

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

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

Justin Sidney James Duddle

David J. Stuart
Kahn Zack Ehrlich Lithwick

v. (30552)

City of Vernon, et al. (B.C.)

James A. Dowler
Alexander Holburn Beaudin & Lang

FILING DATE: 29.9.2004

Maribel Anaya Castillo

Anne L. Kirker
MacLeod Dixon

v. (30534)

Antonio Muñoz Castillo (Alta.)

James T. Eamon
Code Hunter

FILING DATE: 29.9.2004

Gary Leskun

Lorne N. MacLean
MacLean Family Law Group

v. (30548)

Sherry Jean Leskun (B.C.)

Sherry Jean Leskun

FILING DATE: 4.10.2004

**APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST
ISSUE**

**DEMANDES SOUMISES À LA COUR
DEPUIS LA DERNIÈRE PARUTION**

OCTOBER 12, 2004 / LE 12 OCTOBRE 2004

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

Kurton Edwards, Mark Williams, John Richardson

v. (30441)

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

NATURE OF THE CASE

Criminal Law (Non-Charter) - Evidence - Jury Charge - Whether a victim's prior statement to police was properly admitted into evidence under the past recollection recorded exception to hearsay - Whether jury was properly instructed on the use of the co-conspirators exception to the hearsay rule and liability for criminal offences under section 21(2) of the *Criminal Code*.

PROCEDURAL HISTORY

April 14, 1998
Ontario Superior Court of Justice
(Rutherford J.)

Convictions: first degree murder, kidnapping, aggravated sexual assault, assault causing bodily harm, and use of a firearm while committing an indictable offence

August 14, 2003
Court of Appeal for Ontario
(O'Connor A.C.J.O., Weiler and Abella JJ.A.)

Appeals against convictions dismissed

July 28, 2004
Supreme Court of Canada

Applications for extension of time and leave to appeal filed

Daniel Martin Bellemare

v. (30490)

Attorney General of Canada (FC)

NATURE OF THE CASE

Procedural law – Costs – Whether the lower courts erred in upholding the assessment officer's assessment of costs – Whether the lower courts erred in interpreting ss. 400 et seq. of the *Federal Court Rules (1998)*, SOR/98-106 – Whether the assessment officer's assessment of costs was arbitrary, capricious, an abuse of discretion and not in accordance with the law – Whether the Federal Court of Appeal erred in awarding costs to the respondent on the appeal.

PROCEDURAL HISTORY

September 16, 1999 Federal Court of Canada, Trial division (Pinard J.)	Respondent's motion to strike out allegations contained in applicant's application for judicial review under the Access to Information Act granted in part; applicant's application for judicial review allowed to continue in part
November 30, 2001 Federal Court of Appeal (Décary, Létourneau, and Noël J.A.)	Appeal allowed; applicant's application for judicial review struck in its entirety with costs before both the Trial and Appeal Divisions; Information Commissioner ordered to bear its own costs as well as the disbursements of the respondent resulting from its intervention
May 16, 2003 Federal Court of Canada, Trial Division (Michelle Lamy, assessment officer)	Costs assessed in favour of the respondent, for the amount of \$2,442.48 for file T-1073-99 and for \$2,217.12 for file A-598-99
August 7, 2003 Federal Court of Canada, Trial Division (Blanchard J.)	Applicant's motion to review the decision of the assessment officer dismissed
June 14, 2004 Federal Court of Appeal (Desjardins, Létourneau, and Pelletier JJ.A.)	Appeal dismissed
September 1, 2004 Supreme Court of Canada	Application for leave to appeal filed

Council of the Wasauksing First Nation a.k.a. Council of Ojibways of Parry Island Band, and John Beaucage and Terry Pegahmagabow, on their own behalf and on behalf of the registered members of the Wasauksing First Nation a.k.a. Ojibways of Parry Island Band

v. (30324)

Wasausink Lands Inc., Joyce Tabobondung, Wilfred King, Dora Tabobondung, Leslie Tabobondung, and Florence Tabobondung (Ont.)

NATURE OF THE CASE

Constitutional law - Division of powers - Native law - Commercial law - Non-profit corporations - Whether all members of the Wasauksing First Nation are members of the corporation set up as the band's economic development vehicle - Where the Band's Chief and council members are automatic directors of the corporation - Do provincial corporations acts trump aboriginal rights - Participation of First Nations in their own economic destinies - Trust and justice - S. 88 of the *Indian Act*, R.S.C. 1985, c. I-5 - S. 35 of the *Constitution Act, 1982* - S. 309 of the *Corporations Act*, R.S.O. 1990, c. C. 38.

PROCEDURAL HISTORY

January 18, 2002 Ontario Superior Court of Justice (Blair J.)	Applicants' application for constitutional exemption pursuant to s. 35 of the <i>Constitution Act 1982</i> , dismissed; Applicants not entitled relief under s. 309(1) of the <i>Corporations Act</i>
March 4, 2004 Court of Appeal for Ontario (Laskin, Cronk and Armstrong JJ.A.)	Appeal dismissed
May 3, 2004 Supreme Court of Canada	Application for leave to appeal filed

Assessor of Area #14 - Surrey/White Rock

v. (30438)

Southam Inc. (Pacific Newspaper Group Inc.) (B.C.)

