

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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**APPLICATIONS FOR LEAVE TO
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R.V.M.

Sonia Heyeur

c. (30499)

M.B.G.A., et autres (Qc)

Jean El Masri
El Masri Dugal

DATE DE PRODUCTION: 7.9.2004

The Immigration and Refugee Board

Lorne Waldman
Waldman and Associates

v. (30564)

The Minister of Citizenship and Immigration (FC)

Ian Hicks
Attorney General of Canada

FILING DATE: 28.9.2004

Wilfred Dwayne Johnson

Terrance G. Sheppard
Boyne Clarke

v. (30556)

Her Majesty the Queen (N.S.)

William D. Delaney
Attorney General of Nova Scotia

FILING DATE: 29.9.2004

John Susin

John Susin

v. (30565)

Ronald G. Chapman (Ont.)

M. Scott Martin
Torkin Manes Cohen Arbus

FILING DATE: 30.9.2004

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

Dr. Brian Chutskoff, et al.

Eugene Meehan, Q.C.
Lang Michener

v. (30563)

**Mary Waterhouse as executrix for the estate of
Angeline Ruskin (Sask.)**

Karen M. Prisciak, Q.C.
A.S.K. Law

FILING DATE: 4.10.2004

Edna Jane Visneskie

Brigitte Gratl
Gratl Law Office

v. (30555)

Ronald Brian Visneskie (Ont.)

Tracy Miller
Miller Law Office

FILING DATE: 6.10.2004

David Baugh

David Baugh

v. (30474)

**Faculty Association of Red Deer College, et al.
(Alta.)**

Simon Renouf, Q.C.
Simon Renouf Professional Corporation

FILING DATE: 7.10.2004

S.B., et autre

Catherine Brousseau
Houle, Nilsson, Brousseau

c. (30558)

**Marie Maynard, personne autorisée par le
Directeur de la protection de la jeunesse des
Centres jeunesse de la Mauricie et du Centre du
Québec, et autre (Qc)**

Jean-François Champoux
Madore, Trudel, Champoux, Leduc

DATE DE PRODUCTION: 8.10.2004

Her Majesty the Queen

John A. Henheffer
Attorney General of New Brunswick

v. (30557)

Jason Daniel MacKay (N.B.)

Brian D. Munro

FILING DATE: 12.10.2004

Gregory Peace

Gregory Peace

v. (30287)

Attorney General of Canada (FC)

Jan E. Brongers
Attorney General of Canada

FILING DATE: 13.10.2004

OCTOBER 18, 2004 / LE 18 OCTOBRE 2004

CORAM: Chief Justice McLachlin and Binnie and Charron JJ.
La juge en chef McLachlin et les juges Binnie et Charron

Eric Young and Marlene Young

v. (30377)

The Saanich Police Department and the Capital Regional District (B.C.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms (Civil) - Civil rights - Statutes - Interpretation - Ss. 7 and 15 of the *Charter* - Food and drugs - Medical use of marihuana - Eviction - *Residential Tenancy Act*, RSBC 1996, c. 406 - Did the Court of Appeal for British Columbia err when interpreting s. 32(1) of the *Charter*? - Did the Court of Appeal err when determining that police questioning about medical information falls outside the ambit of s. 8 of the *Charter*? - Did the Court of Appeal err in law when deciding that there is no evidence supporting a finding of violations of s. 15(1) of the *Charter*? - Is the *Constitutional Question Act*, R.S.B.C. 1996 c. 68 constitutionally valid?

PROCEDURAL HISTORY

June 13, 2003 Supreme Court of British Columbia (Macaulay J.)	Applicants' application for judicial review, dismissed; Applicants' petition seeking constitutional remedies for alleged <i>Charter</i> breaches, dismissed
April 16, 2004 Court of Appeal for British Columbia (Finch C.J.B.C., Lowry and Huddart JJ.A.)	Appeal dismissed
June 9, 2004 Supreme Court of Canada	Application for leave to appeal filed

Ivan Morris and Carl Olsen

v. (30328)

Her Majesty the Queen (B.C.)

NATURE OF THE CASE

Native law - Constitutional law - Aboriginal rights - Hunting at night - Whether *bona fide* safety regulations such as prohibition on night hunting conflict with Douglas Treaty right to hunt - What is the proper definition, in a dispute concerning treaty rights, of the exclusive federal jurisdiction in s. 91(24) of the *Constitution Act, 1867* over "Indians and the Lands reserved for Indians"? - Are treaty rights to be interpreted in their modern context by restricting their scope with contemporary safety regulations? - What is the scope of the protection from provincial laws accorded to treaty rights under s. 88 of the *Indian Act*?

