Charron and Armstrong JJ.A.)

Appeal dismissed

October 29, 2002
Supreme Court of Canada

Application for leave to appeal filed

November 8, 2002
Supreme Court of Canada

Amended application for leave to appeal filed

Guangshu Li, Guangxia Li and Guanghwa Li

v. (29478)

Nina Li, Kiki Li and Karen Li (Ont.)

NATURE OF THE CASE

Property law – Estates – Real property – Partnership agreement – Joint tenancy – Deceased entered partnership agreement governing real property consisting of forty-six townhouses – Children of deceased living in China residual beneficiaries under deceased will, along with spouse and children in Canada – Whether partnership agreement provided property interests held in joint tenancy such that property excluded from residue of deceased’s estate.

PROCEDURAL HISTORY

April 4, 2002 Ontario Superior Court of Justice (Carnwath J.)	Interest in the partnership agreement of the deceased and Respondent Nina Li as joint tenants, not as tenants in common, declared
November 7, 2002 Court of Appeal for Ontario (McMurtry C.J.O., Catzman and Rosenberg JJ.A.)	Appeal dismissed
November 20, 2002 Supreme Court of Canada	Application for leave to appeal filed

Barbara Parravano and Mario Parravano

v. (29464)

KPMG Incorporated and Laurentian Bank of Canada (Ont.)

NATURE OF THE CASE

Commercial law – Receivership – Procedural law – Courts – Bias – Assessment of court-appointed receiver’s accounts, including fees and disbursements of solicitors – Motions judge approving receiver’s accounts in entirety as fair and reasonable – Motions judge refused to allow applicant to cross-examine receiver – Whether motions judge correct in refusing to allow cross examination of receiver – Whether motion judge demonstrated reasonable apprehension of bias such that fair hearing denied.

PROCEDURAL HISTORY

April 18, 2001 Ontario Superior Court of Justice (Farley J.)	Respondent KPMG Inc.’s interim fees and disbursements approved; Respondent KPMG Inc.’s second report as Receiver, approved.
September 9, 2002 Court of Appeal for Ontario (Catzman, Doherty and Borins JJ.A.)	Appeal allowed, in part: solicitors fees to be re-submitted, verified by affidavit and assessed by different judge; in all other respects, appeal dismissed.
November 14, 2002 Supreme Court of Canada	Application for leave to appeal filed

Daniel Edward Webb

v. (29397)

**Waterloo Regional Police Services Board, Chief R. Larry Gravill, P.C.
George Gillingham, P.C. P. Foy and P.C. Dickson (Ont.)**

NATURE OF THE CASE

Canadian Charter - Civil - Canadian Charter - Criminal - Police - Sting operations - Evidence - Torts - Negligence - Abuse of process - Malicious prosecution - Whether conduct of police in response to alleged complaints of gay public sex in public park violated Charter or was tortious conduct - Whether applicant committed sexual assault - Whether undercover police operation was a sting operation that resulted in charges of sexual assault inconsistently with Charter - Whether police policy to identify to the media and public the names of persons arrested on allegations of criminal conduct prior to swearing Information or issuance of warrant violates Charter - Whether Charter violated by refusal to allow testimony from experts on standards of police practice or discriminatory differences in policing of sexual activity or social organization of sexual interaction among gay men or human rights issues in social action connecting police, media and employers- Test for admission of expert evidence in constitutional litigation - Whether harmful non-consensual disclosure of an individual's homosexuality by a state actor gives rise to liability under the Charter or common law - Whether it was an error to decline jurisdiction to adjudicate s. 15 Charter claim - Whether Courts erred in interpreting Charter restrictively and in making conclusions not supported by the record - Whether Courts erred in reversing or disregarding long lines of authority.

PROCEDURAL HISTORY

June 30, 2000
Ontario Superior Court of Justice
(Borkovich J.)

Applicant's action for negligence, malicious prosecution, Charter violations and intentional infliction of mental distress dismissed

June 26, 2002
Court of Appeal for Ontario
(Finlayson, Carthy and Cronk JJ.A.)

Appeal dismissed

September 30, 2002
Supreme Court of Canada

Application for leave to appeal filed

**CORAM: Iacobucci, Binnie and LeBel JJ. /
Les juges Iacobucci, Binnie et LeBel**

Frank Lambert et Front commun des assistés sociaux du Québec

c. (29227)

Le Procureur général du Québec (Qué.)

NATURE DE LA CAUSE

Libertés publiques - Aide sociale - Droit administratif - Appel - Compétence - *Loi sur la sécurité du revenu*, L.R.Q., ch. S-3.1.1, excluant le demandeur de l'application de la *Loi sur les normes du travail*, L.R.Q., ch. N-1.1 - La Cour d'appel a-t-elle exercé la retenue judiciaire exigée envers la décision d'un tribunal spécialisé? - La Cour d'appel a-t-elle erré lorsqu'elle a conclu qu'il était nécessaire, outre la distinction, exclusion ou préférence fondée sur un des motifs énumérés ayant comme effet de compromettre l'exercice et la reconnaissance des droits et libertés, de démontrer que le droit à la dignité est compromis? - Si l'atteinte à la dignité est un élément nécessaire, la Cour d'appel a-t-elle mal appliqué les critères développés dans l'arrêt *Law c. Canada (Ministre de l'emploi et de l'immigration)*, [1999] 1 R.C.S.497? - La *Loi sur les normes du travail*, loi impérative et d'ordre public, n'est-elle pas la mise en oeuvre des conditions de travail justes et raisonnables énoncées à l'art. 46 de la *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12? - Le demandeur a-t-il été victime de discrimination au sens des art. 10 et 16 de la *Charte québécoise*? - Dans l'affirmative, la Cour d'appel, dans le jugement *Communauté urbaine de Montréal c. Cadieux*, no 500-09-007230-980, commet-elle une erreur en concluant que lorsqu'une disposition législative contrevient à la *Charte québécoise*, le seul remède est un constat d'inopérabilité s'il n'y a pas de faute civile?

HISTORIQUE PROCÉDURAL

Le 23 décembre 1996
Tribunal des droits de la personne
(Brossard j.t.d.p.)

Demande du demandeur Lambert pour réparation en raison de discrimination accueillie; art. 23 et 24 de la *Loi sur la sécurité du revenu* déclarés invalides et inopérants quant au demandeur; manque à gagner et dommages moraux accordés

Le 1 mars 2002
Cour d'appel du Québec
(Deschamps, Delisle et Nuss jj.c.a.)

Appel accueilli; jugement infirmé; demande introductive d'instance du demandeur Lambert rejetée

Le 30 mai 2002
Cour suprême du Canada

Demandes d'autorisation d'appel et de prorogation de délai déposées

La Capitale Assurances MFQ Inc.

c. (29199)

Henri-Louis Dumas (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Jugements et ordonnances - Recours collectif - *Code de procédure civile*, L.R.Q., ch. C-25, articles 199, 1010, 1016 - Appel - La Cour d'appel a-t-elle commis une erreur en limitant le droit d'un défendeur de faire valoir tous les moyens de contestation qui s'imposent avant l'audition de la requête pour autorisation d'un recours collectif, niant ainsi le droit d'un justiciable de faire valoir une défense pleine et entière? - La Cour d'appel a-t-elle commis une erreur en ne rejetant pas l'appel d'un jugement qui accueille en partie une requête en amendement d'une requête en autorisation d'un recours collectif? - La Cour d'appel a-t-elle commis une erreur de droit en reconnaissant l'existence d'un type de jugement qui ne soit ni interlocutoire, ni final?

HISTORIQUE PROCÉDURAL

Le 7 juin 2001
Cour supérieure du Québec
(Meyer j.c.s.)