NATURE OF THE CASE

Taxation - Assessment - Respondent owning property with buildings housing printing - Market value of real property for taxation purposes - Limited market, special purpose property - Method of valuation - Determination of highest and best use of property where property has no ready market, is unlikely to be sold and is suited for the purposes of the owner - Whether it is appropriate to apply a replacement cost approach to valuation

PROCEDURAL HISTORY

April 11, 2002 The British Columbia Property Assessment Appeal Board (Flood, Panel Chair)	Respondent's appeals against the 2000 and 2001 decisions of the Property Assessment Review Panel regarding property value assessments made pursuant to the <i>Assessment Act</i> at \$40,535,000 and \$40,338,000 respectively, dismissed
May 1, 2003 Supreme Court of British Columbia (Gray, J.)	Appeal allowed; assessment roll to be amended to reflect an assessed value of 25,000,000
May 4, 2004 Court of Appeal for British Columbia (Braidwood, Levine and Smith, JJ.A.)	Appeal dismissed
July 22, 2004 Supreme Court of Canada	Application for leave to appeal filed

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

Raymond Joseph Morrison

v. (30461)

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

NATURE OF THE CASE

Criminal law - Evidence - Admission of video confession following *voir dire* on the matter - Applicant claims admission obtained under oppressive circumstances and through threats and promises - Failure to videotape interview before confession not detrimental to admission of confession into evidence - Applicant claims his rights were violated.

PROCEDURAL HISTORY

November 14, 2003
Court of Queen's Bench of Manitoba
(McCawley J.)

Applicant convicted of two counts of robbery

May 11, 2004
Court of Appeal of Manitoba
(Monnin, Steel and Freedman JJ.A.)

Leave to appeal denied

August 4, 2004
Supreme Court of Canada

Application for leave to appeal filed

Bachan Singh Sogi

v. (30469)

The Minister of Citizenship and Immigration (FC)

NATURE OF THE CASE

Canadian Charter - Immigration - Constitutional Law - Civil - Whether the Federal Court of Appeal erred in holding that section 86 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 does not violate section 7 of the *Canadian Charter of Rights and Freedoms* - Whether the Federal Court of Appeal erred in finding that the Applicant's section 7 right was met by the right to apply for judicial review of a decision by the Immigration Division not to disclose confidential security information.

PROCEDURAL HISTORY

October 8, 2002
Immigration Division

Applicant held to be inadmissible to Canada pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*

December 8, 2003
Federal Court of Canada
(MacKay J.)

Applicant's application for judicial review of the decision of inadmissibility dismissed; Respondent's application for judicial review granted: Order of non-disclosure of information continued

May 28, 2004
Federal Court of Appeal
(Strayer, Rothstein and Malone JJ.A.)

Appeal dismissed

August 13, 2004
Supreme Court of Canada

Application for leave to appeal filed

Danny Leskiw

v. (30430)

Attorney General of Canada (FC)

NATURE OF THE CASE

Administrative Law - Statutes - Appeal - Judicial review - Standard of review - Natural justice - Procedural fairness - Right to be heard - Interpretation - *Canada Pension Plan* R.S.C. 1985 c. C-8 - Whether the Applicant was afforded procedural fairness by the Respondent, pursuant to subsection 66(4) of the *Canada Pension Plan Act*? - Whether the lower courts erred in stating that the decision was not patently unreasonable? - Whether the lower courts erred in stating that the Respondent had jurisdiction to render a decision under s. 66(4) of the *Canada Pension Plan Act*?

PROCEDURAL HISTORY

June 12, 2002
Federal Court of Canada
(Lafrenière, Prothonotary)

Applicant's motion to admit new evidence dismissed

May 9, 2003
Federal Court of Canada
(Snider J.)

Application for judicial review dismissed; Minister not obligated to grant retroactive Canada Pension Plan benefits

September 19, 2003
Federal Court of Appeal
(Malone J.A.)

Applicant's motion to adduce new evidence on appeal, dismissed

May 3, 2004
Federal Court of Appeal
(Strayer, Rothstein and Malone JJ.A.)

Appeal dismissed

July 13, 2004
Supreme Court of Canada

Application for leave to appeal filed

Slavtcho Petrov Detchev

v. (30498)

**The Ontario Labour Relations Board, The Ontario Ministry of Labour - Legal Services, Canadian Feed Screws
Mfg. Ltd. (Ont.)**

NATURE OF THE CASE

Canadian *Charter* - civil – Labour law – Administrative law – Constructive dismissal – Judicial review – Whether the lower courts erred in finding that the applicant had resigned from his employment – Whether the Superior Court of Justice erred in applying the reasonableness standard of review – Whether the applicant’s *Charter* rights were infringed in the present case.