PROCEDURAL HISTORY

June 11, 1999 Provincial Court of British Columbia (Higinbotham J.)	Applicants convicted of hunting with a firearm during prohibited hours and hunting by the use or with the aid of a light or illuminating device contrary to s. 27(1)(d) and (e) of the <i>Wildlife Act</i> Applicant Olsen, convicted of discharging a firearm at wildlife from a motor vehicle contrary to s. 28(1) of the <i>Wildlife Act</i>
May 24, 2002 Supreme Court of British Columbia (Singh J.)	Appeal from conviction dismissed
March 3, 2004 Court of Appeal for British Columbia (Lambert [<i>dissenting</i>], Huddart and Thackray JJ.A.)	Appeal dismissed
May 3, 2004 Supreme Court of Canada	Application for leave to appeal filed
June 3, 2004 Supreme Court of Canada	Application for leave to cross- appeal filed.

**CORAM: Major, Fish and Silberman Abella JJ.
Les juges Major, Fish et Silberman Abella**

Andrew Davis a.k.a Andrija Tramsek

v. (30155)

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

NATURE OF THE CASE

Criminal Law (Non Charter) - Trial - Jury Instructions - Similar fact evidence - Trial on two counts of intentionally causing an explosion and two counts of mailing an explosive device - Whether trial judge erred in instructing jury to consider all of the evidence in determining whether applicant guilty of two separate transactions without a finding of similar fact evidence - Whether trial judge ought to have instructed jury to consider transactions separately and not to use evidence related to one transaction as evidence to convict on the other - Whether trial judge erred in telling the jury that the only live issue was identification - Whether Court of Appeal erred in applying curative proviso.

PROCEDURAL HISTORY

July 13, 2002 Supreme Court of British Columbia	Convictions: two counts of intentionally causing an explosion and two counts of sending an explosive device to a person with intent to do bodily harm (ss. 81(1)(a) and 81(1)(b)(ii) of the <i>Criminal Code</i>)
December 4, 2003 Court of Appeal for British Columbia (Ryan, Newbury and Levine JJ.A.)	Appeal from convictions dismissed

January 27, 2004
Supreme Court of Canada

Application for leave to appeal filed

Petro-Canada

v. (30433)

Her Majesty the Queen (FC)

NATURE OF THE CASE

Statutes - Interpretation - Commercial law - Arm's length transaction - *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 66.1(6)(a) "Canadian exploration expense" - Whether expenditures made by the Applicant were Canadian exploration expenses - Whether the lower courts applied the correct test to determine the Applicant's "purpose" under s. 66.1(6)(a), which provides for immediate deductibility of an "eligible exploration expense" incurred "for the purpose of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas" in Canada - Whether the lower courts applied the correct test to determine whether the parties were acting at "arm's length" under s. 251(1) of the *Income Tax Act*.

PROCEDURAL HISTORY

December 6, 2002
Tax Court of Canada
(Bowie J.)

Applicant's appeal from income tax assessment for 1992 taxation year, dismissed

April 23, 2004
Federal Court of Appeal
(Létourneau, Nadon and Sharlow JJ.A.)

Appeal allowed in part; reassessment referred back to the Minister of National Revenue

July 9, 2004
Supreme Court of Canada

Applications for leave to appeal and for extension of time filed

Zdzislaw Wojtowicz

v. (30285)

Maria Wojtowicz (Man.)

NATURE OF THE CASE

Procedural Law- Costs- Family Law- Whether the Bill of Costs is in accordance with the *Queen's Bench Rules of Tariff Classification*- Whether the error must be corrected in accordance with the law.

PROCEDURAL HISTORY

November 7, 2002
Court of Queen's Bench of Manitoba
(Family Division)
(McKelvey J.)

Respondent awarded Class III costs in accordance with the *Queen's Bench Rules*

October 15, 2003 Court of Queen's Bench of Manitoba (McKelvey J.)	Leave to appeal granted
February 25, 2004 Court of Appeal of Manitoba (Huband, Monnin and Freedman JJ.A.)	Appeal dismissed
May 25, 2004 Supreme Court of Canada	Application for leave to appeal filed
June 9, 2004 Supreme Court of Canada (Arbour J.)	Applicant's motion to extend time to file and/or serve leave application to May 25, 2004, granted

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

Greenpeace Canada, Tzeporah Berman, and Tamara Stark

v. (30443)

Clint Verchere, Rod Plosz, Richard Wild, and Terry Poslowsky (B.C.)

