SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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June 11, 2004 Supreme Court of Canada	Application for leave to appeal filed

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September 20, 2002 Court of Queen's Bench of Manitoba (McKelvey J.)	Respondent's action for fraud and entitlement for recision of the contract with Applicants, granted; Applicants' counterclaim dismissed
May 4, 2004 Court of Appeal of Manitoba (Scott C.J.M., Twaddle, Steel JJ.A [dissenting in part])	Appeal and cross-appeal dismissed
August 3, 2004 Supreme Court of Canada	Application for leave to appeal filed
November 24, 2004 Supreme Court of Canada	Motion to extend time to file and/or serve the leave application filed

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October 21, 2003 Supreme Court of British Columbia (Brenner C.J.B.C.)	Respondents' application for an order for security costs, allowed
February 25, 2004 Supreme Court of British Columbia (Brenner C.J.B.C.)	Applicants' application for an order for an investigation of audiotapes for the proceedings of October 20 and 21, 2003, dismissed; Applicants' application for reconsideration, dismissed; Applicants' application for recusation, dismissed
March 31, 2004 Court of Appeal for British Columbia (Lowry J.A.)	Applicants' applications for indigent status and for extension of time, dismissed
May 18, 2004 Court of Appeal for British Columbia (Finch C.J.B.C., Donald and Low JJ.A.)	Applicants' application to discharge or vary the order of Lowry J., dismissed
August 17, 2004 Supreme Court of Canada	Application for leave to appeal filed

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D.L.

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NATURE DE LA CAUSE

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July 16, 2003 Ontario Superior Court of Justice (Spiegel J.)	Motion for summary judgment dismissing Applicant's action for specific performance of an oral agreement for the purchase of land granted
June 8, 2004 Court of Appeal for Ontario (Weiler, Abella and Armstrong JJ.A.)	Appeal dismissed
September 3, 2004 Supreme Court of Canada	Application for leave to appeal filed

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CORAM: Major, Fish and Abella JJ.
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October 17, 2003 Federal Court of Canada (Gibson J.)	Applicants' application for relief allowed in part: Minister of Health prohibited from issuing notices of compliance under s. C.08.004 of the *Food and Drug Regulations* to Respondent Apotex prior to expiration of patent
June 23, 2004 Federal Court of Appeal (Linden, Rothstein and Sexton J.J.A.)	Applicants' motion to dismiss Respondents' appeal on the basis of mootness dismissed
September 22, 2004 Supreme Court of Canada	Application for leave to appeal filed

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PROCEDURAL HISTORY

February 28, 2003 Federal Court of Canada,Trial Division (Layden-Stevenson, J.)	Applicant's application for an order prohibiting the Minister of Public Works from disclosing certain documents dismissed

May 31, 2004 Federal Court of Appeal (Stone, Sexton and Evans, JJ.A.)	Appeal dismissed
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Antonio Munoz Castillo (Alta.)

NATURE OF THE CASE

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PROCEDURAL HISTORY

April 18, 2002 Court of Queen's Bench of Alberta (Rawlins J.)	Limitations law of both California and Province of Alberta, declared to apply to Applicant's action; Applicant's action declared statute barred if not filed in time under California's one year limitations law
July 9, 2004 Court of Appeal of Alberta (Russell, Berger and Wittmann JJ.A.)	Applicant's appeal dismissed
September 29, 2004 Supreme Court of Canada	Application for leave to appeal filed

Her Majesty the Queen

v. (30533)

Dale Sappier and Clark Polchies (N.B.)

NATURE OF THE CASE

Native law - Constitutional law - Treaty rights - Aboriginal rights - Whether the Court of Appeal erred in determining that the respondents have a treaty right to harvest trees for personal use from Crown lands - Whether the Court of Appeal erred in determining that the respondents have an aboriginal right to harvest trees for personal use from Crown lands - Whether

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July 22, 2004 Court of Appeal of New Brunswick (Daigle, Deschênes, Robertson JJ.A.)	Appeal dismissed
September 28, 2004 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

The Crown in Right of Alberta as represented by the Minister responsible for Alberta Human Resources and Employment

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The Director of the Human Rights and Citizenship Commission (Alta.)

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PROCEDURAL HISTORY

June 1, 2001 Human Rights Panel (Andreachuck, Chair)	*Widows' Pension Act* declared *prima facie* discriminatory on the basis of marital status; Discrimination found to be reasonable and justifiable in the circumstances
August 27, 2002 Court of Queen's Bench of Alberta (Greckol J.)	Appeal allowed; Applicant ordered to extend benefits under the *Widows' Pension Act* to qualified applicants who are divorced or separated
May 10, 2004 Court of Appeal of Alberta (McClung, Costigan and Sirrs JJ.A.)	Appeal dismissed

August 17, 2004 Supreme Court of Canada	Application for leave to appeal filed
October 8, 2004 Supreme Court of Canada (LeBel J.)	Motion to extend time to file and serve the leave application granted

Her Majesty the Queen

v. (30531)

Darrell Joseph Gray (N.B.)

NATURE OF THE CASE

Native law - Constitutional law - Treaty rights - Aboriginal rights - Aboriginal title - Whether the Court of Appeal of New Brunswick erred in determining that the respondent has an aboriginal right to harvest trees for personal use from Crown lands - Whether the Court of Appeal erred when it incorporated evidence into its reasons for judgment from another trial which evidence was not part of the trial record.

PROCEDURAL HISTORY

August 27, 2001 Provincial Court of New Brunswick (Arsenault J.)	Respondent found not-guilty of charge under s. 67(2) of the *Crown Lands and Forests Act*
April 8, 2003 Court of Queen's Bench of New Brunswick (McIntyre J.)	Appeal allowed; Respondent found guilty contrary to s. 67(2) of the *Crown lands and Forests Act*
July 22, 2004 Court of Appeal of New Brunswick (Daigle, Deschênes, Robertson JJ.A.)	Appeal allowed; appeal judges' decision set-aside and trial judges' verdict of "not-guilty" restored
September 28, 2004 Supreme Court of Canada	Application for leave to appeal filed

CORAM: Bastarache, LeBel and Deschamps JJ.
Les juges Bastarache, LeBel et Deschamps

Société Asbestos Limitée

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Le 7 septembre 2004 Cour d'appel du Québec (Les juges Mailhot, Morissette et Lemelin [*ad hoc*])	Appel rejeté
Le 3 novembre 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Natalie Luffer, Henry Sztern, Es Qualité Trustee and Henry Sztern & Associés Inc.

v. (30608)

Kenneth Roy Sinclair, Éric Lacroix, Meco Limited, 9084-8144 Québec Inc., Service de Mini- Remorque H.C.H. Inc., H.H. Davis & Associés Inc., Alain Lafontaine Es qualité, Deputy Superintendent and L'Officier de la publicité des droits (Que.)

NATURE OF THE CASE

Procedural Law - Commercial Law - Bankruptcy - Civil procedure - Judgments and orders - Pre-trial procedure - Seizure before judgment - Whether section 5(3)(e) and 14.03(1)(b) of the *Bankruptcy and Insolvency Act* give the right to the Office of the Superintendent of Bankruptcy, on its own or through its agents, to conduct a search without a court ordered search warrant - Whether a Federal court order of the specific nature of an Anton Piller Order gives the right to the Office of the Superintendent of Bankruptcy, on its own or through its agents, to conduct a search - Whether a search executed under the circumstances raised in this Application supersede those rights guaranteed by sections 8 and 24 (1) and 24 (2) of the *Canadian Charter of Human Rights and Freedom* and section 24.1 of the *Quebec Charter of Rights and Freedom* - Whether the Quebec Court of Appeal erred by concluding that « *D'autre part, l'appelante et la mise en cause exerçaient les pouvoirs, devoirs et functions prévus aux articles 5 (3) e) et 14.03 de la Loi sur la faillite et l'insolvabilité* », completely ignoring the fact that the seizure was based on allegations that were adjudicated to be completely unproven and the document « Offer to Purchase », upon which the seizure itself was grounded was illegally obtained in violation of the *Canadian and Quebec Charter of Rights and Freedom*s - Whether the Québec Court of Appeal erred in substituting it's own judgment in place of the Lower Court's judgment, where no manifest error in law or fact was established and with the Lower Court having had the benefit of a lengthy hearing of testimony and evidence of numerous witnesses.

PROCEDURAL HISTORY

May 7, 2004 Superior Court of Quebec (Guibault J.)	Applicant Natalie Luffer's motions for dismissal rejected; Applicant Nathalie Luffer's motion to quash the seizure before judgment allowed; seizure before judgment of real property quashed
September 24, 2004 Court of Appeal of Quebec (Mailhot, Otis and Morin JJ.A.)	Appeal allowed
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Assunta Mellichio Baldino, Fernando Baldino

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Le 7 avril 2004 Cour d'appel du Québec (Le juge Hilton)	Requête pour permission d'appel rejetée
Le 12 juillet 2004 Cour d'appel du Québec (Les juges Rayle, Morissette et Lemelin [*ad hoc*])	Requête pour permission d'appel hors délai rejetée
Le 1 octobre 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Société canadienne de Métaux Reynolds, Limitée

v. (30511)

The Deputy Minister of Revenue of Quebec and The Attorney General of Quebec (Que.)

NATURE OF THE CASE

Constitutional Law – Taxation – Statutes – Retroactive statute enacted during court proceedings relating to subject-matter of legislation – Statute has the effect of removing cause of action – Whether the lower courts erred by holding that the retroactive statute did not violate the principles of the Rule of Law, of the separation of powers and of judicial independence in the circumstances and was not unconstitutional as a result.

PROCEDURAL HISTORY

August 28, 2001 Court of Quebec (Desmarais, J.)	Applicant's application for judicial review of the Respondent Minister of Revenue's decision to refuse to allow income tax reimbursements, dismissed
June 17, 2004 Court of Appeal of Quebec (Gendreau, Baudouin and Pelletier, JJ.A.)	Appeal dismissed

September 16, 2004
Supreme Court of Canada

Application for leave to appeal filed

Leslie Greenberg and Nelson Greenberg

v. (30495)

Michael Gruber (Que.)

NATURE OF THE CASE

Commercial law – Company law – Remedies – "Oppression" – Prescription – Whether the lower courts erred in holding that the *Civil Code of Québec* was applicable to determine the prescription applicable to a recourse under s. 241 of the *Canada Business Corporations Act*, R.S. 1985, c. C-44 – Whether the Court of Appeal erred in holding that the respondent's claim to ownership of the shares was not prescribed? – What is the applicable prescription period for claims of oppression?

PROCEDURAL HISTORY

December 10, 2003
Superior Court of Quebec
(Gomery J.)

Applicants' preliminary exception to dismiss the respondent's petition dismissed

May 27, 2004
Court of Appeal of Quebec
(Gendreau, Forget, Pelletier JJ.A)

Appeal dismissed

September 3, 2004
Supreme Court of Canada

Application for leave to appeal and motion to extend time filed

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Alliance professionnelle des infirmières et infirmiers auxiliaires du Québec

c. (30497)

Hôpital Jean-Talon

- et -

Me Marc Gravel, en sa qualité d'arbitre de griefs (Qc)

NATURE DE LA CAUSE

Droit administratif - Contrôle judiciaire - Droit du travail - Arbitrage - Convention collective - Régime d'assurance-salaire - Définition d'invalidité - Un arbitre excède-t-il sa juridiction lorsque, dans l'interprétation des droits découlant d'un régime d'assurance-salaire intégré à la convention collective, il ajoute des éléments étrangers à la convention collective convenue entre les parties? - En restreignant les bénéfices du régime d'assurance-salaire aux seuls salariés pour qui la médecine peut offrir un espoir de guérison, la décision de la Cour d'appel conduit-elle à un résultat discriminatoire?