PROCEDURAL HISTORY

October 31, 2000
Ministry of Labour
(Bhatt, Employment Standards Officer)

Applicant’s application for an Order to Pay pursuant to section 68 of the *Employment Standards Act*, refused

July 13, 2001
Ontario Labour Relations Board
(Kelly, Vice-Chair)

Appeal dismissed

March 30, 2004
Ontario Superior Court of Justice
(MacFarland, Wilson and Swinton JJ.)

Applicant’s application for judicial review dismissed

June 25, 2004
Ontario Court of Appeal
(Armstrong, Blair and Juriansz JJ.A.)

Application for leave to appeal dismissed

September 7, 2004
Supreme Court of Canada

Application for leave to appeal filed

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

Sa Majesté la Reine

c. (30409)

Luis Deschênes (Qc) (Crim.)

NATURE DE LA CAUSE

Droit criminel - Procédure - Appel - La Cour d’appel a-t-elle erré en droit en concluant que l’art. 676(1)a) du *Code criminel*, L.R.C. (1985), ch. C-46, régit les appels de dossier dont la poursuite a été introduite par déclaration de culpabilité par procédure sommaire? - La Cour d’appel a-t-elle erré en droit en affirmant que ce faisant, le poursuivant ne peut en appeler d’une décision que pour le seul motif qu’elle serait erronée en droit?

HISTORIQUE DES PROCÉDURES

Le 22 mars 2002 Cour municipale (Le juge Vachon)	Intimé acquitté d'avoir conduit avec les facultés affaiblies et avec un taux d'alcool dépassant la limite permise
Le 6 mars 2003 Cour supérieure du Québec (Le juge Desjardins)	Appel de la demanderesse accueilli seulement quant au chef d'accusation de conduite avec les facultés affaiblies; déclaration de culpabilité prononcée quant à ce chef
Le 26 avril 2004 Cour d'appel du Québec (Les juges Thibault, Rochette et Dalphond)	Appel de l'intimé accueilli; jugement de la Cour supérieure infirmé; jugement de la Cour municipale rétabli
Le 23 juin 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

2849-7378 Québec Inc.

c. (30434)

Le Groupe Commerce, compagnie d'assurance (Qc)

NATURE DE LA CAUSE

Droit commercial – Assurance – Obligation de divulgation imposée à l'assuré – Obligation de renseignement imposée à l'assureur – Assurance contractée par l'administrateur et actionnaire unique d'une société pour le compte de cette dernière – Société vendue à un tiers – Quelle est l'obligation de l'acheteur des actions d'une société face à la couverture d'assurance? – La modification d'une police d'assurance entraîne-t-elle novation? – La Cour d'appel a-t-elle erré en rejetant l'appel de l'intimée?

HISTORIQUE DES PROCÉDURES

Le 29 janvier 2002 Cour supérieure du Québec (Le juge Rolland)	Action de la demanderesse rejetée; offre de l'intimée de remboursement des primes d'assurances déclarée bonne et valable; contrat d'assurance annulé
Le 20 mai 2004 Cour d'appel du Québec (Les juges Rochon, Hilton et Lemelin [<i>ad hoc</i>])	Appel rejeté
Le 19 juillet 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Garan, Lucow, Miller, P.C. and Thomas W. Emery

v. (30336)

M.J. Jones Inc., Melvin J. Jones, Kingsway General Insurance Company, Donald Fish, D.E. Fish & Associates Ltd. (Ont.)

NATURE OF THE CASE

Courts - Jurisdiction - Foreign litigation lawyers representing Ontario clients in foreign litigation before foreign courts - Ontario Court of Appeal found that it had jurisdiction over an action relating to the conduct of the foreign litigation lawyers - Whether Canadian courts should assume jurisdiction over foreign lawyers on a basis that would force them to recognize the ability of foreign courts to usurp their important supervisory function over the conduct of Canadian lawyers in litigation before them - Whether Canadian courts should assume jurisdiction on a basis that leaves Canadian barristers exposed to foreign judgments which may not be based on consideration of the standards and codes of conduct that govern their practice before Canadian courts - Whether Canadian courts should assume jurisdiction on a basis that, as recognized in the courts below, offends the jurisdictional rules applied elsewhere in the civilized world, including the United States.

PROCEDURAL HISTORY

April 28, 2003
Ontario Superior Court of Justice
(Speigel J.)

Applicants' motion for an order dismissing or staying the action and crossclaims, dismissed

March 17, 2004
Court of Appeal for Ontario
(Laskin, Armstrong and Blair JJ.A)

Appeal dismissed

May 14, 2004
Supreme Court of Canada

Application for leave to appeal filed

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

OCTOBER 14, 2004 / LE 14 OCTOBRE 2004

30235 **Trojan Technologies Inc. v. Suntec Environmental Inc.** (FC) (Civil) (By Leave)

Coram: Major, Binnie and Fish 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-321-03, dated April 5, 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-321-03, daté du 5 avril 2004, est rejetée avec dépens.