Requête verbale de l'intimé Henri-Louis Dumas visant à modifier une requête en autorisation d'exercer un

recours collectif et pour être représentant, accueillie en partie.

Le 5 décembre 2001
Cour supérieure du Québec
(Viau j.c.s.)

Requête ré-amendée de l'intimé Henri-Louis Dumas en autorisation d'exercer un recours collectif et pour être représentant, rejetée.

Le 7 mars 2002
Cour d'appel du Québec (Montréal)
(Michaud j.c.q., Forget et Rochon jj.c.a.)

Requête de la demanderesse La Capitale Assurance, en rejet d'appel, rejetée.

Le 3 mai 2002
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**Canadian Association of Internet Providers and Canadian Cable Television Association
and Bell/Expressvu and Telus Communications Inc. and Bell Canada and
Aliant Inc. and MTS Communications Inc.**

v. (29286)

Society of Composers and Authors and Music Publishers of Canada (F.C.A.)

NATURE OF THE CASE

Property - Copyright - Statutes - Interpretation - Administrative law - Judicial review - Whether an Internet service provider (ISP) using a cache server can rely on s. 2.4 of the *Copyright Act*, R.S.C. 1985, c. C-42 - Whether the transmission of copyright works from a cache server constitutes a communication to the public under s. 3(1)(f) of the *Act* - Test to determine whether communication of a work over the Internet takes place in Canada - Standard of judicial review - Whether an ISP operating a host server and transmitting musical works to an end user communicates the works to the public or authorizes communication under s. 3.1 - Whether an ISP which provides public access to the Internet and transmits musical works received from a host server to an end user communicates the works to the public or authorizes their communication under s. 3.1.

PROCEDURAL HISTORY

October 27, 1999
Copyright Board Canada
(Héту, Burns and Fenus, members)

Royalty may be imposed on those who post music on a server located in Canada; liability not imposed on Internet intermediaries; communication by telecommunication occurs in Canada only if the communication originates from a host server in Canada

May 1, 2002
Federal Court of Appeal
(Linden, Evans and Sharlow [*dissenting in part*] JJ.A.)

Applicant's application for judicial review dismissed, except for setting aside the Board's decisions that transmission from a cache is protected by s. 2.4(1)(b) of the *Copyright Act* and that a communication by telecommunication occurs in Canada only if the communication originates from a host server in Canada

July 31, 2002
Supreme Court of Canada

Application for leave to appeal filed

October 11, 2002
Supreme Court of Canada

Response and Application for leave to cross-appeal filed

October 15, 2002
Supreme Court of Canada
LeBel J.

Application for an extension of time to serve and file
Respondent's Response and application for leave to cross-
appeal, granted

**Nova Growth Corp., Win North Gaming Corporation, Brian Hamm,
William Hamm, Marco Durante and Peter Tassiopoulos**

v. (29334)

**Andrzej Roman Kepinski, 1021862 Ontario Ltd. and A. Kepinski & Associates,
Richard J.G. Boxer, 867214 Ontario Limited,
Buckingham Capital Corporation and Falls Entertainment Corporation (Ont.)**

NATURE OF THE CASE

Procedural law - Solicitor-client privilege - Whether a party to a lawsuit can be prohibited by Court Order from communicating specific information to its lawyer thereby denying the entitlement of the client to obtain informed legal advice.

PROCEDURAL HISTORY

December 31, 2001
Ontario Superior Court of Justice
(Farley J.)

Applicants restrained from using or disseminating
privileged confidential material and information contained
in Box 9

May 27, 2002
Ontario Superior Court of Justice
(Divisional Court)
(Flinn J.)

Motion for leave to appeal to the Divisional Court
dismissed

August 26, 2002
Supreme Court of Canada

Application for leave to appeal filed

Commission des droits de la personne et des droits de la jeunesse en faveur de Jean-Marc Larocque

c. (29231)

Communauté urbaine de Montréal (Qué.)

- et -

Le Procureur général du Québec

NATURE DE LA CAUSE

Procédure - Jugements et ordonnances - Discrimination - Réparation appropriée - La Cour d'appel a-t-elle erré en décidant qu'aucune réparation ne pouvait être accordée au candidat puisque les normes discriminatoires appliquées en l'espèce découlaient de l'exercice d'un pouvoir de nature réglementaire? - La Commission des droits de la personne pouvait-elle

obtenir une réparation en vertu des articles 80 et 111 de la *Charte des droits et libertés de la personne*, L.R.Q., c. C-12, compte tenu de l'intérêt public?

HISTORIQUE PROCÉDURAL

Le 19 juin 2000
Tribunal des droits de la personne
(Brossard j.)

Intimée ordonnée de replacer le demandeur dans le processus d'embauche sans que lui soit appliquée la norme auditive et, le cas échéant, de lui offrir un poste de policier avec tous les avantages dont il aurait bénéficié s'il avait été embauché à la suite du processus initial

Le 1 mars 2002
Cour d'appel du Québec
(Deschamps, Delisle et Nuss jj.c.a.)

Appel accueilli

Le 31 mai 2002
Cour suprême du Canada

Demande d'autorisation d'appel et requête en prorogation de délai déposées

Walter A. Conohan and Eastern Marine Underwriters Inc.

v. (29154)

The Cooperators (F.C.A.)

NATURE OF THE CASE

Statutes - *Maritime Insurance Act*, S.C. 1993, c. 22 - Interpretation- Whether the Court of Appeal erred in failing to ignore specific words in a contract that contradict the underlying intention and whole purpose of the contract itself, especially where taking into account such words would lead to unnatural, inequitable and unjust results.

PROCEDURAL HISTORY

November 28, 2000
Federal Court of Canada
(O'Keefe J.)

Applicants' action for damages and loss of revenue dismissed

February 11, 2002
Federal Court of Appeal
(Stone, Evans and Malone JJ.A.)

Appeal dismissed

April 10, 2002
Supreme Court of Canada

Application for leave to appeal filed

FEBRUARY 13, 2003 / LE 13 FÉVRIER 2003

CORAM: Gonthier, Major and Arbour JJ. /

Les juges Gonthier, Major et Arbour

Susan Lynn Czaban

v. (29481)

Brandy Rai MacPherson (B.C.)

NATURE OF THE CASE

Procedural law - Civil procedure - Trial - Jury - Chambers judge striking defendant's notice requiring trial by jury - Court of Appeal upholding decision - Whether, in determining if a jury notice should be struck, the chambers judge should have regard only for whether the issues before the court are complex, with respect to both the evidence and the issues - Whether, in the alternative, a chambers judge should also seek to place the onus on the party seeking to strike to explain why the alleged complexities cannot be simplified and made understandable.

PROCEDURAL HISTORY

November 29, 2001
Supreme Court of British Columbia
(Downs J.)

Applicant's jury notice struck

September 13, 2002
Court of Appeal for British Columbia
(Lambert, Newbury and Mackenzie JJ.A.)

Appeal dismissed

November 22, 2002
Supreme Court of Canada

Application for leave to appeal filed

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

FEBRUARY 13, 2003 / LE 13 FÉVRIER 2003

29360 **Leo Henry Pilotte v. Her Majesty the Queen** (Ont.) (Criminal) (29360)

Coram: McLachlin C.J. and Bastarache and Deschamps JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C28618, dated March 5, 2002, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C28618, daté du 5 mars 2002, est rejetée.

NATURE OF THE CASE

Criminal law - Can a trial judge ever, during the course of a trial, hold an *in camera* hearing on issues of disclosure at which neither party to the trial is present? - How should juries be instructed when the evidence reveals that another person may have committed the crime?