HISTORIQUE DES PROCÉDURES

Le 15 février, 2002 Tribunal d'arbitrage (Me Gravel et MM. Bouchard et Séguin)	Grief de la demanderesse contestant la cessation du paiement des indemnités d'assurance-salaire par l'employeur rejeté
Le 10 janvier 2003 Cour supérieure du Québec (Le juge Rolland)	Requête en révision judiciaire accueillie, sentence arbitrale annulée et dossier retourné à l'arbitre
Le 4 juin 2004 Cour d'appel du Québec (Les juges Proulx, Chamberland et Lemelin [*ad hoc*])	Pourvoi de l'intimé accueilli, jugement du juge Rolland infirmé et requête en révision judiciaire rejetée
Le 2 septembre 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

DECEMBER 16, 2004 / LE 16 DÉCEMBRE 2004

30223 **Patrick Manningham v. United States of America AND BETWEEN Patrick Manningham v. Minister of Justice for Canada** (Ont.) (Criminal) (By Leave)

Coram: McLachlin C.J. and Binnie and Charron 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, Numbers C33598 and C38933, dated March 10, 2004, 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, numéros C33598 et C38933, daté du 10 mars 2004, est rejetée.

NATURE OF THE CASE

Canadian Charter - Criminal law - Statutes - Interpretation - Extradition - Money laundering charge - Whether Court of Appeal erred in relying on their decision in *U.S.A. v. Yang* which upheld and constitutional validity of ss. 32-34 of the *Extradition Act* - Whether ss. 32 and 34 of the *Extradition Act* are unconstitutional - Whether s. 29 of the Act requires the extradition judge to define conduct - Whether the Minister committed a reviewable error with respect to the application of ss. 6 and 7 of the *Charter*.

PROCEDURAL HISTORY

January 31, 2000 Ontario Superior Court of Justice (Dambrot J.)	Applicant committed for extradition on all charges relating to violations of ss. 5(1), 6(1) and 8(1) of the *Controlled Drugs and Substances Act* and s. 465(1)(*c*) of the *Criminal Code*
September 27, 2002 Office of the Minister of Justice (The Honourable Martin Cauchon, P.C., M.P.)	Applicant's surrender to the United States of America ordered
November 8, 2002 Court of Appeal for Ontario (Laskin J.)	Sealing order for appeal book and file granted
March 10, 2004 Court of Appeal for Ontario (Laskin, Moldaver and Goudge JJ.A.)	Applicant's appeal from committal order and application for judicial review of the Minister's surrender decision dismissed
June 11, 2004 Supreme Court of Canada	Application for leave to appeal and motion for an extension of time filed

30222 **Michael McDowell v. United States of America** (Ont.) (Criminal) (By Leave)

Coram: McLachlin C.J. and Binnie and Charron 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 C37643, dated March 10, 2004, 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 C37643, daté du 10 mars 2004, est rejetée.

NATURE OF THE CASE

Criminal law - Extradition - Whether ss. 32-24 of the *Extradition Act* are contrary to section 7 of the *Canadian Charter of Rights and Freedoms* - Whether the Court of Appeal for Ontario erred in dismissing the appeal of committal regarding the definition of the conduct (the nature of the conspiracy charged) by ruling that the extradition judge need not define the "conduct" under section 29 of the *Extradition Act* - Whether the Court of Appeal for Ontario erred in dismissing the appeal in relation to the proof of identity by relying on evidence obtained in Canada contrary to section 32(2) of the *Extradition Act*

PROCEDURAL HISTORY

January 30, 2002 Ontario Superior Court of Justice (Whealy, J.)	Applicant ordered to surrender to the United States of America for conspiracy to launder the proceeds of an offence contrary to s. 9(1) of the *Controlled Drugs and Substances Act* and s. 465(1) of the *Criminal Code*
March 10, 2004 Court of Appeal for Ontario (Laskin, Moldaver and Goudge JJ.A.)	Appeal dismissed
July 20, 2004 Supreme Court of Canada	Applications for leave to appeal and for extension of time filed

30372 **Ryan Eichmanis, by his Litigation Guardian, Bonnie Eichmanis, Ken Eichmanis, James Eichmanis and the said Bonnie Eichmanis, personnally v. Ryan Prystay, by his Litigation Guardian, The Children's lawyer, James Prystay, John Prystay, Catherine Prystay, Tracey Lauersen** (Ont.) (Civil) (By Leave)

Coram: McLachlin C.J. and Binnie and Charron JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C39622, dated April 6, 2004, is dismissed with costs to the respondents Tracey Lauersen, Catherine Prystay and John Prystay.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C39622, daté du 6 avril 2004, est rejetée avec dépens en faveur des intimés Tracey Lauersen, Catherine Prystay et John Prystay.

NATURE OF THE CASE

Torts - Negligence - Apportionment of liability - Standard of care - Damages - When members of a blended family of necessity delegate temporary supervisory responsibility for a child among themselves, what is the applicable standard of care? - Is it less than that of a reasonable parent, especially when unsecured firearms are in the factual matrix? - When the key defendant does not testify at trial to rebut the critical evidence in such cases, when and by what overt protocol should the court draw an adverse inference against the defendant? - When should an appellate court be allowed to selectively reverse key findings of fact in a case, despite some evidence on the record which would have supported the trial judge's finding?

PROCEDURAL HISTORY

January 29, 2003 Ontario Superior Court of Justice (Wright J.)	Applicant's action allowed: damages assessed at $1,066,500.00

April 6, 2004 Court of Appeal for Ontario (Abella J.A. (dissenting in part) and Cronk and Armstrong JJ.A.)	Appeal allowed in part; judgment of Wright J. on apportionment of liability to Respondent James Prystay varied
June 3, 2004 Supreme Court of Canada	Application for leave to appeal filed

30422 **Rainer Zenner v. Prince Edward Island College of Optometrists** (P.E.I.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Supreme Court of Prince Edward Island, Appeal Division, Number S1-AD-0983, dated April 19, 2004, is granted.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour suprême de l'Île-du-Prince-Édouard, Section d'appel, numéro S1-AD-0983, daté du 19 avril 2004, est accordée.

NATURE OF THE CASE

Labour law - Law of professions - Optometrists - Respondent refused to provide Applicant with a licence to practice optometry in Prince Edward Island until Applicant complied with the requirements of the *Optometry Act*, R.S.P.E.I. 1988, c. O-6, s. 12(1)(e) - Whether Applicant was entitled to an order requiring the Respondent to issue a licence or otherwise process the application.

PROCEDURAL HISTORY

June 24, 2002 Supreme Court of Prince Edward Island, Trial Division (Campbell J.)	Applicant's application for extension of time, denied; Applicant's applications for judicial review, dismissed
April 19, 2004 Supreme Court of Prince Edward Island, Appeal Division (Mitchell C.J.P.E.I., McQuaid and Webber JJ.A.)	Appeal with respect to the extension of time, allowed; appeal with respect to the applications for judicial review dismissed
June 24, 2004 Supreme Court of Canada	Application for leave to appeal filed
July 19, 2004 Supreme Court of Canada	Motion to extend time filed

30399 **Georges Agazarian v. Her Majesty the Queen** (FC) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-36-03, dated April 23, 2004, is dismissed with costs to the respondent.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-36-03, daté du 23 avril 2004, est rejetée avec dépens en faveur de l'intimée.

NATURE OF THE CASE

Taxation - Assessment - Statutes - Interpretation - *Income Tax Act*, R.S.C. 1985, c. 1 (5th supp.) as amended - Extended reassessment provisions - Whether Minister of National Revenue has the power to reassess a person's tax for the year within or beyond time limitations imposed by the *Act* in s. 152(4)(b)(i)

PROCEDURAL HISTORY

January 6, 2003 Tax Court of Canada (Bell J.T.C.C.)	Applicant's motion for the determination of a point of law pursuant to Rule 58 of the *Tax Court of Canada Rules (General Procedure)*, granted
April 23, 2004 Federal Court of Appeal (Létourneau, Nadon and Pelletier JJ.A.)	Appeal allowed; Minister deemed to have the power to reassess the Applicant more than once beyond the normal assessment period
June 21, 2004 Supreme Court of Canada	Application for leave to appeal filed
November 4, 2004 Supreme Court of Canada (McLachlin, C.J.)	Applicant's miscellaneous motion to cross-examine David William Turner on the affidavit filed in the Respondent's material dismissed

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30478 **Monique Marie Turenne v. The Minister of Justice, United States of America** (Man.) (Criminal) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Manitoba, Numbers AR03-30-05525 and AR99-30-04400, dated July 21, 2004, is dismissed and the application for an oral hearing is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Manitoba, numéros AR03-30-05525 et AR99-30-04400, daté du 21 juillet 2004, est rejetée et la demande d'audition orale est rejetée.

NATURE OF THE CASE

Canadian Charter - Criminal - Criminal Law (Non Charter) - Extradition - Whether an order for committal and an order for surrender ought to have been issued.

PROCEDURAL HISTORY

October 29, 1999 Court of Queen's Bench of Manitoba (Steel J.)	Applicant committed for surrender to the United States of America on the ground of first-degree murder charge in violation of ss.777.011 and 782.04(1)(a)1 of the Florida Statutes
March 3, 2003 Minister of Justice (Hon. Martin Cauchon)	Order for surrender

July 21, 2004
Court of Appeal of Manitoba
(Scott C.J.M., Philp and Freedman JJ.A.)

Applicant's appeal and application for judicial review dismissed

August 23, 2004
Supreme Court of Canada

Application for leave to appeal filed

30468 **Victoria Steffen v. Rodney Breyer, Barbara Breyer, Rodney Breyer and Barbara Breyer Operating as Wolverine Farms, Attorney General of Manitoba** (Man.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Manitoba, Number AI 03-30-05679, dated June 4, 2004, is dismissed with costs to respondents Rodney Breyer, Barbara Breyer, Rodney Breyer and Barbara Breyer Operating as Wolverine Farms.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Manitoba, numéro AI 03-30-05679, daté du 4 juin 2004, est rejetée avec dépens en faveur des intimés Rodney Breyer, Barbara Breyer, Rodney Breyer et Barbara Breyer opérant sous Wolverine Farms.

NATURE OF THE CASE

Constitutional law - Civil rights - Procedural law - Civil procedure - Summary judgment - Constitutional issues - *Fatal Accidents Act* c. F50, s. 3(5)(a) "common-law spouse" - Whether the Applicant raised a triable issue as to whether she had cohabited with the deceased - Whether it is permitted under the *Constitution Act, 1867* that the provinces and territories define "common law spouse"; "wife and husband"; or "spouse" variously and include, "a person of the opposite sex" - Whether this unequal treatment breaches ss. 7 or 15 of the *Charter* - Whether restricting the interpretation of cohabitation to "common law" relationships is appropriate - Whether the lower courts applied the correct test on summary judgment of a case involving a constitutional issue.

PROCEDURAL HISTORY

April 23, 2003
Court of Queen's Bench of Manitoba
(Mykle J.)

Applicant's motion for summary judgment dismissed

June 4, 2004
Court of Appeal of Manitoba
(Huband, Steel and Hamilton JJ.A.)