NATURE OF THE CASE

Procedural law – Summary judgment – Property law – Patents – Summary judgment given in patents claim where experts evidence in conflict – Motions judge finding no serious issues of credibility arising but preferring evidence of one expert – Court of Appeal setting aside summary judgment, concluding motions judge repeatedly called upon to make determinations based upon assessment of credibility of expert witnesses such that serious issues of credibility did arise and matter should have been sent on to trial – Whether need to clarify contradictory decisions from Federal Court concerning the availability of summary judgment under Rule 216 of *Federal Court Rules, 1998*, particularly where only contest between expert witnesses.

PROCEDURAL HISTORY

July 3, 2003
Federal Court of Canada, Trial Division
(Gibson J.)

Applicant's motion for summary judgment granted;
Applicant's patent claims valid and subsisting

April 5, 2004
Federal Court of Appeal
(Rothstein, Sexton and Pelletier JJ.A.)

Appeal allowed; motions judge's order set aside

June 18, 2004
Supreme Court of Canada

Application for leave to appeal and motion to extend time
filed

30301 **Great Pacific Management Co. Ltd. v. Guy J. Collette, Sector Financial Services Ltd. and Sector Securities Inc., Multimetro Mortgage Corporation and Ken Megale** (B.C.) (Civil) (By Leave)

Coram: Major, Binnie and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA028283, dated March 1, 2004, is dismissed with costs to respondent Guy J. Collette.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA028283, daté du 1 mars 2004, est rejetée avec dépens en faveur de l'intimé Guy J. Collette.

NATURE OF THE CASE

Procedural law - Civil Procedure - Actions - Class actions - Class proceedings - Certification - Common issues - Preferable procedure - *Class Proceedings Act*, R.S.B.C. 1996, c. 50 s. 4 - Commercial law - Contracts - Agency - mandate

- Torts - Negligence - Appellate court reversing lower court dismissal of application for certification of class action - Can there be any obligation at law arising *per se* from the relationship of investment broker and client other than the obligation of any agent to carry out the instructions of its principal - Does any implied warranty of fitness or quality arise from the sale of an investment product by an investment broker, either under the law of contract or under the law of tort.

PROCEDURAL HISTORY

March 5, 2003 Supreme Court of British Columbia (Macaulay J.)	Respondent Collette's second application to certify the action as a class proceeding, dismissed
March 1, 2004 Court of Appeal for British Columbia (Braidwood, Mackenzie, Low JJ.A.)	Appeal allowed; Order that action be certified as class proceeding
April 29, 2004 Supreme Court of Canada	Application for leave to appeal filed

30312 **Keith Maydak v. Canada (Minister of Justice) and Canada (Minister of Citizenship and Immigration)** (B.C.) (Criminal) (By Leave)

Coram: Major, Binnie and Fish JJ.

The application for an extension of time to file and serve the response is granted and the application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA030864, dated February 27, 2004, is dismissed.

La demande de prorogation de délai pour déposer et signifier la réponse est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA030864, daté du 27 février 2004, est rejetée.

NATURE OF THE CASE

Criminal law (Non Charter) – Extradition – Judicial interim release – Applicant seeking judicial interim release, first, pending appeal of committal order and later, pending judicial review of Minister's order to surrender, which applications were both denied by Court of Appeal – Whether, relying on s. 20(a) and s. 20(c) of the *Extradition Act*, a person can apply for judicial interim release at each stage listed in the statute, even if an application was made at an earlier stage – Whether, without relying on s. 20 of the *Extradition Act*, a person may apply for judicial interim release when their application arises from clear changes in circumstances, including inter alia, that the time spent in custody awaiting extradition will soon exceed the statutory maximum for the prospective sentence that could be imposed by the requesting state – Whether, if it does not allow for successive bail applications, section 20 of the *Extradition Act* unreasonably infringes upon s. 7 and s. 9 of the *Canadian Charter of Rights and Freedoms* to the extent it allows a person to be detained for longer than the maximum prospective sentence that the requesting state could lawfully impose?

PROCEDURAL HISTORY

November 19, 2002 Supreme Court of British Columbia (Maczko J.)	Applicant's application for bail pending extradition hearing, dismissed (<i>U.S.A. v. Maydak</i>)
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April 30, 2003 Supreme Court of British Columbia (Garson J.)	Motion for extradition granted (<i>U.S.A. v. Maydak</i>); Applicant under order of committal awaiting surrender, in accordance with s. 29(1)(b) of the <i>Extradition Act</i>
July 31, 2003 Court of Appeal for British Columbia (Hall J.A.)	Applicant's application for judicial interim release pending appeal of committal order, dismissed
November 18, 2003 Minister of Justice	Surrender of Applicant to U.S.A., ordered
February 27, 2004 Court of Appeal for British Columbia (Huddart J.A.)	Applicant's application for judicial interim release pending judicial review of Minister's surrender order, dismissed; Respondents' application for an order declining to hear Applicant's judicial review of refugee claim rejection and constitutional challenge, adjourned to panel hearing appeal
April 23, 2004 Supreme Court of Canada	Application for leave to appeal decision of Huddart J.A., filed
May 11, 2004 Court of Appeal for British Columbia	Applicant's appeal from committal order and application for judicial review of Minister's surrender order, heard; decision on reserve

30316 **Kenneth Hugo Wenzel, Kenneth H. Wenzel Oilfield Consulting Inc. and KW Downhole Tools Inc. v. Dreco Energy Services Ltd. and Vector Oil Tool Ltd.** (Alta.) (Civil) (By Leave)

Coram: Major, Binnie and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Edmonton), Number 0303-0084-AC, 2004 ABCA 95, dated February 26, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 0303-0084-AC, 2004 ABCA 95, daté du 26 février 2004, est rejetée avec dépens.