PROCEDURAL HISTORY

October 12, 1997 Ontario Court of Justice (Gordon J.)	Conviction: first degree murder and committing an indignity to human remains
March 5, 2002 Court of Appeal for Ontario (Labrosse, Abella and Charron JJ.A.)	Appeal dismissed
September 18, 2002 Supreme Court of Canada	Application for leave to appeal and motion for extension of time filed

29111 **The Canada Life Assurance Company c. The Halifax Insurance Company** (Qué.) (Civile)

Coram : La juge en chef McLachlin et les juges Bastarache et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-007923-998, daté du 9 janvier 2002, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-007923-998, dated January 9, 2002, is dismissed with costs.

NATURE DE LA CAUSE

Droit commercial - Assurance - Prêt- Hypothèques - Dation en paiement - Clause de diminution de garantie hypothécaire - Un créancier hypothécaire, dont la créance assurée aux termes d'une police d'assurance de diminution de garantie hypothécaire, est-il toujours en droit de réclamer la perte monétaire qu'il a subie après qu'il ait repris la propriété endommagée par voie de dation en paiement?

HISTORIQUE PROCÉDURAL

Le 25 février 1999
Cour supérieure du Québec
(Tannenbaum j.c.s.)

Action de la demanderesse accueillie en partie; intimée condamnée à payer la somme de 387 448, 16 \$ avec intérêts et pénalités

Le 9 janvier 2002
Cour d'appel du Québec
(Mailhot, Dussault et Thibault jj.c.a.)

Appel accueilli; action de la demanderesse rejetée

Le 8 mars 2002
Cour suprême du Canada

Demande d'autorisation d'appel déposée

29050 **Grill Newman Inc. c. Entreprises Cara Ltée, Pitco Frialator Inc., Embouteillage Coca-Cola Ltée, Summit Food Service Distributors Inc. and Sound Products Limited** (Qué.) (Civile)

Coram : La juge en chef McLachlin et les juges Bastarache et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-011290-012, daté du 3 décembre 2001, est rejetée avec dépens en faveur des intimées Entreprises Cara Ltée et Pitco Frialator Inc.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-011290-012, dated December 3, 2001, is dismissed with costs to Entreprises Cara Ltée and Pitco Frialator Inc.

NATURE DE LA CAUSE

Droit criminel - Injonction - Les ristournes, rabais-volume et/ou commissions versées à l'agent par les différents fournisseurs du commettant constituent-elles une contravention de l'article 426 du *Code criminel* lorsque celles-ci ne sont pas divulguées de façon appropriée et en temps opportun au commettant? - L'injonction est-elle un recours recevable en droit pour empêcher la violation de l'article 426 du *Code criminel*?

HISTORIQUE PROCÉDURAL

Le 19 avril 2001
Cour supérieure du Québec
(Lévesque j.c.s.)

Ordonnance de non-publication et de non-diffusion du contenu de la requête en injonction interlocutoire et permanente intentée par la demanderesse à être instituée.

Le 30 mai 2001
Cour supérieure du Québec
(Nadeau j.c.s.)

Ordonnance d'injonction permanente : les intimés sont tenus de cesser et de s'abstenir de verser des commissions secrètes à l'intimée Entreprises CARA Ltée

Le 10 juillet 2001
Cour supérieure du Québec
(Lefebvre j.c.s.)

Requêtes des intimés en irrecevabilité accueillies; requête de la demanderesse en injonction interlocutoire et permanente rejetée

Le 3 décembre 2001
Cour d'appel du Québec
(Otis, Delisle et Biron jj.c.a.)

Requêtes des intimés en rejet d'appel accueillies: appel rejeté

Le 4 février 2002
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Le 26 mars 2002
Cour suprême du Canada

Requête en prolongation pour le dépôt de la demande
d'autorisation d'appel accordée.

29377 **Dr. Jozef Krop v. Discipline Committee of the College of Physicians and Surgeons of Ontario**
(Ont.) (Civil)

Coram: McLachlin C.J. and Bastarache and Deschamps JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number M28272, dated June 25, 2002, is dismissed with costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro M28272, daté du 25 juin 2002, est rejetée avec dépens.

NATURE OF THE CASE

Administrative Law - Physicians & surgeons - Whether the Divisional Court erred in holding that the Discipline Committee for the College of Physicians and Surgeons did not err in its application of the test in law for determining a violation of the standard of practice of the profession

PROCEDURAL HISTORY

December 23, 1998 Discipline Committee of the College of Physicians and Surgeons of Ontario (Thompson (Chair), Rao, Finlayson and Steep)	Applicant found guilty of professional misconduct in that he failed to maintain the standard of practice of the profession in the care of patients
August 30, 1999 Discipline Committee of the College of Physicians and Surgeons of Ontario (Thompson (Chair), Rao, Finlayson and Steep)	Penalty, including a recorded reprimand and the imposition of conditions on the Applicant's Certificate of Registration, ordered
January 30, 2002 Ontario Superior Court of Justice (Then, Carnwath and Cameron JJ.)	Appeal from the finding of professional misconduct and the penalty, dismissed
June 25, 2002 Court of Appeal for Ontario (Finlayson, Carthy and Laskin JJ.A.)	Motion for leave to appeal dismissed
September 26, 2002 Supreme Court of Canada	Application for leave to appeal filed

29270 **Corey Allan Hall v. Her Majesty the Queen** (Crim.) (Alta.)

Coram: Gonthier, Major and Arbour JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 00-18651, dated October 31, 2001, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 00-18651, daté du 31 octobre 2001, est rejetée.

NATURE OF THE CASE

Criminal Law (Non-Charter) - Murder - Jury Charge - Causation - Intervening cause - Lawfulness of a conviction for murder where the accused has assaulted the victim and rendered him unconscious but where the victim is breathing after the family decides to withdraw a feeding tube providing the nourishment necessary to sustain life.

PROCEDURAL HISTORY

December 18, 1999 Court of Queen's Bench of Alberta (Chrumka J.)	Conviction: second degree murder Sentence: life imprisonment, parol eligibility after 10 years, lifetime weapons ban
October 31, 2001 Court of Appeal of Alberta (Calgary) (McClung, Costigan J.J.A. and Sirrs J. (ad hoc))	Appeal dismissed
January 10, 2002 Court of Appeal of Alberta (Calgary) (McClung, Costigan J.J.A. and Sirrs J. (ad hoc))	Reasons for judgment of Court of Appeal issued
July 17, 2002 Supreme Court of Canada	Applications for time extension and leave to appeal filed

29267 **Calvin Boyd Colby v. Her Majesty the Queen** (Crim.) (Sask.)

Coram: **Gonthier, Major and Arbour J.J.**

The application for leave to appeal from the judgment of the Court of Appeal for Saskatchewan, Number 321, dated April 23, 2002, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Saskatchewan, numéro 321, daté du 23 avril 2002, est rejetée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Pre-trial procedure - Informations - Whether counts in Informations charging offences predicated on prior conviction disclose the existence of a prior criminal offence - Whether charge of breach of probation on multi-count Information should be severed from counts alleging offences for which accused's criminal record is not admissible.

PROCEDURAL HISTORY

January 7, 1999 Provincial Court of Saskatchewan

(Ebert J.)	Application to stay charges or quash Information dismissed
October 22, 1999 Provincial Court of Saskatchewan (Ebert J.)	Convictions for refusing to provide breath sample, breach of probation, and assault.
December 2, 1999 Provincial Court of Saskatchewan (Ebert J.)	Sentences: Fines; suspended sentence; 15 months probation; driving privileges suspended; prohibited from operating motor vehicle for 3 months
June 1, 2001 Court of Queen's Bench for Saskatchewan (Dielschneider J.)	Summary conviction appeal allowed, convictions set aside
April 23, 2002 Court of Appeal for Saskatchewan (Tallis, Vancise and Jackson JJ.A.)	Appeal allowed, convictions restored
June 24, 2002 Supreme Court of Canada	Application for leave to appeal filed

29192 **Affordable Cottages Inc. v. 772592 Ontario Inc.** (Ont.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36340, dated April 3, 2002, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36340, daté du 3 avril 2002, est rejetée.