NATURE OF THE CASE

Torts - Intentional torts - Negligence - Whether the definition of the tort of intentional interference with contractual relations is an issue of public importance, given conflicting appellate decisions from British Columbia, Alberta, Ontario and Nova Scotia - Whether the British Columbia Court of Appeal erred in holding that the Applicants had both knowledge of, and the intent to interfere with, the Respondents' contractual relations.

PROCEDURAL HISTORY

April 29, 2003 Supreme Court of British Columbia (Sinclair Prowse J.)	Applicants held liable and order to pay the total sum of \$5,925 to the Respondents in damages
May 3, 2004 Court of Appeal for British Columbia (Southin, Braidwood and Oppal JJ.A)	Appeal dismissed
July 30, 2004 Supreme Court of Canada	Application for leave to appeal filed

Benoit Baron

c. (30524)

Ville de Saint-Lin-Laurentides (Qc)

NATURE DE LA CAUSE

Droit municipal - Municipalités - Fossé - Propriété - Requête en bornage - Entre 1994 et 2000, la Ville de St-Lin a-t-elle respecté le *Code municipal du Québec*, L.R.Q., ch. C-27.1, afin de faire valoir son droit de propriété sur la parcelle de terrain en litige? - Après la fusion en l'an 2000, la nouvelle Ville de St-Lin-Laurentides a-t-elle respecté la *Loi sur les cités et villes*, L.R.Q., ch. C-19, afin de faire valoir son droit de propriété sur la parcelle de terrain en litige?

HISTORIQUE DES PROCÉDURES

Le 29 septembre 2003
Cour supérieure du Québec
(Le juge Jean Guibault)

Requête du demandeur afin de déterminer le droit de bornage accueillie en partie

Le 22 juin 2004
Cour d'appel du Québec
(Les juges Dussault, Benoit et Morissette)

Appel de l'intimée accueilli et jugement de première instance infirmé

Le 17 septembre 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Sous-ministre du Revenu du Québec

c. (30382)

Richard Moufarrège (Qc)

NATURE DE LA CAUSE

Droit fiscal – Déduction d'un montant payé à titre d'intérêts sur un prêt contracté pour générer un revenu de bien ou d'entreprise – Déductibilité du montant payé à titre d'intérêts lorsque la source génératrice de revenus disparaît – La Cour d'appel a-t-elle erré en déterminant que l'intimé pouvait déduire les intérêts alors que les immeubles initialement acquis avaient été vendus et que le produit d'aliénation avait été affecté au remboursement partiel de l'emprunt? – La Cour d'appel a-t-elle erré en déterminant que l'intimé pouvait déduire les intérêts alors que les actions d'une société désormais en faillite étaient réputées avoir été aliénées et de nouveau acquises à un coût nul en vertu des art. 232.1 et 299 de la *Loi sur les impôts*, L.R.Q., ch. I-3? – La Cour d'appel a-t-elle erré en déterminant que la dépense d'intérêt demeure déductible si le lien entre cette dépense et le bien visé est maintenu depuis son origine, et que la question de la relation entre la dépense et la source de revenu ne se pose qu'au moment de l'investissement initial?

HISTORIQUE DES PROCÉDURES

Le 19 avril 2002
Cour du Québec
(Le juge Barbe)

Requête de l'intimé pour annuler des avis de cotisation à l'égard des années d'imposition 1993, 1994, 1995 et 1996, rejetée

APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST ISSUE

DEMANDES SOUMISES À LA COUR DEPUIS
LA DERNIÈRE PARUTION

Le 13 avril 2004
Cour d'appel du Québec
(Les juges Baudouin, Morin et Rochon)

Appel accueilli

Le 10 juin 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

OCTOBER 21, 2004 / LE 21 OCTOBRE 2004

30219 Jason Dwight Linley v. Insurance Corporation of British Columbia (B.C.) (Civil) (By Leave)

Coram: Major, Fish and Silberman 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 CA029610, dated January 12, 2004, is dismissed with costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029610, daté du 12 janvier 2004, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law – Insurance – Automobile insurance – Coverage – Unlicensed driver striking and injuring pedestrian while driving in field – Vehicle insured by Respondent – Courts below finding Applicant forfeited coverage under insurance policy by driving without licence – Whether court of appeal erred in law in its interpretation of s. 55(3)(i) of motor vehicle regulation, by concluding phrase “authorized and qualified by law” imposed duty to obtain drivers licence to have coverage, when: no such obligation exists in British Columbia; Applicant’s conduct not prohibited by statute, regulation, or common law, and; no process in British Columbia by which Applicant could be either authorized or qualified to drive, not on a highway, but in a field – *Motor Vehicle Act*, R.S.B.C. 1979, c. 288, s. 24(1) – *Insurance (Motor Vehicle) Act*, R.S.B.C. 1979, c. 204, s. 18(1)(c) – *Insurance (Motor Vehicle) Regulations, Revised Regulation (1984)*, B.C. Reg. 447/83, s. 55(3)(a).