NATURE OF THE CASE

Commercial Law - Contracts - Remedies - Injunctions - Interpretation of contract provisions - Restrictive covenants - Whether it is the court's function to define the rights and obligations of contracting parties by severing the overly-broad portions of severance provisions contained in restrictive covenants, and enforcing what is left - What is the standard of proof required of the Plaintiff for the first branch of the tripartite test for an interlocutory injunction.

PROCEDURAL HISTORY

February 6, 2003 Court of Queen's Bench of Alberta (Hembroff J.)	Respondents' application for an interlocutory injunction, dismissed
--	--

February 26, 2004
Court of Appeal of Alberta
(Côté, Russell and Fruman JJ.A.)

Appeal allowed; order dismissing interlocutory injunction
application set aside and interlocutory injunction entered

April 26, 2004
Supreme Court of Canada

Application for leave to appeal filed

30331 **Sandra Buschau, Sharon M. Parent and Albert Poy suing on their behalf and in a Representative capacity on behalf of all persons entitled to be beneficiaries of the Premier Communications Limited Pension Plan v. Rogers Communication Incorporated (formerly known as Rogers Cablesystems Incorporated), Rogers Cable T.V. Ltd. and National Trust Company (B.C.) (Civil)**
(By Leave)

Coram: Major, Binnie and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Numbers CA030970 and CA031312, dated March 12, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéros CA030970 et CA031312, daté du 12 mars 2004, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Remedies - Commercial Law - Interest - Contracts - Procedural Law - Judgments and orders - Whether the Court of Appeal erred on an important issue of law by overturning the two lower court judges and deciding that an agreement made between counsel many years earlier could be opened up and changed by the court.

PROCEDURAL HISTORY

September 25, 1998
Supreme Court of British Columbia
(Lowry J.)

Respondents ordered to pay prejudgment interest at the rate that would have been earned had the amount taken remained in the fund.

June 17, 2003
Supreme Court of British Columbia
(Lowry J.)

Respondents' application to amend an order, dismissed

October 7, 2003
Supreme Court of British Columbia
(Groberman J.)

Respondents' application to amend an order, dismissed

March 12, 2004
Court of Appeal for British Columbia
(Ryan, Newbury and Oppal JJ.A.)

Appeals allowed

May 10, 2004
Supreme Court of Canada

Application for leave to appeal filed

30343 **Joseph Patrick Authorson, deceased, by his Litigation Administrator, Peter Mountney and by his Litigation Guardian, Lenore Majoros v. Attorney General of Canada (Ont.) (Civil) (By Leave)**

Coram: Major, Binnie and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C39953, dated March 25, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C39953, daté du 25 mars 2004, est rejetée avec dépens.

NATURE OF THE CASE

Statutes – Interpretation – Property law – Pensions – Estates – Department of Veterans Affairs (DVA) administering accumulated pension and treatment allowances on behalf of disabled veterans deemed incapable of managing own affairs – Court of Appeal finding accumulated but unspent pension and treatment allowances in veterans' accounts not forming part of veterans' estates upon death, pursuant to unambiguous and *intra vires* legislation – Whether s. 31 *Pension Act* unambiguously authorizes Crown to keep, at their deaths, unpaid balance of veterans' accumulated administered pensions – Whether s. 55 *Veteran's Treatment Regulations* is *ultra vires* its enabling statute, *Department of Veterans Affairs Act* – *Pension Act* R.S.C. 1985 c. P-6, s. 31, as amended – *Department of Veterans Affairs Act*, R.S.C. 1985, c. V-1, s. 5(1)(d) – *Veteran's Treatment Regulations*, C.R.C. 1978, c. 1585, s. 55.

PROCEDURAL HISTORY

March 24, 2003
Ontario Superior Court of Justice
(Brockenshire J.)

Applicant's motion for summary judgment regarding accumulated pensions, dismissed; Applicant's claim regarding accumulated treatment allowances, allowed in part; s. 55 *Veterans Treatment Regulations* declared *ultra vires* as of 1986

March 25, 2004
Court of Appeal for Ontario
(Abella, Blair and Benotto [*ad hoc*] JJ.A.)

Applicant's appeal dismissed; Respondent's cross-appeal, allowed

May 21, 2004
Supreme Court of Canada

Application for leave to appeal filed

30366 **John Susin v. Howard Swartz (Ont.) (Civil) (By Leave)**

Coram: Major, Binnie and Fish 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 C37616, dated April 7, 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 l'Ontario, numéro C37616, daté du 7 avril 2004, est rejetée avec dépens.