NATURE OF THE CASE

Commercial law - Bills of exchange - Promissory note - Whether the defence of equitable set-off available as between immediate parties to a bill of exchange.

PROCEDURAL HISTORY

April 12, 2001 Superior Court of Justice (Backhouse J.)	Respondent's motion for summary judgement for a claim related to a promissory note granted: Applicant ordered to pay \$27,252.65
April 3, 2002 Court of Appeal for Ontario (Feldman, MacPherson and Simmons JJ.A.)	Appeal dismissed
April 23, 2002 Supreme Court of Canada	Application for leave to appeal filed

29235 The Toronto-Dominion Bank and the Canadian Imperial Bank of Commerce v. Metroland Printing, Publishing and Distribution Ltd. (Ont.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C36371, dated April 2, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C36371, daté du 2 avril 2002, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law - Bills of Exchange - Tort - Conversion - Whether the cheques were valid bills of exchange - Whether the "fictitious or non-existing payee" defence in s. 20(5) of the *Bills of Exchange Act*, R.S.C. 1985, c. B-4 is available - Whether the cheques, which bore facsimile signatures, did not contain forged or unauthorized signatures of the drawer and were worthless piece of paper in accordance with s. 48(1) of the *BEA* - Whether the operation of account agreement between CIBC and the respondent provides a complete defence to the claims - Application of the principles in *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996] 3 S.C.R. 727 - Whether the court of appeal erred - Whether there are issues of public importance raised.

PROCEDURAL HISTORY

May 3, 2001 Ontario Superior Court of Justice (Lederman J.)	Respondent's motion for summary judgment, granted; Applicant CIBC to pay the sum of \$383,351.40; Applicant TD Bank to pay the sum of \$229,794.89
April 2, 2002 Court of Appeal for Ontario (Carthy, Cronk and Gillese JJ.A.)	Appeal dismissed
June 3, 2002 Supreme Court of Canada	Application for leave to appeal filed

29424 The Honourable Robert H. Nelson, Founder President of Public Defenders for himself and as representative of all those improperly denied benefits v. Her Majesty the Queen, as represented by the Honourable Martin Cauchon, Minister of Canada Customs and Revenue Agency (F.C.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-88-02, dated September 25, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-88-02, daté du 25 septembre 2002, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Whether the Court of Appeal erred in dismissing a motion brought by the Applicant requesting leave to file a claim for \$1,500,000,000,000 in punitive damages against Her Majesty the Queen, and various representatives of Her Majesty the Queen.

PROCEDURAL HISTORY

September 25, 2002
Federal Court of Appeal
(Létourneau J.A.)

Applicant's motion for leave to file claim for \$1,500,000,000,000 in punitive damages dismissed

October 18, 2002
Supreme Court of Canada

Application for leave to appeal filed

29283 **Her Majesty the Queen v. Abraham Robert Cooper** (Crim.) (Alta.)

Coram: **Gonthier, Major and Arbour JJ.**

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Edmonton), Number 0103-0132-A, dated May 7, 2002, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 0103-0132-A, daté du 7 mai 2002, est rejetée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Procedural Law - Courts - Jurisdiction - DNA samples - DNA data bank - Order to seize blood sample for submission to DNA data bank after conviction stayed pending outcome of appeal - Whether provincial superior court has jurisdiction to stay order - Whether *Criminal Code* removes jurisdiction.

PROCEDURAL HISTORY

March 22, 2001
Court of Queen's Bench of Alberta
(Veit J.)

Order to take DNA sample for data bank stayed pending disposition of appeal from conviction

June 11, 2002
Court of Appeal of Alberta
(Conrad, Picard and Hart JJ.A.)

Appeal dismissed

July 26, 2002
Supreme Court of Canada

Application for leave to appeal filed

29264 **Terrance Parker v. Her Majesty the Queen** (Crim.) (Ont.)

Coram: **Gonthier, Major and Arbour JJ.**

The motion for a stay and the application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C38113, dated May 3, 2002, are dismissed.

La requête en sursis d'exécution et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38113, daté du 3 mai 2002, sont rejetées.

NATURE OF THE CASE

Canadian Charter - Criminal - Criminal law - Controlled Drugs and Substances Act, S.C. 1996, c. 19 - Medical marihuana - Whether the doctrines of res judicata and issue estoppel prevented Chapnik J. from handing down a decision inconsistent with the ruling of Pitt J. - Whether the Applicant's section 7 right to life is being infringed.

PROCEDURAL HISTORY

March 15, 2002 Ontario Superior Court of Justice (Pitt J.)	Order extending constitutional exemption to the Applicant granted
April 19, 2002 Ontario Superior Court of Justice (Chapnik J.)	Respondent's motion to set aside the order of March 15, 2002 allowed; Applicant's cross-motion adjourned
May 3, 2002 Court of Appeal for Ontario (Feldman J.A.)	Appeal dismissed
July 9, 2002 Supreme Court of Canada	Application for leave to appeal and motion for stay filed
August 27, 2002 Supreme Court of Canada (Gonthier J.)	Motion to expedite application for leave to appeal denied

29302 **George Kingfisher, Ben Weenie, Leslie Angus, Larry Chickness, Lola Okeeweehow and Donald Higgins for themselves and on behalf of the descendants of the Chief Chipeewayan Band v. Her Majesty the Queen** (F.C.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-541-01, dated May 27, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-541-01, daté du 27 mai 2002, est rejetée avec dépens.

NATURE OF THE CASE

Native law - *Indian Act*, S.C. 1876, c.18 - Statutes - Interpretation - Treaty rights - Breach of fiduciary duty - Compensation - Standing - Whether collective rights under 1876 Treaty can only be asserted by claimants who are direct descendants of members of the Young Chipeewayan Band - - *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 - *Housen v. Nikolaisen*, [2002] S.C.R. 33

PROCEDURAL HISTORY

August 8, 2001 Federal Court of Canada (Trial Division) (Gibson J.)	Applicants' action for breach of a fiduciary duty owed to descendants of members of the Band dismissed
May 27, 2002 Federal Court of Appeal (Décary, Rothstein and Malone JJ.A.)	Appeal dismissed
August 15, 2002 Supreme Court of Canada	Application for leave to appeal filed

29324 **Apotex Inc. v. Merck & Co. Inc. and Merck Frosst Canada Inc.** (F.C.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-120-01, dated May 28, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-120-01, daté du 28 mai 2002, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law - Licences - Patents - Patented medicines - Estoppel - Whether the public interest in finality of litigation should be allowed override the competing public interest in ensuring that justice is done between the parties on the particular facts of a given case - Whether the existence of demonstrable injustice will, as a matter of law, prevent the enforcement of any estoppel that might be found to exist using the traditional three-step analysis.

PROCEDURAL HISTORY

February 2, 2001 Federal Court of Canada (McKeown J.)	Respondents' motion for summary judgment granted, action dismissed; Applicant's cross-motion for summary judgment dismissed
May 28, 2002 Federal Court of Appeal (Stone, Sharlow and Malone JJ.A.)	Appeal dismissed
August 27, 2002 Supreme Court of Canada	Application for leave to appeal filed

29291 **Flint F. Kaya v. The Gazette Newspaper of Montreal and Lisa Fitterman** (Que.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-012171-021, dated May 10, 2002, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-012171-021, daté du 10 mai 2002, est rejetée.