PROCEDURAL HISTORY

May 27, 2002 Supreme Court of British Columbia (Cole J.)	Applicant in breach of s.55 of the <i>Revised Regulations (1984) under the Insurance (Motor Vehicle) Act</i>
January 12, 2004 Court of Appeal for British Columbia (Braidwood, Mackenzie and Low JJ.A.)	Applicant’s appeal dismissed
March 12, 2004 Supreme Court of Canada	Application for leave to appeal filed
July 30, 2004 Supreme Court of Canada	Motion to extend time to serve application filed

30350 Keyvan Nourhaghighi v. Canadian Human Rights Commission, Mervin Witter, Bob Fagan, Bell Canada, Sprint Canada, Wennifer Wilson, The Canadian Radio-Telecommunications Commission, Robert Birgeneau, The University of Toronto, Robert Pearce, The Bank of Montreal, The Canadian Imperial Bank of Commerce, Dennis Osborne, Bank of Nova Scotia, The MBNA Canada Bank, Toronto Dominion Bank, Nicole Barbe, Office of the Superintendent of Financial Institutions Canada, Royal Canadian Mounted Police, Richard Schobesberger, Tina Soares, The Transport Canada, Bruce Preston, Michel Lortie, Orland Carryl, Anne Edge, Anne Roland, The Attorney General of Canada (FC) (Civil) (By Leave)

Coram : Major, Fish and Silberman Abella JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-50-01, dated March 2, 2004 and all ancillary motions, are dismissed with costs to the respondent the Attorney General of Canada.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-50-01, daté du 2 mars 2004 et toutes les requêtes accessoires, sont rejetées avec dépens en faveur de l'intimé le Procureur général du Canada.

NATURE OF THE CASE

Procedural law - Civil procedure - Judgments and orders - Whether the Federal Court of Canada committed a double standard, 'intimidation' and the discriminatory practices in complying with 'Orders and Directions' and the Rules that governs the 'Service of Documents', 'Application', 'Contempt of Proceedings', 'and the 'Costs to self-represent citizens' in the circumstances of this case that offend Sections 2, 5(a)(b), 13 and 59 of the *Canadian Human Rights Act*? - Whether there is an institutional conflict of interest that does not allow the judges of the 'Federal Court of Canada' be able to act independent and impartial in the 'mandamus' or a 'review of a decision' issues against their own clerks and managers that were respondents before the 'Canadian Human Rights Commission'? - Whether the fairness and impartiality is both subjectively and objectively demonstrated to the eyes of informed and reasonable observer in the circumstances of this case? If the answer is negative, whether the applicant's rights guaranteed under Sections 7, 9, 10, 11(a)(d), 12, 15 and 24(1) of the *Canadian Charter of Rights and Freedoms* ("Charter") infringed; whether the infringement is justifiable under Section 1 of the Charter?

PROCEDURAL HISTORY

August 18, 2000 Federal Court, Trial Division	Notice of application
January 22, 2001 Federal Court of Canada (Gibson J.)	Applicant's application for judicial review dismissed; Respondent Canadian Human Rights Commission, MBNA Canada Bank, Mervin Witter and Bob Fagan's motion for an order dismissing the application against each of them, without leave to amend, granted
December 14, 2001 Federal Court of Appeal (Décary J.A.)	Appeal deemed discontinued for delay
March 2, 2004 Federal Court of Appeal (Evans J.A.)	Motion to set aside the discontinuance order dismissed
April 30, 2004 Supreme Court of Canada	Application for leave to appeal filed

30362 Canadian Kawasaki Motors Inc. v. Attorney General of Canada (FC) (Civil) (By Leave)

Coram: Major, Fish and Silberman Abella JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-358-03, dated April 2, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-358-03, daté du 2 avril 2004, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law – Appeal – Standard of review – Customs and excise – Classification of goods – Decision of Canadian International Trade Tribunal (CITT) classifying all-terrain vehicles (“ATVs” or “quad bikes”) as “motorcycles” and not “motor cars and other vehicles” under the Schedule to the *Customs Tariff*, found unreasonable and reversed by the Federal Court of Appeal – Whether CITT decision reasonable – What are Canada’s legal obligations arising from global economy and harmonization of tariff classifications – Are quad bikes more akin to motorcycles or cars and other motor vehicles and who is in the best position to make that determination: a specialist tribunal or a non-specialist court.