NATURE OF THE CASE

Torts - Negligence - Damages - Mechanics' Liens - Estoppel - Whether the Court of Appeal or the trial judge erred in overlooking or excusing the Respondent's submissions as to the validity of the lien claims - Whether the Court of Appeal or the trial judge erred in overlooking or excusing the fact that estoppel by conduct or estoppel by convention had been established - Whether the Court of Appeal or the trial judge erred in overlooking or excusing the fact that there was an abuse of power by the Respondent solicitor by arguing that any of the liens were valid, and adjudged accordingly, in the judgment negotiated by the Respondent were invalid - Whether the Court of Appeal or the trial judge erred in overlooking or excusing the fact that the improper withdrawal of funds from the special account by the bank led to default on the project and the filing of liens - Whether the Court of Appeal or the trial judge erred in overlooking or excusing the fact that the plaintiffs had met the test required in law to establish damages after negligence was proven - Whether the Court of Appeal or the trial judge erred in making no order to grant compensation for unauthorized use of retainer money - Whether the Court of Appeal or the trial judge erred in overlooking or excusing the fact that the Respondent solicitor was a privy of QDL or the plaintiffs in the consent judgment negotiated by him on February 16, 1982?

PROCEDURAL HISTORY

December 21, 2001 Ontario Superior Court of Justice (Seppi J.)	Applicants' action for negligence in the performance of professional services, dismissed
May 23, 2003 Court of Appeal for Ontario (Moldaver, Goudge and Cronk JJ.A.)	Appeal dismissed
April 7, 2004 Court of Appeal for Ontario (Moldaver, Goudge and Cronk JJ.A.)	Applicants' motion for order setting aside decision, dismissed
June 3, 2004 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

30368 **Jason Rochon v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram: **Major, Binnie and Fish 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 C28510, dated April 8, 2003, 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 C28510, daté du 8 avril 2003, est rejetée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Evidence - Trial - Defences - Jury Charge - Cross-examination - Domestic abuse - Party liability - Self-defence - Whether jury charge erred in suggesting that evidence concerning history of domestic abuse was essentially irrelevant - Whether jury charge erred in failing to adequately relate evidence of domestic abuse to the theory of the defence - Whether jury charge erred regarding defence of self-defence - Whether cross-examination by Crown counsel was abusive and compromised the fairness of the trial - Whether jury charge erred with respect to party liability

on the basis of encouragement - Whether jury charge erred in failing to properly limit the use of statements attributed to an accused to implicate a co-accused.

PROCEDURAL HISTORY

December 22, 1995 Ontario Superior Court of Justice (Chadwick J.)	Applicants convicted of first degree murder
April 8, 2003 Court of Appeal for Ontario (Gillese, MacPherson and Simmons JJ.A.)	Appeal dismissed
May 10, 2004 Supreme Court of Canada	Applications for leave to appeal, extensions of time and to file a joint Memorandum filed

30369 **Bonnie McAuley v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram: Major, Binnie and Fish 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 C26218, dated April 8, 2003, 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 C26218, daté du 8 avril 2003, est rejetée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Evidence - Trial - Defences - Jury Charge - Cross-examination - Domestic abuse - Party liability - Self-defence - Whether jury charge erred in suggesting that evidence concerning history of domestic abuse was essentially irrelevant - Whether jury charge erred in failing to adequately relate evidence of domestic abuse to the theory of the defence - Whether jury charge erred regarding defence of self-defence - Whether cross-examination by Crown counsel was abusive and compromised the fairness of the trial - Whether jury charge erred with respect to party liability on the basis of encouragement - Whether jury charge erred in failing to properly limit the use of statements attributed to an accused to implicate a co-accused.

PROCEDURAL HISTORY

December 22, 1995 Ontario Superior Court of Justice (Chadwick J.)	Applicants convicted of first degree murder
April 8, 2003 Court of Appeal for Ontario (Gillese, MacPherson and Simmons JJ.A.)	Appeal dismissed
May 10, 2004 Supreme Court of Canada	Applications for leave to appeal, extensions of time and to file a joint Memorandum filed

30311 **Banque nationale du Canada c. Procureure générale du Canada ET ENTRE Caisse populaire d'Amos c. Procureure générale du Canada ET ENTRE Caisse populaire Desjardins de Lebel-sur-Quévillon c. Procureure générale du Canada ET ENTRE Banque nationale du Canada c. Procureure générale du Canada** (CF) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Charron

La demande d'autorisation d'appel des arrêts de la Cour d'appel fédérale, numéros A-626-02, A-627-02, A-628-02 et A-629-02, datés du 5 mars 2004, est rejetée avec dépens.

The application for leave to appeal from the judgments of the Federal Court of Appeal, Numbers A-626-02, A-627-02, A-628-02 and A-629-02, dated March 5, 2004, is dismissed with costs.