Appeal dismissed

August 16, 2004
Supreme Court of Canada

Application for leave to appeal filed

30426 **Insurance Corporation of British Columbia v. J.F. Raymond Chouinard, Chouinard & Company and Harper Grey Easton, Amin Hosseini-Nejad** (B.C.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA029771, dated April 28, 2004, is dismissed with costs to the respondents J.F. Raymond Chouinard, Chouinard & Company and Harper Grey Easton.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029771, daté du 28 avril 2004, est rejetée avec dépens en faveur des intimés J.F. Raymond Chouinard, Chouinard & Company et Harper Grey Easton.

NATURE OF THE CASE

Commercial law - Barristers and solicitors - Solicitor's lien - Whether a solicitor's lien can attach to a reduction of indebtedness - Whether a solicitor's lien can attach to property belonging to an adverse party - whether solicitor's liens are enforceable to the prejudice of an adverse party's right of set-off.

PROCEDURAL HISTORY

May 1, 2002 Supreme Court of British Columbia (Williamson J.)	Respondent, Hosseini's solicitors' application for solicitor's lien pursuant to s. 79 of the *Legal Professions Act*, granted; Solicitor's lien claim deemed to have priority over any right of set-off claimed by the Applicant
May 2, 2003 Court of Appeal for British Columbia (Hall, Saunders and Levine JJ.A.)	Appeal adjourned to the earliest convenient date following the decision of the Applicant's action against Respondent Hosseini
December 12, 2003 Supreme Court of British Columbia (Groberman J.)	Applicant's application against Respondent Hosseini for summary judgment pursuant to Rule 18A of the *Supreme Court Civil Rules*, granted; Applicant entitled to receive damages in the amount of $ 1,080,000.00 from Respondent Hosseini
April 28, 2004 Court of Appeal for British Columbia (Braidwood, Saunders and Rowles JJ.A.)	Appeal dismissed
June 28, 2004 Supreme Court of Canada	Application for leave to appeal filed

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30512 **B.V.N. v. Her Majesty the Queen** (B.C.) (Criminal) (By Leave)

Coram: Major, Fish and Abella 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 British Columbia (Vancouver), Number CA031717, dated May 6, 2004, is granted.

This case will be heard with *Her Majesty the Queen v. B.W.P.* (30514).

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA031717, daté du 6 mai 2004, est accordée.

Cet appel sera entendu avec *Sa Majesté la Reine c. B.W.P.* (30514).

NATURE OF THE CASE

Criminal law - Sentencing - Principles of sentencing under *Youth Criminal Justice Act*, S.C. 2002, c. 1 - Is general deterrence a principle to be considered in imposing a sentence under the *Youth Criminal Justice Act*?

PROCEDURAL HISTORY

January 30, 2004 Provincial Court of British Columbia (Auxier J.)	Applicant sentenced to 9 months custody followed by a 15-month intensive support and supervision program order, following conviction of assault causing bodily harm contrary to s. 267 (b) of the *Criminal Code*
May 6, 2004 Court of Appeal for British Columbia (Vancouver) (Lambert, Mackenzie, and Oppal JJ.A.)	Applicant's appeal from sentence allowed in part; Conditions deleted
September 10, 2004 Supreme Court of Canada	Application for leave to appeal filed

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30514 **Her Majesty the Queen v. B.W.P.** (Man.) (Criminal) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Manitoba, Numbers AY03-30-05680 and AY03-30-05687, dated July 7, 2004, is granted.

This case will be heard with *B.V.N. v. Her Majesty the Queen* (30512).

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Manitoba, numéros AY03-30-05680 et AY03-30-05687, daté du 7 juillet 2004, est accordée.

Cet appel sera entendu avec *B.V.N. c. Sa Majesté la Reine* (30512).

NATURE OF THE CASE

Criminal law - Sentencing - Principles of sentencing under *Youth Criminal Justice Act*, S.C. 2002, c. 1 - Is general deterrence a principle to be considered in imposing a sentence under the *Youth Criminal Justice Act*? - Whether Court of Appeal erred in holding that deterrence may not be considered in sentencing under the *Youth Criminal Justice Act* - Whether Court of Appeal erred in principle in its interpretation of Section 42(2)(o) of the *Youth Criminal Justice Act*.

PROCEDURAL HISTORY

September 16, 2003 Provincial Court of Manitoba (Meyers J.)	Respondent sentenced to a custody and supervision order for fifteen months, followed by one year of supervised probation
July 7, 2004 Court of Appeal of Manitoba (Huband, Kroft and Hamilton JJ.A.)	Appeal dismissed

September 2, 2004
Supreme Court of Canada

Application for leave to appeal filed

30411 **Imperial Tobacco Canada Limited v. Her Majesty the Queen in Right of British Columbia AND BETWEEN Imperial Tobacco Canada Limited v. Attorney General of British Columbia AND BETWEEN Rothmans, Benson & Hedges Inc. v. Her Majesty the Queen in Right of British Columbia AND BETWEEN Rothmans, Benson & Hedges Inc. v. Attorney General of British Columbia AND BETWEEN JTI-Macdonald Corp. v. Her Majesty the Queen in Right of British Columbia AND BETWEEN JTI-Macdonald Corp. v. Attorney General of British Columbia AND BETWEEN Canadian Tobacco Manufacturers' Council v. Her Majesty the Queen in Right of British Columbia AND BETWEEN British American Tobacco (Investments) Limited v. Her Majesty the Queen in Right of British Columbia AND BETWEEN Philip Morris Incorporated, Philip Morris International Inc. v. Her Majesty the Queen in Right of British Columbia** (B.C.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The applications for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Numbers CA030975, CA030976, CA030977 and CA030978, dated May 20, 2004, are granted with costs to the applicants in any event of the cause.

Les demandes d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéros CA030975, CA030976, CA030977 et CA030978, daté du 20 mai 2004, sont accordées avec dépens en faveur des demanderesses quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Constitutional law – Statutes – Tobacco legislation – Provincial jurisdiction (s. 92(13)) – Property and civil rights in the province – British Columbia enacting legislation to recover from tobacco industry health care costs paid in respect of persons suffering from tobacco related disease – Whether B.C. *Tobacco Damages and Health Care Costs Recovery Act* unconstitutional as *ultra vires* competence of British Columbia legislature, because in pith and substance is extraterritorial in purpose and effect – Whether Act unconstitutional as violation of rule of law because of retroactivity – Whether Act unconstitutional as violation of judicial independence – *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 2000 c. 30.

PROCEDURAL HISTORY

June 5, 2003
Supreme Court of British Columbia
(Holmes J.)

Applicants' applications for declaration the *Tobacco Damages and Health Care Costs Recovery Act* unconstitutional as *ultra vires* the competence of the British Columbia legislature, allowed; Respondents' aggregate action pursuant to s. 2(1) of the *Act*, dismissed

May 20, 2004
Court of Appeal for British Columbia
(Lambert, Rowles and Prowse JJ.A.)

Respondents' appeals allowed; *Tobacco Damages and Health Care Costs Recovery Act* declared constitutionally valid legislation; applications of *ex juris* Applicants regarding issue of jurisdiction remitted to Supreme Court of British Columbia

June 22, 2004
Supreme Court of Canada

Application for leave to appeal filed by the Applicant, Imperial Tobacco Canada Limited

June 22, 2004 Supreme Court of Canada	Application for leave to appeal filed by the Applicant, Rothmans, Benson & Hedges Inc.
June 22, 2004 Supreme Court of Canada	Application for leave to appeal filed by the Applicant, JTI-MacDonald Corp.
June 22, 2004 Supreme Court of Canada	Application for leave to appeal filed by the Applicant, Canadian Tobacco Manufacturers' Council
June 22, 2004 Supreme Court of Canada	Application for leave to appeal filed by the Applicant, British North American Tobacco (Investments) Limited
June 22, 2004 Supreme Court of Canada	Application for leave to appeal filed by the Applicants, Philip Morris Incorporated (now Philip Morris USA Inc.) and Philip Morris International Inc.

30555 **Edna Jane Visneskie v. Ronald Brian Visneskie** (Ont.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C40000, dated August 23, 2004, is dismissed with costs in the fixed amount of $2,917.09.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C40000, daté du 23 août 2004, est rejetée avec dépens au montant de 2, 917, 09 $.

NATURE OF THE CASE

Family law - Custody - Access - Maintenance - Costs - Whether the Court of Appeal erred in failing to consider whether the trial judge erred in failing to hear a contempt motion brought at the outset of trial - Whether the trial judge erred in failing to appreciate the significance of a violation of an order prohibiting smoking indoors in the presence of the children - Whether the lower courts erred in failing to provide spousal support - Whether the lower courts erred in awarding significant costs in that it may impact the best interests of the children

PROCEDURAL HISTORY

October 4, 2001 Ontario Superior Court of Justice (Glithero, J.)	Interim order made regarding custody, access, child support, and spousal support; Order made reserving costs
April 4, 2002 Ontario Superior Court of Justice (Wallace, J.)	Applicant ordered to comply with the Order of Glithero J. concerning access visits, pending further court order; Order made reserving costs
November 20, 2002 Ontario Superior Court of Justice (Reilly J.)	Order for non-liquidation of NFP; Order for expedited trial; Motion to vary spousal support order and custody order denied; Order made reserving costs

March 10, 2003 Ontario Superior Court of Justice (Glithero, J.)	Joint custody awarded to both parties with alternating residence to continue and to follow existing schedule; Respondent ordered to maintain a smoke-free environment in any building, vehicle or other enclosed space, while in the presence of the children; In the event that the parties are unable to agree on issues regarding the children, the Respondent is to make the decision subject to the intervention of the court. Applicant to maintain exclusive possession of the matrimonial home until further agreement with the Trustee in Bankruptcy; Applicant's motion to have the Respondent held in contempt dismissed.
April 8, 2003 Ontario Superior Court of Justice (Glithero, J.)	Substantial indemnity costs ordered in favour of the Respondent in the amount of $45,508.14
August 13, 2004 Court of Appeal for Ontario (Rosenberg, Armstrong and Blair, JJ.A.)	Appeal dismissed; costs to the Respondent in the amount of $5,000.00
October 6, 2004 Supreme Court of Canada	Application for leave to appeal filed

30374 **Canadian Pacific Railway Company v. City of Vancouver** (B.C.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Numbers CA30277 and CA30357, dated April 7, 2004, is granted.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéros CA30277 et CA30357, daté du 7 avril 2004, est accordée.

NATURE OF THE CASE

Statutes - Interpretation - Municipal law - Bylaws - Jurisdiction to pass bylaws - Municipal bylaw freezing or sterilizing redevelopment on private lands for indefinite period - Can a municipality designate private land solely for public use, eliminating all economic use of it, without purchase or expropriation, in the absence of clear and unambiguous language - Was the Court of Appeal correct in finding that the statute does not require a public hearing as prerequisite to the exercise of the power - Was the Court of Appeal correct that a lesser procedural standard applies in this situation.

PROCEDURAL HISTORY

October 29, 2002 Supreme Court of British Columbia (Brown J.)	Applicant's application granted; Respondent's Arbutus Corridor Official Development Plan, set aside
April 7, 2004 Court of Appeal for British Columbia (Esson, Donald and Southin JJ.A.)	Appeal allowed; cross-appeal dismissed

June 7, 2004
Supreme Court of Canada

Application for leave to appeal filed

30424 **André Tremblay c. Sa Majesté la Reine** (CF) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-490-03, daté du 30 avril 2004, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-490-03, dated April 30, 2004, is dismissed with costs.

NATURE DE LA CAUSE

Procédure – Droit administratif – Actions – Contrôle judiciaire – Action intentée par le demandeur mis à la retraite obligatoire en vertu de la législation fédérale – Réintégration dans l'emploi et dommages-intérêts demandés par action – Validité constitutionnelle de la législation fédérale contestée par action – La Cour d'appel fédérale a-t-elle erré en jugeant que le demandeur devait procéder par contrôle judiciaire en vertu de l'art. 18 de la *Loi sur les cours fédérales*, L.R.C. (1985), ch. F-5, et non par voie d'action en vertu de l'art. 17 de la même loi?