PROCEDURAL HISTORY

May 2, 2003
Canadian International Trade Tribunal
(Close, Presiding Member)

Applicant’s appeals of the classification of ATVs under the Schedule to the *Customs Tariff*, allowed; ATV’s classified as “motorcycles” under heading No. 87.11 as opposed to “motor cars and other vehicles principally designed for the transport of persons” under heading No. 87.03

April 2, 2004
Federal Court of Appeal
(Evans, Létourneau and Malone JJ.A.)

Respondent’s appeal allowed: CITT decision set aside; Applicant’s appeals from Commissioner’s decisions dismissed

May 31, 2004
Supreme Court of Canada

Application for leave to appeal filed

30389 **Star Choice Television Network Incorporated v. The Commissioner of Customs and Revenue** (FC)
(Civil) (By Leave)

Coram: Major, Fish and Silberman Abella JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-67-03, dated April 13, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-67-03, daté du 13 avril 2004, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law – Appeal – Standard of review – Customs and excise – Classification of goods under *Customs Tariff*, S.C. 1997, c. 36 – Decision of Canadian International Trade Tribunal (CITT) classifying integrated receivers/decoders (IRDs) as falling within tariff item number 8528.12.99 as an "other colour reception apparatus for television" under the Schedule to the *Customs Tariff* – CITT decision upheld as reasonable by Federal Court of Appeal – Whether CITT decision reasonable – On an appeal from a tribunal’s decision restricted to questions of law and governed by the standard of reasonableness *simpliciter*, is the appellate court required, under the pragmatic and functional approach, to consider whether the tribunal’s findings of fact (and hence its application of law to the facts) are reasonably based on the evidence before it? If a tribunal’s findings of fact and hence decision are not reasonably based on the evidence, does this constitute an error of law, an excess of jurisdiction or otherwise make the tribunal’s decision unreasonable? Under what circumstances can expert evidence in CITT hearings be relied upon to show that it would be unreasonable to follow non-

binding classification guides issued by the World Customs Organization, particularly where the guides relate to different apparatus and provide little or no rationale for their conclusion?

PROCEDURAL HISTORY

November 8, 2002 Canadian International Trade Tribunal (Kvarda , Presiding Member; Thalheimer and Ogilvy, Members)	Applicant's appeal pursuant to subsection 67(1) of the <i>Customs Act</i> , whether the integrated receivers/decoders are properly classified under tariff item No. 8528.12.99 as other colour reception apparatus for television, dismissed
April 13, 2004 Federal Court of Appeal (Evans [<i>dissenting</i>] , Strayer, and Sexton JJ.A.)	Appeal dismissed
June 11, 2004 Supreme Court of Canada	Application for leave to appeal filed

30393 **Bruce Morris v. Her Majesty the Queen** (FC) (Civil) (By Leave)

Coram: Major, Fish and Silberman Abella JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-285-03, dated March 30, 2004, is dismissed with costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-285-03, daté du 30 mars 2004, est rejetée avec dépens.

NATURE OF THE CASE

Taxation - Assessment - Administrative Law - Judicial Review - Whether the lower courts erred in its findings that the Applicant's endeavours as a fishing guide did not constitute a source of income under the *Income Tax Act* having regard to the approach set out in *Stewart v. Canada*, 2002 SCC 46.

PROCEDURAL HISTORY

July 12, 2001 Tax Court of Canada (O'Connor J.T.C.C.)	Applicant's appeals from tax assessments under the <i>Income Tax Act</i> for taxation years 1996, 1997 and 1998, dismissed
March 4, 2003 Federal Court of Appeal (Strayer, Evans and Malone JJ.A.)	Application for judicial review allowed; Tax Court decision set aside; matter remitted to another Tax Court judge for reconsideration
May 14, 2003 Tax Court of Canada (Bowie J.T.C.C.)	Applicant's appeals from tax assessments under the <i>Income Tax Act</i> for taxation years 1996, 1997 and 1998, dismissed
March 30, 2004 Federal Court of Appeal (Strayer, Noël and Sexton JJ.A.)	Application for judicial review dismissed

June 16, 2004
Supreme Court of Canada

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

30396 **Nicole Desjardins et Mohamed Sdiri c. Centre d'achats St-Jérôme Inc.** (Qc) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

Les requêtes pour déposer de nouveaux éléments de preuve et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-012438-024, daté du 28 avril 2004, sont rejetées avec dépens.