NATURE DE LA CAUSE

Droit fiscal - Perception de la fiducie présumée - Les dispositions du par. 227(4.1) de la *Loi de l'impôt sur le revenu*, L.R.C. 1985, ch. 1 (5^e suppl.) et du par. 86(2.1) de la *Loi sur l'assurance-emploi*, L.C. 1996, ch. 23, ont-elles une portée suffisamment claire et étendue pour permettre à Sa Majesté de rendre les demanderesse personnellement responsables du paiement de dettes fiscales dues par leurs emprunteurs (les débiteurs fiscaux) et ce, du seul fait qu'elles soient, aux termes de l'exercice de leurs droits hypothécaires, devenues propriétaires de biens de ces derniers ou qu'elles aient perçu le produit découlant de leur vente?

HISTORIQUE DES PROCÉDURES

Le 11 octobre 2002
Cour fédérale du Canada
(Le juge Martineau)

Actions de l'intimée visant le recouvrement de montants déduits à la source et non remis contrairement aux par. 227(4) et (4.1) de la *Loi de l'impôt sur le revenu* et 86(2.1) de la *Loi sur l'assurance-emploi* rejetées

Le 5 mars 2004
Cour d'appel fédérale
(Les juges Décary, Noël et Nadon)

Appels accueillis

Le 3 mai 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

30420 **Jean-Marc Béliveau c. Barreau de Montréal** (Qc) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande de prorogation de délai et la requête pour accepter le dossier tel quel sont accordées. La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-10-002736-047, daté du 29 avril 2004, est rejetée sans dépens.

The application for an extension of time and the motion to accept the file as is are granted. The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-10-002736-047, dated April 29, 2004, is dismissed without costs.

NATURE DE LA CAUSE

Droit du travail – Droit des professions – Exercice illégal de la profession d’avocat – Interprétation d’un contrat d’assurance par un expert en relations de travail qui n’est pas membre du Barreau du Québec – Les instances inférieures ont-elles erré en trouvant le demandeur coupable d’avoir illégalement exercé la profession d’avocat? – La Cour d’appel a-t-elle erré en refusant la permission d’appel?

HISTORIQUE DES PROCÉDURES

Le 25 juin 2003 Cour du Québec (Le juge Bonin)	Demandeur reconnu coupable d’avoir exercé illégalement la profession d’avocat
Le 19 janvier 2004 Cour supérieure du Québec (Le juge Downs)	Appel rejeté
Le 29 avril 2004 Cour d’appel du Québec (Le juge Hilton)	Requête en permission d’appel rejetée
Le 28 juin 2004 Cour suprême du Canada	Demande d’autorisation d’appel déposée
Le 14 juillet 2004 Cour suprême du Canada	Requête en prorogation de délai pour déposer la demande d’autorisation d’appel déposée; Requête pour accepter le dossier tel quel déposée

30440 **Raymond Adam Dagenais v. Her Majesty the Queen** (Alta.) (Criminal) (By Leave)

Coram: **Bastarache, LeBel and Deschamps JJ.**

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 01-00211, dated December 23, 2003, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 01-00211, daté du 23 décembre 2003, est rejetée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Jurisdiction - Sentencing - Dangerous Offender - Whether the Court of Appeal erred in determining that the sentencing judge’s determination respecting rehabilitation and public safety constituted an error of law - Whether the Court of Appeal erred in concluding that if public safety cannot be addressed with a determinate sentence or a long term offender designation, then the only alternative is to designate the offender a dangerous offender - Whether a judge hearing a dangerous offender application is entitled to decline to designate an offender a dangerous offender in the absence of admissible expert opinion deemed worthy of weight respecting treatment prospects and future dangerousness.

PROCEDURAL HISTORY

May 4, 2001

Court of Queen's Bench of Alberta
(Park J.)

Applicant sentenced to life imprisonment for two counts of threatening to cause death or bodily harm contrary to section 264.1(1)(a) of the *Criminal Code* and attempted murder contrary to section 239(b) of the *Criminal Code*

December 23, 2003

Court of Appeal of Alberta (Calgary)
(Fruman, Wittmann, and LoVecchio JJA)

Appeal allowed; sentence set aside; Applicant designated as a dangerous offender; Applicant sentenced to detention in a penitentiary for an indeterminate period

July 27, 2004

Supreme Court of Canada

Application for extension of time and leave to appeal filed

5.10.2004

Before / Devant: ABELLA J.

Motion for leave to intervene**Requête en autorisation d'intervention**

BY / PAR: Canadian Civil Liberties
Association

IN / DANS: Lafferty, Harwood & Partners Ltd.,
et al.

v. (30103)

Jacques Parizeau, et al. (Que.)

GRANTED / ACCORDÉE

UPON APPLICATION by the Canadian Civil Liberties Association for leave to intervene in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

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

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

The intervener shall not be entitled to raise new issues or adduce further evidence or otherwise to supplement the record of the parties.

Pursuant to Rule 59(1)(a) the intervener shall pay to the appellants and respondents any additional disbursements occasioned to the appellants and respondents by the intervention.