HISTORIQUE DES PROCÉDURES

Le 1er novembre 2002 Cour fédérale du Canada, Section de première instance (Le protonotaire Morneau)	Requête de l'intimée en radiation rejetée
Le 17 octobre 2003 Cour fédérale du Canada, Section de première instance (Le juge Rouleau)	Appel rejeté
Le 30 avril 2004 Cour d'appel fédérale (Les juges Desjardins, Noël et Nadon)	Appel accueilli; décisions annulées; requête en radiation accordée en partie
Le 29 juin 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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30384 **Sa Majesté la Reine c. Jean-Paul Larche ET ENTRE Sa Majesté la Reine c. L'honorable Robert Sansfaçon, ès qualités de juge de la Cour du Québec, Jean-Paul Larche** (Qc) (Criminelle) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéros 500-10-002523-031 et 500-10-002643-037, daté du 29 mars 2004, est accordée sans dépens. La demande d'autorisation d'appel incident est accordée avec dépens en faveur de Jean-Paul Larche quelle que soit l'issue de l'appel.

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 Quebec (Montreal), Numbers 500-10-002523-031 and 500-10-002643-037, dated March 29, 2004,

is granted without costs. The application for leave to cross-appeal is granted with costs to Jean-Paul Larche in any event of the cause.

NATURE DE LA CAUSE

Droit criminel - Détermination de la peine - Faits liés à l'infraction - Courtoisie internationale - La Cour d'appel a-t-elle erré dans son interprétation de l'alinéa 725(1)c) du *Code criminel* en concluant que les faits pris en compte par le premier juge constituaient des faits liés à la perpétration de l'infraction au sens de cette disposition? - Vu les circonstances particulières de la présente affaire, la Cour d'appel du Québec a-t-elle erré en appliquant l'alinéa 725(1)c) du *Code criminel*? - Existe-t-il un lien réel et important (« *real and substantial link* ») entre la possession de 110 005 $ aux États-Unis et les autres infractions dont Jean-Paul Larche avait été formellement accusé?

HISTORIQUE DES PROCÉDURES

Le 16 janvier 2003 Cour du Québec (Le juge Sansfaçon)	Intimé condamné à purger une peine de 36 mois d'incarcération et à payer une amende compensatoire de 15 000$ en vertu de l'article 462.37 du *Code criminel*
Le 11 juillet 2003 Cour supérieure du Québec (Le juge Bellavance)	Requête en *certiorari* de la demanderesse rejetée
Le 29 mars 2004 Cour d'appel du Québec (Les juges Proulx, Dalphond et Otis)	Appel accueilli; Raye la note 3 sur l'acte d'accusation
Le 28 mai 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée
Le 25 juin 2004 Cour suprême du Canada	Demande d'autorisation d'appel incident déposée
Le 23 août 2004 Cour suprême du Canada	Demande de prorogation de délai déposée

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30417 **Attorney General of Canada v. H.J. Heinz Company of Canada Ltd.** (FC) (Civil) (By Leave)

Coram: Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-161-03, dated April 30, 2004, is granted with costs to the applicant in any event of the cause.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-161-03, daté du 30 avril 2004, est accordée avec dépens en faveur du demandeur quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Administrative Law - Judicial review - Access to information - Whether the decision of the Federal Court of Appeal expands the rights of third parties to invoke exemptions to disclosure beyond s. 20 of the *Access to Information Act* - Whether the judgment below creates a two-tier access to information regime - Whether the judgment below creates confusion in the law in that it is inconsistent with an earlier decision by another panel of the Federal Court of Appeal - *Access to Information Act*, R.S.C. 1985, c. A-1, ss. 20, 44

PROCEDURAL HISTORY

February 27, 2003 Federal Court of Canada, Trial Division (Layden-Stevenson J.)	Respondent's application for judicial review of notice of decision to disclose a record made under s. 44 of the *Access to Information Act* allowed
April 30, 2004 Federal Court of Appeal (Desjardins, Nadon and Pelletier JJ.A.)	Appeal dismissed
June 29, 2004 Supreme Court of Canada	Application for leave to appeal filed
September 21, 2004 Supreme Court of Canada Bastarache J.	Motion by Information Commissioner of Canada to be added as a party dismissed

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30517 **K.B. v. Her Majesty the Queen** (Man.) (Criminal) (By Leave)

Coram: Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Manitoba, Number AY03-30-05658, dated June 24, 2004, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Manitoba, numéro AY03-30-05658, daté du 24 juin 2004, est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Exclusion of evidence - Whether the Court of Appeal erred in the interpretation of *R. v. Stillman*, [1997] 1 S.C.R. 607; in treating the knife as non-conscriptive evidence, and in concluding its admission had no impact on the fairness of the Applicant's trial - Whether the Court of Appeal erred in concluding that the *Charter* violations were relatively benign and justifiable because of the "good faith" intentions of the investigating officers - Whether the Court of Appeal erred in concluding that the administration of justice was best served by the admission rather than the exclusion of the evidence

PROCEDURAL HISTORY

August 12, 2003 Provincial Court of Manitoba (Elliott J.)	Applicant convicted of carrying a concealed weapon contrary to s. 90 of the *Criminal Code*
June 24, 2004 Court of Appeal of Manitoba (Twaddle, Hamilton, and Freedman JJ.A.)	Appeal dismissed
September 21, 2004 Supreme Court of Canada	Application for leave to appeal filed

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30391 **Industrial Wood & Allied Workers of Canada, Local 700 v. GMAC Commercial Credit Corporation of Canada, T.C.T. Logistics Inc., T.C.T. Warehousing Logistics Inc., KPMG Inc., the Interim Receiver and Trustee in Bankruptcy of T.C.T. Logistics Inc. and T.C.T. Warehousing Logistics Inc. (and the Companies listed on Schedule "A" hereto)** (Ont.) (Civil) (By Leave)

Coram: Bastarache, LeBel and Deschamps JJ.

The application for leave to cross-appeal is granted without costs and the application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C39988, dated October 14, 2004, is granted with costs to the applicant in any event of the cause.

La demande d'autorisation d'appel incident est accordée sans dépens et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C39988, daté du 14 octobre 2004, est accordée avec dépens en faveur du demandeur quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Commercial law – Bankruptcy - Receivership - Labour law - Collective agreement - Successor employer - Interim receivership order containing standard form clause protecting receiver from status of successor employer under collective agreement - Order also containing standard form clause preventing anyone from bringing action or proceeding against receiver without leave of court - Whether Court of Appeal changed established test for leave to commence proceedings against trustee in bankruptcy or receiver and thereby enhanced bankruptcy judge's power and discretion to deny leave - Whether Court of Appeal raised bar so high as to effectively immunize trustees and receivers from almost all legal action from employees and unions - *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, ss.. 47, 215.

PROCEDURAL HISTORY

April 29, 2003 Ontario Superior Court of Justice (Ground J.)	Applicant's motion for an order deleting certain provisions of an interim receivership order allowed; Applicant's application for leave to commence proceedings before the Ontario Labour Relations Board dismissed
April 2, 2004 Court of Appeal for Ontario (Feldman, MacPherson [*dissenting*] and Cronk JJ.A.)	Appeal allowed; decision of bankruptcy judge set aside
June 1, 2004 Supreme Court of Canada	Application for leave to appeal filed
August 3, 2004 Supreme Court of Canada	Conditional application for leave to cross-appeal filed

30444 **Dynatec Corporation, Brian Hagan, William Shaver, Edward Okell and David Chapman v. Her Majesty the Queen (Ontario Ministry of Labour)** (Ont.) (Civil) (By Leave)

Coram: Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C41292, dated May 7, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C41292, daté du 7 mai 2004, est rejetée avec dépens.

NATURE OF THE CASE

Canadian Charter - Civil - Civil rights - Remedies - Costs - Labour law - Health and safety - Administrative law - Judicial review - Standard of review - Evidence - Disclosure - Law of professions - Solicitor-client privilege - Whether trial judge has discretion to grant costs against Crown under s. 24 of the *Charter* - Standard of review to be followed on judicial review of a decision under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, s. 40 - Whether, on a disclosure motion, a trial judge has jurisdiction to order production of documents in Crown's possession and that evidence be adduced by affidavit in relation to that order - Whether solicitor-client privilege or "near privilege" can be abridged if it is being used to shield abuse of process by a public official.

PROCEDURAL HISTORY

July 21, 2003 Ontario Court of Justice (Bishop J.)	Motion to stay charges, denied; Respondent to make full, complete and timely disclosure and to pay all costs and disbursements throughout
August 20, 2003 Ontario Superior Court of Justice (Nordheimer J.)	Orders stayed pending judicial review
January 26, 2004 Ontario Superior Court of Justice (Ewaschuk J.)	Judicial review dismissed
May 7, 2004 Court of Appeal for Ontario (Abella, Moldaver and Simmons JJ.A.)	Appeal allowed; order of Ewaschuk J. set aside; order of Bishop J. quashed
August 3, 2004 Supreme Court of Canada	Application for leave to appeal filed

30505 **Jean Gélinas c. Gilbert Normand** (Qc) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande de prorogation de délai pour déposer et signifier la réplique est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-014401-046, daté du 14 juin 2004, est rejetée avec dépens.

The application for an extension of time to file and serve the reply is granted and the application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-014401-046, dated June 14, 2004, is dismissed with costs.

NATURE DE LA CAUSE

Procédure - Procédure civile - Appel - Rejet d'appel - La Cour d'appel du Québec, saisie d'une requête pour rejet d'appel fondée sur l'art. 501 par. 4.1 du *Code de procédure civile*, L.R.Q., ch. C-25, peut-elle déclarer qu'un appel de plein droit ne présente aucune chance raisonnable de succès et rejeter tel appel sans motiver sa décision? Dans la négative, quels sont les critères devant guider la Cour d'appel dans la détermination de ce qui constitue ou non une chance raisonnable de succès?

HISTORIQUE DES PROCÉDURES

Le 12 mars 2004 Cour supérieure du Québec (Le juge Durand)	Requêtes en rejet d'action et en irrecevabilité des intimés accueillies; action du demandeur rejetée
Le 14 juin 2004 Cour d'appel du Québec (Les juges Morin, Dalphond et Hilton)	Requêtes en rejet d'appel des intimés accueillies et appels du demandeur rejetés au motif qu'ils n'ont aucune chance raisonnable de succès
Le 10 septembre 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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30451 **Lynn Sherwood c. Jean St-Jacques** (Qc) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-012471-025, daté du 6 mai 2004, est rejetée.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-012471-025, dated May 6, 2004, is dismissed.

NATURE DE LA CAUSE

Droit des biens – Hypothèques – Prêt hypothécaire – Second prêt signé par l'héritière du prêteur hypothécaire – Billet promissoire en faveur de l'héritière du prêteur hypothécaire – La Cour d'appel a-t-elle erré en concluant que le billet promissoire ne constituait pas un amendement à l'acte de prêt hypothécaire?

HISTORIQUE DES PROCÉDURES

Le 29 mai 2002 Cour supérieure du Québec (Le juge Tannenbaum)	Requête de la demanderesse en délaissement forcé et prise en paiement accueillie; remboursement dans les 30 jours du montant de 40 000 $ ordonné
Le 6 mai 2004 Cour d'appel du Québec (Les juges Chamberland, Proulx et Lemelin [*ad hoc*])	Appel accueilli en partie; appel de la condamnation au paiement du montant de 40 000 $ rejeté
Le 5 août 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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3.12.2004

Before / Devant: CHARRON J.