The motions to adduce new evidence and the application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-012438-024, dated April 28, 2004, are dismissed with costs.

NATURE DE LA CAUSE

Droit des biens - Locateurs et locataires - Est-ce que les demandeurs ont eu droit à un procès impartial? - Est-ce que la Cour d'appel a commis une erreur en rejetant les prétentions des demandeurs à l'effet qu'ils avaient renouvelé le bail? - Est-ce que la Cour d'appel a commis une erreur en rejetant les prétentions des demandeurs qu'ils ont été expulsés des lieux de l'intimée? - Est-ce que la Cour d'appel a commis une erreur en rejetant les prétentions des demandeurs à l'effet que la clause d'exclusivité empêchait la venue du magasin Dollarama?

HISTORIQUE DES PROCÉDURES

Le 12 juin 2002
Cour supérieure du Québec
(Le juge Silcoff)

Action des demandeurs rejetée; demande reconventionnelle de l'intimée rejetée

Le 28 avril 2004
Cour d'appel du Québec
(Les juges Robert, Rayle et Biron [*ad hoc*])

Appel rejeté

Le 17 juin 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

30427 **Ernst Zundel v. Her Majesty the Queen** (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 41054, dated May 19, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro 41054, daté du 19 mai 2004, est rejetée avec dépens.

NATURE OF THE CASE

Administrative Law - Jurisdiction - Immigration law - Security certificate - Canadian Charter - Civil - Whether the principle set out by this Honourable Court in *R. v. Gamble*, that courts considering *habeas corpus* applications should

ensure that justice prevails over rigid procedural rules is still good law - Whether the secret trial legislation violates sections 7, 9, 10(c) of the *Charter* - When the case law on a procedural point arguably changes during a case, whether a party who has reasonably relied on the old law to his detriment should be essentially told retroactively that he is “out of luck” based on the new case law - Whether it is appropriate for courts to allow one party to procedurally sandbag the other party and bounce him from court to court in a jurisdictional ping-pong game.

PROCEDURAL HISTORY

November 25, 2003
Ontario Superior Court of Justice
(Benotto J.)

Jurisdiction declined; Respondent’s motion for a stay of proceedings granted

May 19, 2004
Court of Appeal for Ontario
(Charron, Rosenberg and Gillese JJ.A.)

Appeal dismissed

July 6, 2004
Supreme Court of Canada

Application for leave to appeal filed

12.10.2004

Before / Devant: DESCHAMPS J.

Motion to extend the time in which to serve and file the factum and book of authorities of the intervener the Attorney General of Ontario and for an order to present oral argument at the hearing of the appeal

Requête de l'intervenant le procureur général de l'Ontario en prorogation du délai de signification et de dépôt de ses mémoire et recueil de sources, et en vue de présenter une plaidoirie orale lors de l'audition de l'appel

Provincial Court Judges' Association of New Brunswick, et al.

v. (30006)

Her Majesty the Queen in Right of the Province of New Brunswick as represented by the Minister of Justice (N.B.)

GRANTED / ACCORDÉE

UPON APPLICATION by the intervener, the Attorney General of Ontario, for an order extending the time to serve and file its factum and book of authorities to October 5, 2004, and for an order to present oral argument at the hearing of this appeal.

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion is granted.

13.10.2004

Before / Devant: THE CHIEF JUSTICE

Motion to adjourn the hearing of the appeal

Requête pour ajourner l'audition de l'appel

Liquid Carbonic Inc., et al.

v. (29782)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the appellants for an order extending the time to serve and file their factum, record and book of authorities to November 15, 2004 and for an order adjourning the hearing of the appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

- 1) The appellants are granted an extension of time to serve and file their factum, record and book of authorities to November 15, 2004.

2) The motion to adjourn the appeal is granted.

15.10.2004

Before / Devant: SILBERMAN ABELLA J.

Motion to extend the time in which to serve and file the factum and book of authorities of the intervener the Attorney General for Saskatchewan and for an order to present oral argument at the hearing of the appeal

Requête de l'intervenant le Procureur général de la Saskatchewan en prorogation du délai de signification et de dépôt de ses mémoire et recueil de sources, et en vue de présenter une plaidoirie orale lors de l'audition de l'appel

Christopher Orbanski

v. (29793)

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

- and between -

Her Majesty the Queen

v. (29920)

David Jeff Elias (Man.) (Crim.)