NATURE OF THE CASE

Procedure - Prescription - Whether lower courts erred in finding that the Applicant's action for libel was prescribed despite his alleged impossibility to act.

PROCEDURAL HISTORY

March 7, 2002 Superior Court of Quebec (Morneau J.S.C.)	Respondents' motion to dismiss Applicant's action, granted; Action dismissed
May 10, 2002 Court of Appeal of Quebec (Beauregard, Mailhot and Morin JJ.A.)	Applicant's motion for an extension of delay to file and appeal, denied
August 9, 2002 Supreme Court of Canada	Application for leave to appeal filed

29357 **Nuri Jazairi v. Scott & Aylen** (Ont.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C37475, dated July 2, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C37475, daté du 2 juillet 2002, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Costs - Offer to settle - Whether the motions judge misapplied Rule 49.10 of the "Offer to Settle" costs to the detriment of the Applicant.

PROCEDURAL HISTORY

December 14, 2001	Applicant's motion to vary Report and Certificate of
-------------------	--

Ontario Superior Court of Justice (Chapnik J.)	Assessment dismissed; cross-motion dismissed; Report and Certificate of Assessment confirmed
December 21, 2001 Ontario Superior Court of Justice (Chapnik J.)	Paragraph 15 of endorsement rescinded and replaced: Applicant to pay the sum of \$3,500 plus GST
July 2, 2002 and August 8, 2002 Ontario Court of Appeal (McMurtry C.J.O., Catzman and MacPherson JJ.A.)	Appeal dismissed
September 17, 2002 Supreme Court of Canada	Application for leave to appeal filed

29353 **Dr. Brenlee Kemp v. Dr. Gerald Wittenberg and Dr. Wittenberg Inc., a Professional Corporation**
(B.C.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal of British Columbia (Vancouver), Number CA025305, dated June 17, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA025305, daté du 17 juin 2002, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Civil procedure - Whether the Court of Appeal erred by applying the wrong test in order to determine whether or not to grant a rehearing of the cross-appeal of the Applicant - Whether the Court of Appeal erred by applying the wrong test in order to determine whether oral argument should be permitted with respect to the Applicant's request for a rehearing.

PROCEDURAL HISTORY

June 8, 1999 Supreme Court of British Columbia (Ralph J.)	Applicant's action allowed: Respondent ordered to pay the total sum of \$1,336,328.77 in damages
March 30, 2001 Court of Appeal for British Columbia (Finch C.J.B.C., Ryan and Huddart JJ.A.)	Respondent's appeal against liability dismissed; Applicant's cross-appeal allowed in part: damages increased to \$1,547,750
December 6, 2001 Court of Appeal for British Columbia (Finch C.J.B.C., Ryan and Huddart JJ.A.)	Supplementary reasons: Applicant's costs of the application to adduce fresh evidence disallowed
June 17, 2002 Court of Appeal of British Columbia (Finch C.J.B.C., Ryan and Huddart JJ.A.)	Applicant's application for a re-hearing of cross-appeal and for the right to oral submissions dismissed
September 13, 2002	Application for leave to appeal filed

Supreme Court of Canada

29373 **Earl M. Shuman v. Ontario New Home Warranty Program** (Ont.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C-373-23, dated June 21, 2002, is dismissed without costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C-373-23, daté du 21 juin 2002, est rejetée sans dépens.

NATURE OF THE CASE

Property - Real property - Remedies - Ontario New Home Warranty Program - Procedural law - Actions - Actions in misfeasance in public office and spoliation of public evidence - Whether a home owner was entitled to compensation under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 for defects affecting the home - Whether the Courts have a duty to the public to provide rational decisions based on rational principles - Whether lawyers representing delegated administrative authorities have a duty to the Court and to the public to make honest arguments to assist the Court in making rational decisions - Whether individuals representing delegated administrative authorities, government tribunals and the Court together effect a perverse and irrational change in the law which sets an irrational and unfair principle in law

PROCEDURAL HISTORY

October 23, 2001
Ontario Superior Court of Justice
(Swinton J.)

Motions for summary judgment granted: Applicant's action for compensatory and punitive damages for fraud, breach of contract, negligence, breach of fiduciary duty and statutory duty, misrepresentation and abuse of process, dismissed

June 21, 2002
Court of Appeal for Ontario
(Goudge, Simmons and Gillese JJ.A.)

Appeal dismissed

September 20, 2002
Supreme Court of Canada

Application for leave to appeal filed

29470 **Vasundara Raghavan and Gopalachari Raghavan v. The Attorney General of Canada** (F.C.)

Coram: Gonthier, Major and Arbour JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-350-01, dated September 24, 2002, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-350-01, daté du 24 septembre 2002, est rejetée avec dépens.

NATURE OF THE CASE

Taxation - Assessment - Marital status - Ss. 252(4) of the *Income Tax Act*, R.S.C. 1985, (5th Supp.) c.1 - Procedural law - Tax Court of Canada - Notice requirement of a constitutional question - S. 57 of the *Federal Court Act*, R.S.C. 1985, c. F-7 - Whether the Informal Procedure of the Tax Court of Canada is conducive to vagueness of findings of credibility, to the admissibility of stereotyped behaviour as evidence and to the imposition of stricter standards of proof? - Whether the Informal Procedure of the Tax Court of Canada compromise the accessibility to the justice system and the right to privacy of the parties involved? - Whether violations of *Charter* rights be considered non-violations because an unrepresented party in the Tax Court of Canada did not recognize or object at the time the court caused such violations to happen? - What is the remedy when a constitutional question goes unanswered by the Federal Court of Canada?

PROCEDURAL HISTORY

April 26, 2001 Tax Court of Canada (Campbell J.)	Applicants' appeals from the assessments for the 1996 and 1997 taxation years, dismissed
September 24, 2002 Federal Court of Appeal (Rothstein, Evans and Malone JJ.A.)	Application for judicial review, dismissed
November 20, 2002 Supreme Court of Canada	Application for leave to appeal filed

29482 **Jean Hébert c. Sa Majesté la Reine** (Qué.)

Coram : Les juges Iacobucci, Binnie et LeBel

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Québec), numéro 200-10-001376-024, daté du 30 septembre 2002, est rejetée.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Quebec), Number 200-10-001376-024, dated September 30, 2002, is dismissed.

NATURE DE LA CAUSE

Droit criminel - Fraude - Prorogation de délai - Allégations par le demandeur portant sur la divulgation de la preuve, le comportement des avocats et policiers, et son droit à une défense pleine et entière lorsqu'en détention préventive.

HISTORIQUE PROCÉDURAL

Le 9 novembre 2001 Cour du Québec (Chambre criminelle) (Dubé j.c.Q.)	Sentence: Demandeur condamné à 65 mois de prison sous six chefs d'accusations de fraude
Le 30 septembre 2002 Cour d'appel du Québec (Beauregard, Dussault et Letarte jj.c.a.)	Requêtes en prorogation de délai et pour permission d'en appeler du verdict de culpabilité rejetées
Le 22 novembre 2002 Cour suprême du Canada	Demande d'autorisation d'appel déposée

29255 **Régent Millette c. Sa Majesté la Reine** (Qué.)

Coram : Les juges Iacobucci, Binnie et LeBel

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-84-99, daté du 17 avril 2002, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-84-99, dated April 17, 2002, is dismissed with costs.