Motion to extend the time in which to serve and file the notice of appeal

Requête en prorogation du délai de signification et de dépôt de l'avis d'appel

Sa Majesté la Reine

c. (30588)

James Kouri (Qc)(Crim.)

GRANTED / ACCORDÉE Délai prorogé au 3 novembre 2004.

6.12.2004

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 à l'intimée pour signifier et déposer son recueil de sources

Sameer Mapara

v. (29750)

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

GRANTED / ACCORDÉE Time extended to November 30, 2004.

7.12.2004

Before / Devant: MAJOR J.

Further order on motions for leave to intervene

Autre ordonnance relative aux requêtes en autorisation d'intervention

BY / PAR: Attorney General of Canada
Attorney General of Ontario

IN / DANS: Sameer Mapara

v. (29750)

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

UPON APPLICATIONS by the Attorney General of Canada and the Attorney General of Ontario for leave to intervene in the above appeal and pursuant to the order of November 3, 2004;

IT IS HEREBY FURTHER ORDERED THAT the said interveners are each granted permission to present oral argument not exceeding fifteen (15) minutes at the hearing of the appeal.

7.12.2004

Before / Devant: CHARRON J.

Motion for an order to seal documents **Requête visant la mise sous scellés de documents**

Canada Post Corporation

v. (30599)

Minister of Public Works and Government Services Canada (FC)

GRANTED / ACCORDÉE

UPON APPLICATION by counsel on behalf of the applicant for an order sealing documents filed in this Court related to the material sought to be released by the respondents, pursuant to the *Access to Information Act*;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

1) The motion is granted. The affidavits of William R. Price and Richard Sharp and the cross examination transcript of Christine Ouimet are sealed.

2) The sealed documents will only be made available to counsel for the applicant, counsel for the respondent, Ottawa agents, members of this Court, Court staff and other persons as the parties may, in writing, agree or as this Court may further order.

8.12.2004

Before / Devant: ABELLA J.

Further order on motion for leave to intervene **Autre ordonnance relative à une requête en autorisation d'intervention**

BY / PAR: Attorney General of Ontario

IN / DANS: Christiano Daniel Justin Paice

v. (30045)

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

UPON APPLICATION by the Attorney General of Ontario for leave to intervene in the above appeal and pursuant to the order of October 5, 2004;

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

8.12.2004

Before / Devant: CHARRON J.

Motion to strike **Requête en radiation**

Allan Wayne Lohrer

v. (30160)

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

DISMISSED / REJETÉE

UPON APPLICATION by the respondent for an order striking portions of the appellant's factum, namely page 10, paragraphs 34(iv) and 34(vi) and Appendix 1;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion is dismissed.

10.12.2004

Before / Devant: CHARRON J.

Motion to file lengthy factum by the respondent **Requête de l'intimée en vue de déposer un mémoire comportant plus de pages que ne le prévoient les règles**

Kirkbi AG, et al.

v. (29956)

Ritvik Holdings Inc./Gestions Ritvik Inc. (now operating as Mega Bloks Inc.) (FC)

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

UPON APPLICATION by the respondent for an order permitting the filing of a 60 page factum, or in the alternative, to file a 20 page sur-reply factum;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion is dismissed with costs.

10.12.2004

Before / Devant: CHARRON J.

Motion to strike **Requête en radiation**

UL Canada Inc.

c. (30065)

Procureur général du Québec, et autre (Qc)

GRANTED IN PART WITH COSTS / ACCORDÉE EN PARTIE AVEC DÉPENS

À LA SUITE D'UNE DEMANDE de l'intimé, le procureur général du Québec, visant à obtenir la radiation de parties du dossier et du mémoire de l'appelante;

ET APRÈS EXAMEN des documents déposés;

IL EST PAR LA PRÉSENTE ORDONNÉ CE QUI SUIT:

L'intimé, le procureur général du Québec, demande la radiation de parties du dossier et du mémoire de l'appelante pour motif qu'il s'agit d'une preuve nouvelle qui n'a pas été soumise aux instances inférieures. Les documents en question ont été soumis à la Cour dans le cadre de la demande d'autorisation d'appel. L'appelante soutient donc que cette preuve fait partie du dossier.

Les prétentions de l'appelante ne sont pas bien fondées. Ces documents ne peuvent être considérés comme de la preuve au sens de la règle 38(1)*d*) des *Règles de la Cour suprême du Canada*, du seul fait qu'ils ont été soumis dans le cadre de la demande d'autorisation d'appel et leur production contrevient à l'article 62 de la *Loi sur la Cour suprême* : voir *Public School Boards' Association of Alberta c. Alberta (Procureur général)*, [1999] 3 R.C.S. 845, par. 6.

L'appelante demande subsidiairement l'autorisation de produire ces documents comme preuve nouvelle en vertu de l'article 62(3) de la *Loi sur la Cour suprême*. Elle prétend que ces documents sont pertinents et qu'ils sont recevables en tant que fait législatif.

Cette prétention ne peut pas être acceptée. L'affidavit en question et les documents à l'appui ne peuvent être qualifiés de fait législatif et, en tout état de cause, les faits législatifs sont également assujettis aux conditions de recevabilité d'une preuve nouvelle : voir *Public School Boards' Association of Alberta c. Alberta (Procureur général)*, [2000] 1 R.C.S., p. 44, par. 6. Comme l'a souligné la Cour, les critères d'admissibilité d'une nouvelle preuve sont la diligence raisonnable, la pertinence, la crédibilité et le caractère décisif de la preuve proposée. À mon avis, la preuve ne répond pas à ces critères. Il n'y a rien qui indique que l'appelante n'aurait pu présenter cette preuve au procès de sorte que le critère de la diligence raisonnable n'est pas rempli en l'espèce. De plus, les documents en question soulèvent plusieurs questions controversées et ainsi ne devraient pas être reçus en preuve à ce stade des procédures. Finalement, la nouvelle preuve invoquée par l'appelante n'a pas un caractère concluant compte tenu des questions en litige.

Ces documents doivent donc être retirés du dossier et toute référence aux documents radiée du mémoire de l'appelante.

L'intimé, le procureur général du Québec, demande également une ordonnance radiant toute référence dans le mémoire de l'appelante à l'article 121 de *La Loi constitutionnelle de 1867*. L'intimé prétend que l'argument de l'appelante selon lequel la réglementation contestée serait contraire à l'article 121 soulève une nouvelle question constitutionnelle qui n'est pas incluse dans l'ordonnance prononcée par la Juge en chef de la Cour le 12 août 2004.

À mon avis, cet argument est pertinent aux questions constitutionnelles et il relèvera du tribunal de décider du bien-fondé de cet argument. Cette deuxième partie de la requête est donc rejetée.

La requête est accordée, en partie, avec dépens.

UPON APPLICATION by the respondent Attorney General of Quebec for an order striking out portions of the appellant's record and factum;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED AS FOLLOWS:

The respondent Attorney General of Quebec asks that portions of the applicant's record and factum be struck out on the ground that they constitute fresh evidence that was not before the courts below. The material in question was filed with the Court in the context of the application for leave to appeal. The appellant accordingly submits that this evidence is part of the record.

The appellant's submissions are not valid. The material in question cannot be regarded as evidence within the meaning of R. 38(1)(*d*) of the *Rules of the Supreme Court of Canada* merely because it was filed in the context of the application for leave to appeal, and the filing thereof contravenes s. 62 of the *Supreme Court Act*: see *Public School Boards' Association of Alberta v. Alberta (Attorney General)*, [1999] 3 S.C.R. 845, at para. 6.

In the alternative, the appellant seeks leave to file this material as fresh evidence pursuant to s. 62(3) of the *Supreme Court Act*. It submits that this material is relevant and is admissible as a legislative fact.

This submission cannot be accepted. The affidavit in question and the supporting material cannot be characterized as a legislative fact and, in any event, legislative facts are also subject to the conditions for admission of fresh evidence: see *Public School Boards' Association of Alberta v. Alberta (Attorney General)*, [2000] 1 S.C.R. 44, at para. 6. As mentioned by the Court, the tests for admission of fresh evidence are due diligence, relevance, credibility and decisiveness of the proposed evidence. In my view, the evidence does not meet these tests. There is no indication that the appellant could not have adduced this evidence at trial, so the due diligence test is not met in the case at bar. Also, the material in question raises a number of controversial questions and accordingly should not be admitted in evidence at this stage of the proceedings. Finally, the appellant's fresh evidence is not determinative as regards the issues before the Court.

This material must therefore be struck from the record and any reference to it struck from the appellant's factum.

The respondent Attorney General of Quebec also requests an order striking any reference to s. 121 of the *Constitution Act, 1867* from the appellant's factum. The respondent submits that the appellant's argument that the impugned regulations violate s. 121 raises a new constitutional question that is not included in the order issued by the Chief Justice of the Court on August 12, 2004.

In my opinion, this argument is relevant to the constitutional questions and it is for the Court to determine whether it is valid. This second part of the motion is therefore dismissed.

The motion is granted in part, with costs.

10.12.2004

Before / Devant: CHARRON J.

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

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

Houshang Bouzari, et al.

v. (30523)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the applicants for an order extending the time to serve the application for leave to appeal upon Islamic Republic of Iran to November 17, 2004 and for an order amending the style of cause to include Islamic Republic of Iran;

AND HAVING READ the material filed;

AND WHEREAS subrule 22 of the *Rules of the Supreme Court of Canada* requires that a party who was adverse in interest to the applicant in the court appealed from be named as a respondent in the style of cause;

AND WHEREAS the applicants have not chosen to abandon their claim against the Islamic Republic of Iran;

IT IS HEREBY ORDERED THAT the motion for an order extending the time to serve the application for leave to appeal upon the Islamic Republic of Iran is granted and the style of cause is thereby amended to include the Islamic Republic of Iran as a respondent.

13.12.2004

Attorney General of British Columbia

v. (30317)

Lafarge Canada Inc., et al. (B.C.)

13.12.2004

Ivan Morris, et al.

v. (30328)

Her Majesty the Queen (B.C.)

7.12.2004

Liquid Carbonic Inc., et al.

v. (29782)

British Columbia's Children's Hospital, et al. (B.C.)

(Appeal)

14.12.2004

J.C.G.

c. (30562)

Sa Majesté la Reine (Qc)

(Appel)

10.12.2004

CORAM: Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

Allan Wayne Lohrer

v. (30160)

Her Majesty the Queen (B.C.) (Criminal) (As of Right / By Leave)

Shawn P. Buckley for the appellant.

Kenneth Madsen for the respondent.

DISMISSED / REJETÉ

The appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA029817 - 2003 BCCA 457, dated August 22, 2003, was heard this day and the following judgment was delivered orally:

BINNIE J. – This is an appeal as of right from convictions of the appellant for aggravated assault and uttering a threat. A majority of the B.C. Court of Appeal affirmed the convictions. Justice Hollinrake dissented. He found applicable to this case what was said by Justice Doherty of the Ontario Court of Appeal in *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193, as follows at p. 221:

> Where a trial judge is mistaken as to the substance of material parts of the evidence and those errors play an essential part in the reasoning process resulting in a conviction, then, in my view, the accused's conviction is not based exclusively on the evidence and is not a "true" verdict.

Later in the same paragraph, Justice Doherty stated:

> If an appellant can demonstrate that the conviction depends on a misapprehension of the evidence, then, in my view, it must follow that the appellant has not received a fair trial, and was the victim of a miscarriage of justice. This is so, even if the evidence, as actually adduced at trial, was capable of supporting a conviction.