GRANTED / ACCORDÉE

UPON APPLICATION by the intervener, the Attorney General of Saskatchewan, for an order extending the time to serve and file its factum and book of authorities to October 4, 2004, and for an order to present oral argument at the hearing of these appeals.

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion is granted.

15.10.2004

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the response of the respondent James Coultice

Requête en prorogation du délai imparti pour signifier et déposer la réponse de l'intimé James Coultice

Her Majesty the Queen

v. (30459)

James Coultice, et al. (Ont.) (Crim.)

GRANTED / ACCORDÉE Time extended to October 1, 2004.

15.10.2004

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and file
the applicant's reply to September 13, 2004**

**Requête en prorogation du délai imparti pour
signifier et déposer la réplique du demandeur
jusqu'au 13 septembre 2004**

Bruce Morris

v. (30393)

Her Majesty the Queen (FC)

DISMISSED / REJETÉE

15.10.2004

Before / Devant: THE REGISTRAR

Miscellaneous motions

Autres requêtes

Sameer Mapara

v. (29750)

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

- and between -

Simon Kwok Cheng Chow

v. (29919)

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

GRANTED IN PART / ACCORDÉES EN PARTIE

UPON APPLICATION by the appellant, Simon Kwok Cheng Chow, for an order permitting the filing of a single record in both appeals, extending the time to serve and file its factum, joint record and book of authorities to October 1, 2004, permitting the appellant to file a factum of no more than 50 pages and permitting the Crown to file a single factum in response to both cases of no more than 100 pages;

AND UPON APPLICATION by the appellant, Sameer Mapara, for an order permitting the appellant to file a factum of no more than 50 pages and permitting the Crown to file a single factum in response to both cases of no more than 100 pages;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motions are granted in part.

The motion by the appellant, Simon Kwok Cheng Chow, for an order permitting the filing of a single record in both appeals and extending the time to serve and file its factum, joint record and book of authorities to October 1, 2004, is granted.

The motions by the appellants, Simon Kwok Cheng Chow and Sameer Mapara, for an order permitting the appellants to file factums of no more than 50 pages, are granted.

The motions by the appellants, Sameer Mapara and Simon Kwok Cheng Chow, for an order permitting the respondent to file a single factum of no more than 100 pages, is dismissed.

14.10.2004

P.E.C.

v. (30561)

Her Majesty the Queen (B.C.)

(As of Right)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

14.10.2004

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

Normand Martineau

c. (29794)

**Le ministre du Revenu national, et al. (CF)(Civile)
(Autorisation)**

Frédéric Hivon et Jacques Waite pour l'appelant.

Pierre Cossette et Yvan Poulin pour l'intimés.

Michel Y. Hélie pour l'intervenant Attorney General of Ontario.

Richard Dubois et Gilles Laporte pour l'intervenant Procureur général du Québec.

DISMISSED, REASONS TO FOLLOW / REJETÉ, MOTIFS À SUIVRE

L'appel interjeté contre l'arrêt de la Cour d'appel fédérale, numéro A-71-02, en date du 3 avril 2003, a été entendu aujourd'hui et le jugement suivant a été rendu:

The appeal from the judgment of the Federal Court of Appeal, Number A-71-02, dated April 3, 2003, was heard this day and the following judgment was rendered:

[TRANSLATION]

LA JUGE EN CHEF (oralement) – Nous sommes tous d'avis que l'appel doit être rejeté. Motifs à suivre.

THE CHIEF JUSTICE (orally) – We are all of the view that this appeal should be dismissed. Reasons to follow.

Nature of the case:

Canadian Charter of Rights and Freedoms- S.11(c) - Administrative law - Taxation - Customs and excise - Seizure - Notice of ascertained forfeiture - Customs Act, R.S.C. (1985), c. 1 (2nd suppl.) - S. 135(1) - Federal Court Rules (1998) - Rule 236(2) - Procedure - Judgments and orders - Pre-trial procedure - Pre-trial discovery - Whether the Federal Court of Appeal erred in law in finding that, in the action instituted against the Minister of National Revenue, the appellant was not an accused within the meaning of s. 11(c) of the Canadian Charter of Rights and Freedoms - Whether the Federal Court of Appeal erred in law in finding that the notice of ascertained forfeiture provided for in s. 124 of the Customs Act is not a true penal consequence within the meaning of the test established in R. V. Wigglesworth, [1987] 2 S.C.R.