NATURE DE LA CAUSE

Procédure - Appel - La Cour canadienne de l'impôt a-t-elle erré en refusant d'inclure certaines déductions dans les revenus du demandeur? Droit fiscal - Impôts - Inclusions - Déductions - La Cour d'appel fédérale a-t-elle commis une erreur en refusant au demandeur de produire de la nouvelle preuve?

HISTORIQUE PROCÉDURAL

Le 21 janvier 1999
Cour canadienne de l'impôt
(Lamarre Proulx j.c.c.i.)

Appels des cotisations d'impôts du demandeur accordés partiellement : nouvelles cotisations tenant compte des montants concédés par l'intimée, ordonnées

Le 27 avril 1999
Cour d'appel fédérale
(Létourneau j.c.a.)

Requête du demandeur accueillie en partie

Le 17 avril 2002
Cour d'appel fédérale
(Décary, Noël et Pelletier jj.c.a.)

Appel accueilli en partie : nouvelle cotisation pour l'année d'imposition 1991 ordonnée

Le 19 juin 2002
Cour suprême du Canada

Demande d'autorisation d'appel déposée

29099 **Palma Olii c. Fonds d'assurance responsabilité professionnelle de la Chambre des notaires du Québec** (Qué.)

Coram : Les juges Iacobucci, Binnie et LeBel

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-007706-997, daté du 7 janvier 2002, est rejetée avec dépens en faveur du Fonds d'assurance responsabilité professionnelle de la Chambre des notaires du Québec.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-007706-997, dated January 7, 2002, is dismissed with costs to Fonds d'assurance responsabilité professionnelle de la Chambre des notaires du Québec.

NATURE DE LA CAUSE

Responsabilité civile - Droit des professions - Compte en fidéicomis - Un notaire qui reçoit une somme d'argent dans son compte en fidéicomis par voie de transfert électronique sans en connaître la provenance doit-il faire des vérifications

et obtenir le document bancaire qui indique le nom de l'émetteur, le montant et le motif de l'envoi, et s'enquérir des instructions de l'émetteur, avant de remettre les sommes reçues à son client qui en revendique la propriété? - Une Cour d'appel omet-elle d'exercer sa juridiction en refusant d'intervenir dans un jugement en invoquant qu'il s'agit d'une question de faits, alors que la question posée en première instance était une question de droit à savoir, les obligations de vérification d'un notaire?

HISTORIQUE PROCÉDURAL

Le 12 janvier 1999
Cour supérieure du Québec
(Archambault j.c.s.)

Action en dommages de la demanderesse rejetée

Le 7 janvier 2002
Cour d'appel du Québec
(Mailhot, Dussault et Thibault jj.c.a.)

Appel rejeté

Le 7 mars 2002
Cour suprême du Canada

Demande d'autorisation d'appel déposée

5.2.2003

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer la réponse des intimés

J.H.K.

v. (29495)

United States of America, et al. (Ont.)

GRANTED / ACCORDÉE Time extended to January 29, 2003.

5.2.2003

Before / Devant: MAJOR J.

Miscellaneous order

Autre ordonnance

BY/PAR: Procureur général du Québec

IN/DANS: Canadian Cable Television
Association

v. (28826)

Barrie Public Utilities, et al. (F.C.)

APRÈS AVOIR LU le mémoire déposé par le Procureur général du Québec, qui est intervenu en vertu du par. 61(4) des Règles, et compte tenu de l'alinéa 71(5)c) des Règles;

LA COUR accorde au Procureur général du Québec l'autorisation de présenter une plaidoirie orale dont la durée ne pourra dépasser dix (10) minutes au total lors de l'audition de l'appel.

HAVING READ the factum filed by the intervener, the Attorney General of Québec; who intervened by virtue of Rule 61(4) and having regard to the provisions of Rule 71(5)(c);

IT IS HEREBY ORDERED THAT the Attorney General of Québec is granted permission to present oral argument not exceeding ten (10) minutes in total at the hearing of the appeal.

5.2.2003

Before / Devant: THE CHIEF JUSTICE

Motion for additional time to present oral argument

Requête en prorogation du temps alloué pour les plaidoiries

In the matter of Earth Future Lottery: Attorney General for the Province of Prince Edward Island, and Earth Fund/Fond pour la terre

v. (29213)

Attorney General of Canada, et al. (P.E.I.)

DISMISSED / REJETÉE

UPON APPLICATION by the appellants for additional time for oral argument in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The application on behalf of the appellants for additional time for oral argument is dismissed.

6.2.2003

Before / Devant: IACOBUCCI J.

Motion for a stay of execution

Requête en vue de surseoir à l'exécution

Earl Cameron Creighton

v. (29558)

Charlotte Bjornson (Ont.)

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

UPON APPLICATION by the applicant for an order granting a stay of execution;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The application for a stay of execution is refused with costs and without prejudice to apply to the Ontario Court of Appeal.

6.2.2003

Before / Devant: IACOBUCCI J.

Further order on motion for leave to intervene

Autre ordonnance sur une requête en autorisation d'intervention

BY/PAR: Attorney General of Ontario

IN/DANS: In the matter of Earth Future Lottery:
Attorney General for the Province of
Prince Edward Island, et al.

v. (29213)

Attorney General of Canada, et al.
(P.E.I.)

UPON APPLICATION by the Attorney General of Ontario for leave to intervene in the above appeal and pursuant to the order of November 13, 2002;

IT IS HEREBY FURTHER ORDERED THAT the said intervener is granted permission to present oral argument not exceeding fifteen (15) minutes in total at the hearing of the appeal.

À LA SUITE DE LA DEMANDE du Procureur général du Québec visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné et suite à l'ordonnance du 2 décembre 2002;

LA COUR accorde au Procureur général du Québec l'autorisation de présenter une plaidoirie orale dont la durée ne pourra dépasser quinze (15) minutes au total lors de l'audition de l'appel.

6.2.2003

Before / Devant: THE REGISTRAR

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

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

Her Majesty the Queen

v. (29053)

Yu Wu (Crim.)(Ont.)

GRANTED / ACCORDÉE Time extended to February 21, 2003.

6.2.2003

Before / Devant: THE REGISTRAR

**Motion on behalf of the applicants to file
supplementary materials**

**Requête des demandeurs pour déposer des
documents supplémentaires**

Karen L. Turner-Lienaux, et al.

v. (29407)

Wesley G. Campbell (N.S.)

GRANTED / ACCORDÉE

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

**APPELS ENTENDUS DEPUIS LA
DERNIÈRE PARUTION ET
RÉSULTAT**

11.2.2003

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major, Bastarache, Binnie and Arbour JJ.

R. R.

William R. Gilmour for the appellant.

v. (28933)

Karen Shai for the respondent.

**Her Majesty the Queen (Ont.) (Criminal) (As of
Right) 2003 SCC 4 / 2003 CSC 4**

DISMISSED / REJETÉ

The appeal from the judgment of the Court of Appeal for Ontario, Number C34000, dated November 5, 2001, was heard this day and the following judgment was rendered:

a été entendu aujourd'hui et le jugement suivant a été rendu :

Iacobucci J. (orally) —

Le juge Iacobucci (oralement) :

This is an appeal as of right that comes to the Court as a result of the dissenting judgment of Feldman J.A. in the Ontario Court of Appeal on the issue of necessity regarding the admissibility of hearsay evidence of the complainant in a sexual assault case. Feldman J.A. reasoned that the trial judge erred in law because, although the complainant was unavailable to attend on the trial date, she may have been available in a few weeks and so an adjournment was in order to safeguard the rights of the accused.