L'appel interjeté contre l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029817 - 2003 BCCA 457, en date du 22 août 2003, a été entendu aujourd'hui et le jugement suivant a été rendu oralement :

[TRADUCTION]
LE JUGE BINNIE – Le présent pourvoi est formé de plein droit contre les déclarations de culpabilité de l'appelant relativement à des accusations de voies de fait graves et de profération de menaces. La Cour d'appel de la Colombie-Britannique, à la majorité, a confirmé les déclarations de culpabilité. Le juge Hollinrake, dissident, a considéré applicables en l'espèce les propos tenus par le juge Doherty dans l'arrêt de la Cour d'appel de l'Ontario *R. c. Morrissey* (1995), 97 C.C.C. (3d) 193, p. 221 :

> [TRADUCTION] À mon avis, si un juge commet une erreur quant à l'essence d'un élément de preuve important et que cette erreur joue un rôle capital dans le raisonnement à l'origine de la déclaration de culpabilité, il s'ensuit que la déclaration de culpabilité de l'accusé n'est pas fondée exclusivement sur la preuve et ne constitue pas un verdict « juste ».

Le juge Doherty ajoute ceci plus loin dans le même paragraphe :

> Si un appelant peut démontrer que la déclaration de culpabilité repose sur une interprétation erronée de la preuve, force est de conclure, selon moi, que l'appelant n'a pas subi un procès équitable et qu'il a été victime d'une erreur judiciaire. Tel est le cas même si la preuve réellement produite au procès était susceptible d'étayer une déclaration de culpabilité.

We agree with these observations. Where a miscarriage of justice within the meaning of s. 686(1)(*a*)(iii) of the *Criminal Code*, R.S.C. 1985, c. C-46, has been demonstrated an accused appellant is not bound to show in addition that the verdict cannot "be supported by the evidence" within the meaning of s. 686(1)(*a*)(i).

Morrissey, it should be emphasized, describes a stringent standard. The misapprehension of the evidence must go to the substance rather than to the detail. It must be material rather than peripheral to the reasoning of the trial judge. Once those hurdles are surmounted, there is the further hurdle (the test is expressed as conjunctive rather than disjunctive) that the errors thus identified must play an essential part not just in the narrative of the judgment but "in the reasoning process resulting in a conviction".

The test is not met in this case. The only error identified by Justice Hollinrake in his dissent appears at para. 55 of the judgment ((2003), 186 B.C.A.C. 58, 2003 BCCA 457), where he says:

> For instance, the trial judge found that Ms. Colville's "life was endangered from the repeated blows that she received". There was no medical evidence that her life was endangered, and that finding in my opinion cannot be supported on the basis of an inference being drawn by the judge.

Ms. Colville was beaten about the head and body with a baseball bat. We prefer on that particular point what was said by the majority at para. 23, where Justice Hall stated:

> I do not consider that the trial judge misapprehended the evidence when he described the injury to Colville as "life threatening". The fact is that fracture injury to the orbital area of the face is serious and can be life threatening.

Further along in the same paragraph Justice Hall states:

> The essential ingredients of this offence are contained in that definition [that is to say s. 268(1) of the *Criminal Code*] and by that definition, there can be no doubt that what happened to Colville was, at the very least, maiming or disfiguring.

Nous souscrivons à ces observations. L'accusé appelant qui démontre l'existence d'une erreur judiciaire, au sens du sous-al. 686(1)*a*)(iii) du *Code criminel*, L.R.C. 1985, ch. C-46, n'a pas à établir en plus que le verdict ne peut pas « s'appuyer sur la preuve », au sens du sous-al. 686(1)*a*)(i).

L'arrêt *Morrissey*, faut-il le souligner, établit une norme stricte. L'interprétation erronée de la preuve doit porter sur l'essence plutôt que sur des détails. Elle doit avoir une incidence importante plutôt que secondaire sur le raisonnement du juge du procès. Une fois ces obstacles surmontés, il faut en outre (le critère étant énoncé de manière conjonctive plutôt que disjonctive) que les erreurs ainsi relevées aient joué un rôle capital non seulement dans les motifs du jugement, mais encore « dans le raisonnement à l'origine de la déclaration de culpabilité ».

Ce critère n'est pas respecté en l'espèce. La seule erreur que le juge Hollinrake relève dans ses motifs dissidents figure au par. 55 de l'arrêt ((2003), 186 B.C.A.C. 58, 2003 BCCA 457) où il affirme ceci :

> [TRADUCTION] Par exemple, le juge du procès a conclu que « les nombreux coups reçus par [M^me^ Colville] faisaient craindre pour sa vie ». Il n'y avait aucune preuve médicale que sa vie était en danger, et j'estime que cette conclusion ne peut pas être étayée par une inférence du juge.

Des coups de bâton de baseball avaient été portés à la tête et au corps de M^me^ Colville. À cet égard, nous préférons les propos que le juge Hall a tenus, au nom des juges majoritaires, au par. 23 :

> [TRADUCTION] Je ne considère pas que le juge du procès a mal interprété la preuve lorsqu'il a affirmé que les blessures subies par M^me^ Colville « faisaient craindre pour sa vie ». En fait, une fracture dans la partie orbitaire du visage est grave et peut mettre la vie en danger.

Le juge Hall ajoute ceci, dans le même paragraphe :

> [TRADUCTION] Les éléments constitutifs de la présente infraction sont énoncés dans cette définition [c'est-à-dire au par. 268(1) du *Code criminel*] et, compte tenu de cette définition, il ne fait aucun doute que le traitement subi par M^me^ Colville était, tout au moins, de nature à la mutiler ou à la défigurer.

In the course of his argument, the appellant mentioned a number of other alleged errors and inconsistencies in the trial judgment including his view that the trial judge had not adequately recognized the inconsistencies in the complainants' evidence. However, what the trial judge said was that there were no "major" inconsistencies in their evidence, a conclusion with which we agree. In any event he evidently did not consider the inconsistencies, which he recognized, to be fatal to the complainants' credibility on the material issues in dispute.

In our view, none of the errors urged by the appellant goes to "the substance of material parts" of the evidence that bears on an "essential part in the reasoning process" of the trial judge leading to the convictions.

We would apply to the trial judge in this case what was stated by Justice Rothman, dissenting in the result, in the Quebec Court of Appeal in *R. v. C. (R.)* (1993), 81 C.C.C. (3d) 417, where he said at p. 420:

> I can see no indication that [the trial judge] failed to direct himself to the relevant issues or that he erred in his appreciation of the evidence in a manner that could have affected the outcome.

I emphasize the last phrase. The reasons of Rothman J.A. in dissent were adopted by a majority of this Court in restoring the conviction, reported in [1993] 2 S.C.R. 226.

In our view, the statement of Rothman J.A. in *C. (R.)* and the statement of Doherty J.A. in *Morrissey* both correctly emphasize the centrality (or "essential part") the misapprehension of the evidence must play in the trial judge's reasoning process leading to the conviction before the trial judgment will be set aside on appeal on that basis.

None of the errors alleged in this case meets this standard. The appeal is therefore dismissed.

Nature of the case:

Criminal law - Evidence - Conflicting testimony - Aggravated assault and assault causing bodily harm - Whether the misapprehension of the evidence by the

Pendant son argumentation, l'appelant a allégué l'existence d'un certain nombre d'autres erreurs et contradictions dans le jugement de première instance. Il s'est dit d'avis notamment que le juge du procès n'avait pas suffisamment reconnu les contradictions du témoignage des plaignants. Cependant, le juge du procès a conclu, en réalité, que leur témoignage ne comportait aucune contradiction « majeure », conclusion à laquelle nous souscrivons. Quoi qu'il en soit, il n'a manifestement pas considéré que ces contradictions, dont il a reconnu l'existence, compromettaient la crédibilité des plaignants relativement aux questions litigieuses substantielles.

Selon nous, aucune des erreurs soulignées par l'appelant ne porte sur « l'essence d'un élément de preuve important » ayant joué « un rôle capital dans le raisonnement » du juge du procès, qui est à l'origine des déclarations de culpabilité.

Nous sommes d'avis d'appliquer au juge du procès en l'espèce les propos que le juge Rothman, dissident quant au résultat, a tenus dans l'arrêt de la Cour d'appel du Québec *R. c. C. (R.)* (1993), 81 C.C.C. (3d) 417, p. 420 :

> [TRADUCTION] Je ne vois rien qui indique que [le juge du procès] n'a pas tenu compte des questions pertinentes ou que son appréciation de la preuve était erronée au point de pouvoir influer sur l'issue de l'affaire.

Je souligne le dernier membre de phrase. Dans un arrêt publié à [1993] 2 R.C.S. 226, notre Cour, à la majorité, a souscrit aux motifs du juge Rothman, dissident, en rétablissant la déclaration de culpabilité.

Selon nous, les affirmations du juge Rothman dans l'arrêt *C. (R.)* et du juge Doherty dans l'arrêt *Morrissey* soulignent toutes les deux, à juste titre, le rôle central (ou « capital ») que l'interprétation erronée de la preuve doit jouer dans le raisonnement du juge du procès, qui est à l'origine de la déclaration de culpabilité, pour que le jugement de première instance puisse être annulé à l'issue d'un appel fondé sur ce moyen.

Aucune des erreurs alléguées en l'espèce ne satisfait à cette norme. L'appel est donc rejeté.

Nature de la cause:

Droit criminel - Preuve - Témoignages contradictoires - Voies de faits graves et voies de faits causant des lésions corporelles - La méprise du juge du procès au sujet de la

trial judge deprived the Appellant of a fair trial, thus creating a miscarriage of justice.

preuve a-t-elle privé l'appelant d'un procès équitable et donné ainsi lieu à une erreur judiciaire ?

10.12.2004

CORAM: Chief Justice McLachlin and Major, Bastarache, Binnie, LeBel, Deschamps and Fish JJ.

Cecil Decorte

v. (30081)

Her Majesty the Queen (Ont.) (Criminal) (By Leave)

Irwin Koziebrocki for the appellant.

Michal Fairburn for the respondent.

DISMISSED, REASONS TO FOLLOW / REJETÉ, MOTIFS À SUIVRE

The appeal from the judgment of the Court of Appeal for Ontario, Number C39020, dated September 12, 2003, was heard this day and the following judgment was rendered orally:

THE CHIEF JUSTICE – It is not necessary to call on you Mr. Fairburn. The Court is prepared to give its judgment now. We are all in agreement that the appeal should be dismissed, reasons to follow.

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal - Police - Whether the Court of Appeal for Ontario erred in holding that members of the First Nations Anishinabek Police Service were police officers capable of undertaking a R.I.D.E. program not on reserve territory - Whether the Court of Appeal for Ontario erred in failing to hold that the evidence obtained as a result of an unlawful stop and detention was not admissible as its admission offended sections 7, 9 and 24 of the *Canadian Charter of Rights and Freedoms.*

L'appel contre l'arrêt de la Cour d'appel de l'Ontario, numéro C39020, en date du 12 septembre 2003, a été entendu aujourd'hui et le jugement suivant a été rendu oralement :

[TRADUCTION]
LA JUGE EN CHEF – Il n'est pas nécessaire de vous entendre, M[e] Fairburn. La Cour est prête à rendre jugement. Nous sommes tous d'avis que l'appel doit être rejeté, avec motifs à suivre.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Police - La Cour d'appel de l'Ontario a-t-elle commis une erreur en concluant que des membres du service de police des Premières nations d'Anishinabek étaient des agents de police habilités à intercepter au hasard des automobiles dans le cadre d'une opération *R.I.D.E.* menée à l'extérieur d'une réserve ? - La Cour d'appel de l'Ontario a-t-elle fait erreur en ne jugeant pas que les éléments de preuve recueillis à l'occasion d'une interception et d'une détention illégales étaient inadmissibles parce que leur admission contrevenait aux art. 7, 9 et 24 de la *Charte canadienne des droits et libertés*.