Nature de la cause:

Charte canadienne des droits et libertés - Al. 11c) - Droit administratif - Droit fiscal - Douanes et accise - Saisie - Avis de confiscation compensatoire - Loi sur les douanes, L.R.C. (1985), ch. 1 (2^e suppl.) - Par. 135.(1) - Règles de la Cour fédérale (1998) - Règle 236(2) - Procédure - Jugements et ordonnances - Procédure préalable au procès - Interrogatoire au préalable - La Cour d'appel fédérale a-t-elle commis une erreur de droit en refusant de reconnaître à l'appelant le statut d'inculpé au sens de l'alinéa 11c) de la Charte canadienne des droits et libertés dans les procédures judiciaires entreprises ? - La Cour d'appel fédérale a-t-elle commis une erreur de droit en refusant de reconnaître que l'avis de confiscation compensatoire prévu à l'art. 124 de la Loi sur les douanes est une véritable conséquence pénale au sens du critère établi dans la décision R. c. Wigglesworth, [1987] 2 R.C.S. 541 ?

15.10.2004

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

Cory Howard Grandinetti

Patrick C. Fagan and Greg Dunn for the Appellant.

v. (30096)

Gordon Tomljanovic for the Respondent.

**Her Majesty the Queen (Alta.) (Criminal) (As of
Right / By Leave)**

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal law - Murder - Whether, for purposes of the confession rule, can an undercover police officer ever be a person in authority - When and under what circumstances can evidence capable of supporting an inference that a third party committed a crime be excluded? - Whether the trial judge erred in excluding evidence capable of supporting an inference that a third party committed the crime.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Meurtre - Pour l'application de la règle de l'aveu, un policier agissant comme agent d'infiltration pourrait-il être une personne en situation d'autorité? - Quand et dans quelles circonstances un élément de preuve susceptible d'étayer une conclusion qu'un tiers a commis un crime peut-il être exclu? - Le juge du procès a-t-il commis une erreur en excluant un élément de preuve susceptible d'étayer une conclusion qu'un tiers a commis le crime?

15.10.2004

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

Her Majesty the Queen

Shelley Hallett for the Appellant.

v. (30098)

Nicholas A. Xynnis for the Respondent.

Randolph Blake (Ont.) (Criminal) (As of Right)

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Sexual assault - Similar fact evidence - Whether the credibility of the child complainant's allegation can be an "issue in question" for the purpose of determining the admissibility of similar fact evidence - Whether the majority of the Court of Appeal erred in concluding that the similar fact evidence did not disclose sufficient degree of specificity to justify reception of the evidence - Whether the majority of the Court of Appeal erred in concluding that there were no distinct

Nature de la cause:

Droit criminel - Agression sexuelle - Preuve de faits similaires - La crédibilité de l'allégation de la plaignante, une enfant, peut-elle être une « question en litige » pour déterminer l'admissibilité d'une preuve de faits similaires? - Les juges majoritaires de la Cour d'appel ont-ils commis une erreur en concluant que la preuve de faits similaires ne révélait pas un degré de spécificité suffisant pour justifier la recevabilité de la preuve? - Les juges majoritaires de la Cour d'appel ont-

issues arising out of the cross-examination of the complainant, the Respondent's testimony and the conduct of the defence that justified the admission of the similar fact evidence - Whether the majority of the Court of Appeal erred in failing to defer to the discretion of the trial judge in admitting the similar fact evidence.

ils commis une erreur en concluant qu'aucune question litigieuse distincte, issue du contre-interrogatoire de la plaignante, du témoignage de l'accusé et de la conduite de la défense, ne justifiait l'admission de la preuve de faits similaires? - Les juges majoritaires de la Cour d'appel ont-ils commis une erreur en refusant d'accepter la décision du juge du procès qui, dans l'exercice de son pouvoir discrétionnaire, a admis la preuve de faits similaires?

DEADLINES: APPEALS

The Fall Session of the Supreme Court of Canada started October 4, 2004.

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'automne de la Cour suprême du Canada a commencé le 4 octobre 2004.

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'appellant, 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'appellant.

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
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2	H 3	4	5	6	7	8
9	M 10	11	12	13	14	15
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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
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27	28					

MARCH - MARS						
S D	M L	T M	W M	T J	F V	S S
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27	H 28	29	30	31		

APRIL - AVRIL						
S D	M L	T M	W M	T J	F V	S S
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24	25	26	27	28	29	30

MAY - MAI						
S D	M L	T M	W M	T J	F V	S S
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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	22	23	24	
25	26	27	28	29	30	

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

18
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