[TRADUCTION] Le présent appel interjeté de plein droit devant notre Cour émane des motifs dissidents que la juge Feldman de la Cour d'appel de l'Ontario a rédigés sur la question de la nécessité en matière d'admissibilité du ouï-dire de la plaignante dans une affaire d'agression sexuelle. La juge Feldman a estimé que le juge du procès avait commis une erreur de droit étant donné que, même si la plaignante n'était pas disponible pour comparaître le jour du procès, elle aurait pu éventuellement l'être quelques semaines plus tard, de sorte qu'il convenait d'ordonner un ajournement pour protéger les droits de l'accusé.

Neither party requested an adjournment. Viewed narrowly, the trial judge was required to determine, on the issue of necessity, whether the complainant was available to testify on the date all parties agreed to proceed. The evidence was clear and uncontradicted that for medical reasons she could not testify on that date.

Ni l'une ni l'autre partie n'a sollicité un ajournement. D'un point de vue strict, le juge du procès était tenu de décider, relativement à la question de la nécessité, si la plaignante était disponible pour témoigner à la date convenue par toutes les parties. La preuve claire et non contredite indiquait que, pour des raisons médicales, la plaignante n'était pas en mesure de témoigner à cette date.

Viewed more broadly, although we share the concerns identified by Feldman J.A. on the matter, particularly in cases of this kind, we are of the view that when one considers all the circumstances and evidence before the trial judge, there is no reason to interfere with his discretionary decision to find necessity and admit the statement.

D'un point de vue général, quoique nous partageons les inquiétudes exprimées à ce propos par la juge Feldman, particulièrement dans une affaire de ce genre, nous sommes d'avis que, compte tenu de toutes les circonstances et de la preuve soumise au juge du procès, rien ne justifie de modifier sa décision discrétionnaire

L'appel interjeté contre l'arrêt de la Cour d'appel de l'Ontario, numéro C34000, en date du 5 novembre 2001,

In particular, there was evidence before the trial judge on which he could conclude that there was no reasonable possibility that the complainant would be available to testify within an acceptable period of time. Accordingly, the appeal is dismissed.

Nature of the case:

Criminal law - Evidence - Hearsay - Exceptions to the rule - Necessity - Complainant institutionalized and unavailable to testify at time of the trial - Crown seeking to introduce videotaped statements of complainant in absence of complainant - Whether the Court of Appeal erred in holding that the trial judge properly admitted the hearsay statement under the principled exception to the hearsay rule.

11.2.2203

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major and Bastarache JJ.

Allan Harriott

v. (29118)

Her Majesty the Queen (Ont.) (Criminal) (As of Right) 2003 SCC 5 / 2003 CSC 5

**DISMISSED, IACOBUCCI AND MAJOR JJ. DISSENTING /
REJETÉ, LES JUGES IACOBUCCI ET MAJOR SONT DISSIDENTS**

The appeal from the judgment of the Court of Appeal for Ontario, Number C33886, dated February 7, 2002, was heard this day and the following judgment was rendered:

The Chief Justice (orally) — This is an appeal as of right. The majority of the Court would dismiss the appeal for the reasons of MacPherson J.A. in the Court of Appeal, Iacobucci and Major JJ. dissenting.

Iacobucci and Major JJ. (orally) — We agree with our colleagues on the issue of the alibi instructions.

However, in our opinion the testimony of the young offender witness and Ms. Divito required, in the words

de conclure à l'existence de nécessité et d'admettre la déclaration en question.

En particulier, le juge du procès disposait d'une preuve qui lui permettait de conclure à l'inexistence de toute possibilité raisonnable que la plaignante soit disponible pour témoigner à l'intérieur d'un délai acceptable. En conséquence, l'appel est rejeté.

Nature de la cause:

Droit criminel - Preuve - Oûi-dire - Exceptions à la règle - Nécessité - La plaignante est internée et n'est pas en mesure de témoigner au moment du procès - Le ministère public cherche à introduire en l'absence de la plaignante l'enregistrement magnétoscopique de ses déclarations. - La Cour d'appel a-t-elle commis une erreur en concluant que le juge du procès avait admis à bon droit la déclaration relatée en application de l'exception de principe à la règle du ouï-dire?

Christopher Hicks and Victor Giourgas for the appellant.

Christine Bartlett-Hughes for the respondent.

L'appel interjeté contre l'arrêt de la Cour d'appel de l'Ontario, numéro C33886, en date du 7 février 2002, a été entendu aujourd'hui et le jugement suivant a été rendu :

[TRADUCTION] **La Juge en chef** (oralement) — Le présent appel a été interjeté de plein droit. La majorité de la Cour rejette l'appel pour les motifs exposés par le juge MacPherson de la Cour d'appel. Les juges Iacobucci et Major sont dissidents.

Les juges Iacobucci et Major (oralement) — Nous partageons l'opinion de nos collègues sur la question

of Dickson J. (as he then was) in *Vetrovec v. The Queen*, "a clear and sharp warning to attract the attention of the

juror to the risks of adopting, without more, the evidence of the witness” ([1982] 1 S.C.R. 811, at p. 831). We agree with Doherty J.A., dissenting in the Ontario Court of Appeal, that the charge of the trial judge when read as a whole did not meet this standard. Accordingly, we would allow the appeal, set aside the judgment of the Court of Appeal, and order a new trial.

Nature of the case:

Criminal law - Alibi - *Vetrovec* warning - Whether the Court of Appeal erred in dismissing the Appellant’s appeal in respect of the direction given by the trial judge regarding the Appellant’s alibi - Whether the Court of Appeal erred in dismissing the Appellant’s appeal in respect of the direction given by the trial judge regarding the approach to be taken in considering the evidence of Mr. Hansen and Ms. Vagadia.

12.2.2203

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

Her Majesty the Queen in Right of Alberta

v. (28261)

Devon Gary Ell, et al (Alta.) (Civil) (By Leave)

des instructions concernant l’alibi. À notre avis, toutefois, le témoignage du jeune contrevenant qui a déposé et celui de M^{lle} Divito commandaient, pour reprendre les propos prononcés par le juge Dickson (plus tard Juge en chef) dans l’arrêt *Vetrovec c. La Reine*, « une mise en garde claire et précise pour attirer l’attention du jury sur les dangers de se fier à la déposition d’un témoin sans plus de précautions » ([1982] 1 R.C.S. 811, p. 831). Nous souscrivons à l’opinion dissidente du juge Doherty de la Cour d’appel de l’Ontario selon laquelle, considéré globalement, l’exposé du juge du procès ne respectait pas cette norme. Par conséquent, nous sommes d’avis d’accueillir le pourvoi, d’annuler l’arrêt de la Cour d’appel et d’ordonner un nouveau procès.

Nature de la cause:

Droit criminel - Alibi - Mise en garde de type *Vetrovec* - La Cour d’appel a-t-elle commis une erreur en rejetant l’appel interjeté par l’appelant relativement à la directive du juge du procès concernant l’alibi de l’appelant? - La Cour d’appel a-t-elle commis une erreur en rejetant l’appel de ce dernier concernant la directive du juge du procès quant à l’approche à suivre pour l’examen du témoignage de M. Hansen et de M^{me} Vagadia?

Robert C. Maybank and Christine Enns for the appellant.

Alan D. Hunter, Q.C., Sheilah L. Martin, Q.C., and James T. Eamon for the respondents.

David Sgayias and Jan Brongers for the intervener Attorney General of Canada.

Janet E. Minor and Sean Hanley for the intervener Attorney General for Ontario.

Monique Rousseau et Julie Dassylva pour l’intervenant Procureur général du Québec.

George H. Copley, Q.C. for the intervener Attorney General of British Columbia.

Graeme G. Mitchell, Q.C. for the intervener Attorney General for Saskatchewan.