15.12.2004

CORAM: Major, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

Christiano Daniel Justin Paice

v. (30045)

Her Majesty the Queen (Sask.) (Criminal) (By Leave)

Aaron A. Fox, Q.C., and James Korpan for the appellant.

W. Dean Sinclair for the respondent.

Michael Bernstein and Greg Tweney for the intervener.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal Law - Defence - Statutes - Interpretation - Whether there is a consent fight at all when the deceased as in this case, and contrary to the situation in *R. v. Jobidon*, [1991] 2 S.C.R. 714, was the aggressor throughout and delivered the first blow - Whether the Court of Appeal was in error when it held that because the Appellant consented to fight it was not open to him to say that he did not provoke the assault on him, a required element of the self defence provision of section 34(1) of the *Criminal Code* - Whether the Court of Appeal was in error when it equated the trial judge's finding that when the Appellant delivered his blows he intended to cause serious bodily harm of more than a transient or trifling nature to an intention to cause grievous bodily harm, contrary to the express finding of the trial judge, such as to negate the self defence provision found in section 34(1) of the *Criminal Code*.

Nature de la cause:

Droit criminel - Moyen de défense - Lois - Interprétation - Peut-on dire qu'il y a eu bataille entre adversaires consentants dans un cas où, comme en l'espèce, contrairement aux faits de l'arrêt *R. c. Jobidon*, [1991] 2 R.C.S. 714, la victime décédée fut à tout moment l'agresseur et a porté les premiers coups? - La Cour d'appel a-t-elle fait erreur en décidant que, du fait qu'il a consenti à se battre, l'appelant ne pouvait plus soutenir l'absence de provocation de sa part, un des éléments essentiels de la légitime défense prévue au par. 34(1) du *Code criminel* ? La Cour d'appel a-t-elle commis une erreur en considérant que la conclusion du juge du procès selon laquelle lorsque l'appelant a porté des coups à son adversaire il entendait lui causer des lésions corporelles sérieuses d'une intensité plus que passagère ou insignifiante revenait à conclure que l'intention avait eu l'intention de causer des lésions corporelles graves – et ce bien que le juge du procès ait tiré la conclusion inverse – , et en écartant ainsi l'application de la légitime défense prévue au par. 34(1) du *Code criminel*?

15.12.2004

CORAM: Major, Bastarache, Binnie, Deschamps, Fish, Abella and Charron JJ.

Eifion Wyn Roberts

v. (30282)

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

Charles B. Davison for the appellant.

Eric Tolppanen for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Trial judge's instructions to jury - Second degree murder - Defence of provocation - Appellant shot and killed the victim following several years of bickering about a leaking oil well on the Appellant's property - Whether the majority in the Court of Appeal erred in concluding that the evidence adduced at trial was not sufficient to give rise to a duty on the part of the trial judge to instruct the jury upon the issue of provocation.

Nature de la cause:

Droit criminel - Directives du juge du procès au jury- Meurtre au second degré - Défense de provocation - Après plusieurs années de querelles relativement aux fuites provenant d'un puits de pétrole situé sur ses terres l'appelant a tué par balles une personne - La majorité de la Cour d'appel a-t-elle commis une erreur en jugeant que la preuve présentée au procès était insuffisante pour obliger le juge à donner au jury des directives sur la question de la provocation?

16.12.2004

CORAM: Chief Justice McLachlin and Bastarache, Binnie, LeBel, Fish, Abella and Charron JJ.

Simon Kwok Cheng Chow

v. (29919)

Her Majesty the Queen (B.C.) (Criminal) (By Leave)

Peter Leask, Q.C., and Jeremy Gellis for the appellant.

Henry J.R. Reiner, Q.C., for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal Law - Procedural Law - Appeal - Evidence - Entitlement to severance in order to compel co-accused to testify - Significance to attach on appeal to a trial judge's issuance of a certificate pursuant to s. 675(1)(a)(ii) of the *Criminal Code* - Whether Appellant's intercepted communications should have been admitted against him - Whether verdict unreasonable and not supported by the evidence.

Nature de la cause:

Droit criminel - Procédure - Appel - Preuve - Droit à un procès distinct pour contraindre un coaccusé à témoigner - Importance devant être accordée en appel à la délivrance, par le juge du procès, d'un certificat visé au sous-al. 675(1)*a*)(ii) du *Code criminel* - Les communications de l'appelant qui ont été interceptées auraient-elles dû être admises en preuve contre lui ? - Le verdict est-il déraisonnable et non étayé par la preuve ?

16.12.2004

CORAM: Chief Justice McLachlin and Bastarache, Binnie, LeBel, Fish, Abella and Charron JJ.

Sameer Mapara

v. (29750)

Her Majesty the Queen (B.C.) (Criminal) (By Leave)

Gill D. McKinnon, Q.C., Tom Arbogast and Letitia Sears for the appellant.

John M. Gordon for the respondent.

Robert W. Hubbard and Marion V. Fortune-Stone for the intervener Attorney General of Canada.

Jamie Klukach and Susan Magotiaux for the intervener Attorney General of Ontario.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Admission - Whether the Court of Appeal erred in affirming the trial judge's decision to admit the testimony of an accomplice about a double hearsay statement that implicated the Appellant in a joint venture to murder - Whether the Court of Appeal erred in upholding the trial judge's decision that the Crown's interception of the Appellant's private communications in Call 79 was not contrary to the minimization clause in Authorization 7 and did not infringe his s. 8 *Charter* right - If there is a s. 8 *Charter*

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Preuve - Utilisation d'éléments de preuve - La Cour d'appel a-t-elle commis une erreur en confirmant la décision du juge du procès d'admettre le témoignage d'un complice concernant une déclaration constituant un double ouï-dire qui impliquait l'appelant dans une entreprise commune de meurtre? La Cour d'appel a-t-elle commis une erreur en confirmant la décision du juge du procès selon laquelle l'interception par le ministère public des communications privées de l'appelant au cours de l'appel téléphonique 79 ne contrevenait pas à

infringement, should Call 79 be excluded under s. 24(2) of the *Charter of Rights* - Whether the Court of Appeal erred in its consideration of the trial judge's review of the validity of Authorization 7?

la clause de minimisation de l'autorisation 7 et ne portait pas atteinte au droit garanti à l'appelant par l'art. 8 de la *Charte*? - En cas de violation de l'art. 8 de la *Charte des droits*, l'appel téléphonique 79 devrait-il être écarté en application du par. 24(2) de la *Charte*? - La Cour d'appel a-t-elle commis une erreur en tenant compte de l'examen que le juge du procès a fait de la validité de l'autorisation 7?

DECEMBER 16, 2004 / LE 16 DÉCEMBRE 2004

29794 **Normand Martineau -c. - Ministre du Revenu national - et - Procureur général de l'Ontario et Procureur général du Québec** (CF) **2004 SCC 81 /2004 CSC 81**

Coram : La juge en chef McLachlin et les juges Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella et Charron

L'appel contre l'arrêt de la Cour d'appel fédérale, numéro A-71-02, en date du 3 avril 2003, a été entendu le 14 octobre 2004 et la Cour a prononcé oralement le même jour le jugement suivant:

Nous sommes tous d'avis que l'appel doit être rejeté. Motifs à suivre.

Aujourd'hui la Cour a déposé des motifs et reformulé le jugement comme suit:

L'appel est rejeté. L'intimé a droit à ses dépens devant notre Cour.

The appeal from the judgment of the Federal Court of Appeal, Number A-71-02, dated April 3, 2003, was heard on October 14, 2004 and the Court on that day delivered the following judgment orally:

We are all of the view that this appeal should be dismissed. Reasons to follow.

On this day reasons were delivered and the judgment was restated as follows:

The appeal is dismissed. The respondent shall have his costs in this Court.

DECEMBER 10, 2004 / LE 10 DÉCEMBRE 2004

29949 **H.L. - v. - Attorney General of Canada** (Sask.)

Coram: Iacobucci*, Major, Bastarache, Binnie, LeBel, Deschamps and Fish JJ.

A re-hearing is ordered.

On the consent of the parties, the Court will rehear the appeal by reviewing the transcript and viewing the videotape of the hearing held on May 13, 2004. Should any questions arise during the rehearing, an oral hearing will be held to allow counsel to present submissions in response to the questions from the Court.

Une nouvelle audition est ordonnée.

La Cour procédera, avec le consentement des parties, à une nouvelle audition du pourvoi en lisant la transcription et en visionnant la vidéocassette de l'audience du 13 mai 2004. Si des questions se posent pendant la nouvelle audition, la Cour convoquera les avocats à une audience afin de leur permettre d'y répondre.

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* Iacobucci J. took no part in the judgment.
Le juge Iacobucci n'a pas pris part au jugement.

Normand Martineau -c. - Ministre du Revenu national - et - Procureur général de l'Ontario et Procureur général du Québec (CF) (29794)
Répertorié : Martineau *c.* M.R.N. / Indexed as: Martineau *v.* M.N.R.
Référence neutre : 2004 CSC 81. / Neutral citation: 2004 SCC 81.
Jugement rendu le 16 décembre 2004 /Judgment rendered December 16, 2004

Présents : La juge en chef McLachlin et les juges Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella et Charron.

Droit constitutionnel – Charte des droits – Auto-incrimination – Douanes – Avis de confiscation compensatoire – Interrogatoire préalable – Ministre du Revenu national confirmant la décision d'un agent de douane de signifier à un présumé contrevenant un avis de confiscation compensatoire – Contrevenant contestant la décision du ministre par voie d'action conformément à l'art. 135 de la Loi sur les douanes – Requête du ministre en vue d'interroger le contrevenant au préalable accordée – Le contrevenant peut-il invoquer la protection contre l'auto-incrimination garantie par l'art. 11c) de la Charte canadienne des droits et libertés? – Le contrevenant est-il un inculpé au sens de cet article? – La confiscation compensatoire est-elle une mesure de nature pénale? – Charte canadienne des droits et libertés, art. 11c) – Loi sur les douanes, L.R.C. 1985, c. 1 (2e suppl.), art. 124, 135 – Règles de la Cour fédérale (1998), DORS/98-106, règle 236(2).

Un agent des douanes réclame à l'appelant, en vertu de l'art. 124 de la *Loi sur les douanes*, plus de 315 000 $, soit la valeur présumée des marchandises qu'il aurait tenté d'exporter au moyen de fausses déclarations. L'intimé confirme l'avis de confiscation compensatoire et l'appelant fait appel de cette décision par voie d'action intentée conformément à l'art. 135 de la Loi. L'intimé présente un avis de requête pour interroger l'appelant au préalable en vertu de la règle 236(2) des *Règles de la Cour fédérale (1998)*. L'appelant s'oppose à la requête pour le motif qu'elle irait à l'encontre de la protection contre l'auto-incrimination garantie par l'al. 11*c*) de la *Charte canadienne des droits et libertés*. Le protonotaire rejette la prétention de l'appelant et accueille la requête de l'intimé. Cette décision est confirmée par la Cour fédérale et la Cour d'appel fédérale. Cette dernière conclut que les procédures de confiscation et les autres sanctions en matière douanière sont de nature administrative et que, dans le cadre d'une action en vertu de l'art. 135, l'appelant n'est pas un inculpé, mais un demandeur, et l'intimé un défendeur.

Arrêt : Le pourvoi est rejeté.

L'appelant n'est pas un « inculpé » au sens de l'art. 11 de la *Charte*. Une analyse de l'art. 124 de la *Loi sur les douanes* et des dispositions connexes révèle que le processus relatif à la confiscation compensatoire n'est pas de nature pénale et que la sanction qu'il prévoit n'entraîne pas de véritables conséquences pénales. Le paragraphe 236(2) des *Règles de la Cour fédérale (1998)* qui oblige l'appelant, en sa qualité de demandeur dans une action fondée sur l'art. 135 de la Loi, à subir un interrogatoire préalable, ne porte donc pas atteinte à l'al. 11*c*) de la *Charte*.

La *Loi sur les douanes* a pour objectifs de régir, d'encadrer et de contrôler la circulation transfrontalière des personnes et des marchandises. Pour assurer le respect de la Loi et de son système d'autodéclaration, le législateur a mis en place des mécanismes civils et pénaux. Bien que l'infraction reprochée à l'appelant – celle d'avoir fait de fausses déclarations – puisse donner lieu à une poursuite criminelle (art. 160), cela ne permet pas, en soi, de qualifier de recours pénal le mécanisme d'avis de confiscation compensatoire (art. 124). La détermination du caractère criminel des procédures dépend non pas de la nature de l'acte qui est à l'origine des procédures, mais de la nature des procédures elles-mêmes. Or, en principe, la confiscation compensatoire est un mécanisme de recouvrement civil. Ce mécanisme n'a pas pour objet de punir le contrevenant mais vise plutôt à assurer le respect de la *Loi sur les douanes* de façon rapide et efficace et à produire un effet dissuasif. La confiscation compensatoire est un processus administratif et de nombreux jugements rendus en matière fiscale appuient la conclusion qu'une sanction administrative n'est pas de nature pénale. En l'espèce, bien qu'élevé, le montant exigé en vertu de l'art. 124 ne constitue pas une amende qui, par son importance, est infligée dans le but de réparer le tort causé à la société en général plutôt que dans celui de maintenir l'efficacité des exigences douanières. Les amendes prévues à l'art. 160, qui varient entre 50 000 $ et 500 000 $, et la confiscation compensatoire sont deux conséquences distinctes dont l'une ne dépend aucunement de l'autre. L'amende, qui est manifestement pénale, tient compte des facteurs et des principes pertinents en matière de détermination de la peine, alors que la confiscation compensatoire, de nature civile et purement économique, est plutôt déterminée par un simple calcul mathématique.

Bien que l'appelant ne soit pas un « inculpé » au sens de l'art. 11 de la *Charte*, il est nécessaire de préciser la portée de l'al. *c*) vu l'interprétation de la Cour d'appel fédérale qui a pour effet d'en réduire indûment la mission. Trois conditions doivent être remplies pour qu'un inculpé puisse bénéficier de la protection contre l'auto-incrimination garantie à l'al. 11*c*) : (1) il doit être contraint de témoigner contre lui, (2) dans une poursuite intentée contre lui, (3) pour l'infraction qu'on lui reproche. La première condition ne pose aucune difficulté. En ce qui concerne la deuxième, bien que l'appelant soit désigné comme le « demandeur » devant la Cour fédérale, c'est l'intimé qui est à l'origine de la « poursuite » (*proceedings* dans la version anglaise de l'al. 11*c*)) contre l'appelant. La signification de l'avis de confiscation compensatoire par l'agent des douanes constituait une « poursuite » et l'appelant a opposé une défense à cette poursuite. Le moyen procédural prévu par l'art. 135 de la *Loi sur les douanes* n'a pas pour effet de modifier les rapports réels entre les parties. Quant à la troisième condition, l'infraction reprochée à l'appelant consiste à avoir fait de fausses déclarations. Cette infraction est à l'origine de la « poursuite » de l'intimé. Il ne fait aucun doute que tant la « poursuite » intentée contre l'appelant que son appel interjeté contre la décision de l'intimé sont liés à l'infraction reprochée.

POURVOI contre un arrêt de la Cour d'appel fédérale (2003), 310 N.R. 235, [2003] A.C.F. nº 557 (QL), 2003 CAF 176, qui a confirmé une décision de la Section de première instance (2002), 216 F.T.R. 218, [2002] A.C.F. nº 111 (QL), 2002 CFPI 85, confirmant une décision d'un protonotaire, [2001] A.C.F. nº 1865 (QL), 2001 CFPI 1361. Pourvoi rejeté.

Frédéric Hivon et *Jacques Waite*, pour l'appelant.

Pierre Cossette et *Yvan Poulin*, pour l'intimé.

Michel Y. Hélie, pour l'intervenant le procureur général de l'Ontario.

Richard Dubois et *Gilles Laporte*, pour l'intervenant le procureur général du Québec.

Procureurs de l'appelant : Hivon et Beaulac, Montréal.

Procureur de l'intimé : Sous-procureur général du Canada, Montréal.

Procureur de l'intervenant le procureur général de l'Ontario : Procureur général de l'Ontario, Toronto.

Procureur de l'intervenant le procureur général du Québec : Ministère de la Justice, Sainte-Foy.

Present: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

Constitutional law – Charter of Rights – Self-incrimination – Customs – Notice of ascertained forfeiture – Examination for discovery – Minister of National Revenue upholding decision of customs officer to serve notice of ascertained forfeiture on alleged offender – Offender contesting Minister's decision by way of action pursuant to s. 135 of Customs Act – Motion by Minister to examine offender for discovery allowed – Whether offender may rely on protection against self-incrimination guaranteed by s. 11(c) of Canadian Charter of Rights and Freedoms – Whether offender "person charged with an offence" within meaning of that section – Whether ascertained forfeiture penal in nature – Canadian Charter of Rights and Freedoms, s. 11(c) – Customs Act, R.S.C. 1985, c. 1 (2nd Supp.), ss. 124, 135 – Federal Court Rules, 1998, SOR/98-106, r. 236(2).

A customs officer demanded, pursuant to s. 124 of the *Customs Act*, that the appellant pay more than $315,000, that is, the deemed value of goods he allegedly attempted to export by making false statements. The respondent upheld the notice of ascertained forfeiture and the appellant appealed this decision by way of an action pursuant to s. 135 of the Act. The respondent filed a notice of motion for the purpose of examining the appellant for discovery pursuant to Rule 236(2) of the *Federal Court Rules, 1998*. The appellant contested the motion on the ground that it would violate his right against self-incrimination under s. 11(*c*) of the *Canadian Charter of Rights and Freedoms*. The prothonotary rejected the appellant's argument and allowed the respondent's motion. This decision was affirmed by the Federal Court and the

Federal Court of Appeal. The Federal Court of Appeal concluded that forfeiture proceedings and the other sanctions in customs matters are administrative in nature and that, in respect of the action under s. 135, the appellant was not a "person charged with an offence" but a plaintiff, and the respondent was a defendant.

Held: The appeal should be dismissed.

The appellant is not a "person charged with an offence" within the meaning of s. 11 of the *Charter*. An analysis of s. 124 of the *Customs Act* and its related provisions shows that the ascertained forfeiture process is not penal in nature and that the sanction provided for does not have true penal consequences. Rule 236(2) of the *Federal Court Rules, 1998*, which requires the appellant, as plaintiff in an action under s. 135 of the *Customs Act*, to submit to an examination for discovery, therefore does not violate s. 11(*c*) of the *Charter*.

The objectives of the *Customs Act* are to regulate, oversee and control cross-border movements of people and goods. To enforce the Act and its self-reporting system, Parliament has implemented civil and penal mechanisms. Although the offence imputed to the appellant – that he made false statements – may give rise to criminal prosecution (s. 160), this does not in itself mean that a notice of ascertained forfeiture can properly be characterized as a penal proceeding (s. 124). The question of whether proceedings are criminal in nature is concerned not with the nature of the act which gave rise to the proceedings, but the nature of the proceedings themselves. In principle, ascertained forfeiture is a civil collection mechanism. This mechanism is not designed to punish the offender but is instead intended to provide a timely and effective means of enforcing the *Customs Act* and to produce a deterrent effect. Ascertained forfeiture is an administrative process, and there are many judgments in tax matters that support the conclusion that an administrative sanction is not penal in nature. In the case at bar, the amount demanded pursuant to s. 124, although large, does not constitute a fine that, by its magnitude, is imposed for the purpose of redressing a wrong done to society at large, as opposed to the purpose of maintaining the effectiveness of customs requirements. The fines provided for in s. 160, which vary from $50,000 to $500,000, and ascertained forfeiture are two distinct consequences that are completely independent of each other. A fine, which is clearly penal in nature, takes into account the relevant factors and principles governing sentencing, while ascertained forfeiture, which is civil in nature and purely economic, is instead arrived at by a simple mathematical calculation.

Even though the appellant is not a "person charged with an offence" within the meaning of s. 11 of the *Charter*, it is necessary to determine the scope of s. 11(*c*) in light of the Federal Court of Appeal's interpretation, which would unduly restrict its purpose. Three conditions must be met for a person charged with an offence to benefit from the protection against self-incrimination under s. 11(*c*): (1) the person must be compelled to be a witness (2) in proceedings against that person (3) in respect of the offence. The first condition presents no difficulties. As for the second condition, although the appellant is designated a "plaintiff" in the Federal Court, it is the respondent who initiated the proceedings (*poursuite* in the French version of s. 11(*c*)) against the appellant. The service of the notice of ascertained forfeiture by the customs officer constituted a "proceeding", and the appellant defended himself in that proceeding. The procedure provided for in s. 135 of the *Customs Act* does not alter the actual relationship between the parties. As for the third condition, the offence imputed to the appellant consists in having made false statements. This offence gave rise to the respondent's "proceeding". There is no doubt that both the "proceeding" against the appellant and the appellant's appeal from the respondent's decision are connected with the offence.

APPEAL from a judgment of the Federal Court of Appeal (2003), 310 N.R. 235, [2003] F.C.J. No. 557 (QL), 2003 FCA 176, affirming a decision of the Trial Division (2002), 216 F.T.R. 218, [2002] F.C.J. No. 111 (QL), 2002 FCT 85, affirming a decision of a prothonotary, [2001] F.C.J. No. 1865 (QL), 2001 FCT 1361. Appeal dismissed.

Frédéric Hivon and *Jacques Waite*, for the appellant.

Pierre Cossette and *Yvan Poulin*, for the respondent.

Michel Y. Hélie, for the intervener the Attorney General of Ontario.

Richard Dubois and *Gilles Laporte*, for the intervener the Attorney General of Quebec.

Solicitors for the appellant: Hivon et Beaulac, Montréal.

Solicitor for the respondent: Deputy Attorney General of Canada, Montréal.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitor for the intervener the Attorney General of Quebec: Department of Justice, Sainte-Foy.

DEADLINES: APPEALS

The Winter Session of the Supreme Court of Canada will commence January 10, 2005.

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

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.

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 commencera le 10 janvier 2005.

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:

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.

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

- 2004 -

10/06/04

OCTOBER - OCTOBRE						
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 / 31	25	26	27	28	29	30

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

- 2005 -

JANUARY - JANVIER						
S D	M L	T M	W M	T J	F V	S S
						1
2	**H** 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					

FEBRUARY - FÉVRIER						
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	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	**M** 7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	**H** 25	26
27	**H** 28	29	30	31		

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

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

M

H

18 sitting weeks/semaines séances de la cour
88 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