Paul B. Schabas and Catherine Beagan Flood for the intervener Association of Justices of the Peace of Ontario.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Constitutional law - Judicial independence - Justices of the peace - Legislative amendments affecting statutory tenure - Whether s. 2.4(8) of the *Justice of the Peace Act*, R.S.A. 1980, c. J-3, as amended, interferes with the tenure of non-sitting justices of the peace and thereby violates the principle of judicial independence guaranteed by the preamble of the *Constitution Act, 1867*, or s. 11(d) of the *Canadian Charter of Rights and Freedoms* - If the provision violates s. 11(d), is the Act demonstrably justified as a reasonable limit prescribed by law under s. 1 of the *Charter*? - Whether the Court of Appeal erred in finding that the essential element of security of tenure is “removal only for cause” - Whether the Court of Appeal erred in awarding appellate costs on a solicitor-client basis on the basis that judicial independence cases are an exception to the common law rule.

Nature de la cause:

Droit constitutionnel - Indépendance judiciaire - Juges de paix - Modifications législatives touchant l'inamovibilité prévue par la loi - Le paragraphe 2.4(8) de la *Justice of the Peace Act*, R.S.A. 1980, ch. J-3 et ses modifications, porte-t-il atteinte à l'inamovibilité des juges de paix qui ne siègent pas et contrevient-il, de ce fait, au principe de l'indépendance judiciaire garanti par le préambule de la *Loi constitutionnelle de 1867* ou par l'al. 11d) de la *Charte canadienne des droits et libertés*? - Si la disposition en cause viole l'al. 11d), s'agit-il d'une loi dont la justification peut se démontrer en tant que limite raisonnable prescrite par une règle de droit, au sens de l'article premier de la *Charte*? - La Cour d'appel a-t-elle commis une erreur en concluant que la caractéristique essentielle de l'inamovibilité est le fait qu'il peut y avoir [TRADUCTION] « destitution seulement pour un motif suffisant »? - La Cour d'appel a-t-elle commis une erreur en accordant des dépens procureur-client en appel pour le motif que les affaires concernant l'indépendance judiciaire sont une exception à la règle de common law?

13.2.2203

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

Canadian Union of Public Employees, Local 79

v. (28840)

City of Toronto, et al (Ont.) (Civil) (By Leave)

Douglas J. Wray and Harold F. Caley for the appellant.

Jason Hanson, Mahmud Jamal and Kari M. Abrams for the respondent City of Toronto.

Sean Kearney, Mary Gersht and Meredith Brown for the intervener Attorney General of Ontario.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Administrative law - Labour law - Arbitration - Judicial review - What is the appropriate standard of judicial review of the Arbitrator's decision(s) - Whether the

Arbitrator erred in his decision(s) - Whether the court should substitute its view and quash the Arbitrator's award(s), without remitting the matter to the Arbitrator.

Nature de la cause:

Droit administratif - Droit du travail - Arbitrage - Contrôle judiciaire - Quelle norme de contrôle judiciaire convient-il d'appliquer aux décisions de l'arbitre? - L'arbitre s'est-il trompé dans ses décisions? - La Cour devrait-elle substituer sa propre opinion et annuler les sentences arbitrales sans renvoyer l'affaire à l'arbitre?

13.2.2203

CORAM: Chief Justice McLachlin and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

Ontario Public Service Employees Union

v. (28849)

Her Majesty the Queen in Right of Ontario as represented by the Ministry of Community and Social Services, et al (Ont.) (Civil) (By Leave)

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Administrative law - Labour law - Arbitration - Judicial review - Is the proper standard of review of procedural and evidentiary decisions of Ontario Crown Employees Grievance Settlement Board one of correctness - In the absence of issue estoppel, collateral attack and a clear finding of abuse of process, is it proper for a court on judicial review to set aside an arbitrator's decision and apply a free-standing principle of judicial finality to restrict the evidence permitted in rebuttal of a criminal conviction - Did the Court err in interfering with the Board's exclusive jurisdiction over evidentiary and procedural matters, and the determination of just cause - Whether the Court erred by simply dismissing the appeals without providing adequate reasons.

Craig Flood for the appellant.

Mary Gersht, Sean Kearney and Meredith Brown for the respondent Her Majesty the Queen in Right of Ontario.

Nature de la cause:

Droit administratif - Droit du travail - Arbitrage - Contrôle judiciaire - La norme de contrôle appropriée des décisions rendues par la Commission de règlement des griefs des employés de la Couronne de l'Ontario à l'égard des questions de preuve et de procédure est-elle celle de la décision correcte? - En l'absence de préclusion, d'attaque indirecte et de conclusion claire d'abus de procédure, est-il approprié pour un tribunal qui entend des demandes de contrôle judiciaire d'annuler la décision de l'arbitre et d'appliquer le principe de la décision définitive indépendante afin de restreindre la preuve qui peut être admissible pour réfuter une condamnation criminelle? - La Cour a-t-elle commis une erreur lorsqu'elle est intervenue relativement à la compétence exclusive de la Commission à l'égard des questions de preuve et de procédure et à l'égard d'une conclusion quant à un motif valable? - La Cour a-t-elle commis une erreur lorsqu'elle a simplement rejeté les appels sans énoncer de motifs suffisants?

DEADLINES: APPEALS

The Winter Session of the Supreme Court of Canada started January 13, 2003.

The Supreme Court of Canada has enacted new rules that came into force on June 28, 2002.

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

1) For notices of appeal filed on and after June 28, 2002

Appellant's record; appellant's factum; and appellant's book(s) of authorities must be filed within 12 weeks of the filing of the notice of appeal or 12 weeks from decision on the motion to state a constitutional question.

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

Intervener's factum and intervener's book(s) of authorities, (if any), must be filed within eight weeks of the order granting leave to intervene or within 20 weeks of the filing of a notice of intervention under subrule 61(4).

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

2) For notices of appeal filed before June 28, 2002

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 documents.

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.

The Registrar shall enter the appeal on a list of cases to be heard after the respondent's factum is filed or at the end of the eight-week period referred to in Rule 36.

DÉLAIS : APPELS

La session d'hiver de la Cour suprême du Canada a commencé le 13 janvier 2003.

La Cour suprême du Canada a adopté de nouvelles règles qui sont entrées en vigueur le 28 juin 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 entendu:

1) Pour les avis d'appel déposés le ou après le 28 juin 2002

Le dossier de l'appelant, son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les douze semaines du dépôt de l'avis d'appel ou douze semaines de la décision de la requête pour formulation d'une question constitutionnelle.

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 des documents de l'appelant.

Le mémoire de l'intervenant et son recueil de jurisprudence et de doctrine, le cas échéant, doivent être déposés dans les huit semaines suivant l'ordonnance autorisant l'intervention ou dans les vingt semaines suivant le dépôt de l'avis d'intervention visé au paragraphe 61(4).

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

2) Pour les avis d'appel déposés avant le 28 juin 2002

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 des documents 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.

Le registraire inscrit l'appel pour audition après le dépôt du mémoire de l'intimé ou à l'expiration du délai de huit semaines prévu à la règle 36.

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2002 -

OCTOBER - OCTOBRE						
S D	M L	T M	W M	T J	F V	S S
	M 30	1	2	3	4	5
6	7	8	9	10	11	12
13	H 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	M 4	5	6	7	8	9
10	H 11	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	M 2	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				

- 2003 -

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	M 13	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	M 10	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	M 10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

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

Sittings of the court:
Séances de la cour:

18 sitting weeks / semaines séances de la cour

Motions:
Requêtes:

M

80 sitting days / journées séances de la cour

Holidays:
Jours fériés:

H

9 motion and conference days / journées requêtes, conférences

1 holidays during sitting days / jours fériés durant les sessions