5.10.2004

Before / Devant: ABELLA J.

Motion for leave to intervene**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.)

GRANTED / ACCORDÉE

UPON APPLICATION by the Attorney General of Ontario for leave to intervene on the first two grounds raised by the appellant in order to provide this Court with written submissions and brief oral argument on the meaning of “consent fight” and on the scope and application of the defence of self-defence in cases involving a “consent fight” in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion for leave to intervene on the first two grounds raised by the appellant, is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

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

The intervener shall not be entitled to raise new issues or adduce further evidence or otherwise to supplement the record of the parties.

Pursuant to Rule 59(1)(a) the intervener shall pay to the appellant and respondent any additional disbursements occasioned to the appellant and respondent by the intervention.

6.10.2004

Before / Devant: LEBEL J.

Further order on motions for leave to intervene

Autre ordonnance sur des requêtes en autorisation d’intervention

BY / PAR: Canadian Association of Provincial Court Judges
Ontario Conference of Judges

IN / DANS: 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.)

UPON APPLICATIONS by the Canadian Association of Provincial Court Judges and the Ontario Conference of Judges, for leave to intervene in the above appeal and pursuant to the order of June 28, 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.

6.10.2004

Before / Devant: DESCHAMPS J.

Further order on motions for leave to intervene

Autre ordonnance sur des requêtes en autorisation d'intervention

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

IN / DANS: 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.)

UPON APPLICATIONS by the interveners the Attorney General of Alberta and the Attorney General of Ontario for leave to intervene in the above appeal and pursuant to the order of August 31, 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.

6.10.2004

Before / Devant: ABELLA J.

Motion to file a reply factum on appeal

Requête pour le dépôt d'un mémoire en réplique lors de l'appel

Kirkbi AG and Lego Canada Inc.

v. (29956)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the appellants for directions confirming that the appellants are entitled to file a reply factum pursuant to Rule 29(4), or in the alternative, permitting the appellants to file a 60-page factum;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The appellants are permitted to file a 20-page reply factum pursuant to Rule 29(4).

7.10.2004

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de sources de l'appelante

Grecon Dimter Inc.

v. (30217)

J. R. Normand Inc., et al. (Que.)

GRANTED / ACCORDÉE

Time to file the amended factum extended to September, 27, 2004.

Time to serve the amended factum extended to September 28, 2004.

Time to serve the book of authorities extended to September 28, 2004.

7.10.2004

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve the respondent's response

Requête en prorogation du délai imparti pour signifier la réponse de l'intimée

Clifford Barry Howdle

v. (30439)

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

GRANTED / ACCORDÉE Time extended to September 2, 2004.

7.10.2004

Before / Devant: LEBEL J.

Motion to extend the time in which to serve and file the factum and book of authorities of the intervener Advocacy Centre for the Elderly and to present oral argument at the hearing of the appeal

Requête en prorogation du délai imparti pour signifier et déposer les mémoire et recueil de sources et de doctrine de l'intervenant Advocacy Centre for the Elderly et pour présenter une plaidoirie lors de l'audition de l'appel

J.J.

v. (29717)

Nova Scotia (Minister of Health) (N.S.)

GRANTED / ACCORDÉE

UPON APPLICATION by the intervener, Advocacy Centre for the Elderly, for an order extending the time to serve and file its factum and book of authorities to August 17, 2004, and for an order permitting the intervener to present oral argument not exceeding 15 minutes at the hearing of this appeal.

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion is granted.

8.10.2004

Before / Devant: MAJOR J.

Motion to extend the time in which to serve and file the respondent's factum and to present oral argument at the hearing of the appeal

Requête en prorogation du délai imparti pour signifier et déposer le mémoire de l'intimé et pour présenter une plaidoirie lors de l'audition de l'appel

Her Majesty the Queen

v. (30098)

Randolph Blake (Ont.) (Crim.)

GRANTED / ACCORDÉE Motion to present oral argument granted and time extended to September 30, 2004.

8.10.2004

Before / Devant: MAJOR J.

Motion for leave to intervene in the application for leave to appeal

Requête en autorisation d'intervention dans la demande d'autorisation d'appel

BY / PAR: Mothers Against Drunk Driving
Canada

IN / DANS: Zoe Childs, et al.

v. (30472)

Desmond Desormeaux, et al. (Ont.)

DISMISSED / REJETÉE

UPON APPLICATION by Mothers Against Drunk Driving Canada for leave to intervene in the above mentioned application for leave to appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

Interventions in support of a leave application are exceptional and should not be encouraged. There are no special circumstances here.

The motion is dismissed without prejudice to the applicant's right to apply for leave to intervene in the appeal, in the usual manner, if the Court grants the application for leave to appeal.

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

**AVIS D'APPEL DÉPOSÉS DEPUIS LA
DERNIÈRE PARUTION**

5.10.2004

David George Stender

v. (30551)

Her Majesty the Queen (Ont.)

(As of Right)

7.10.2004

Balvir Singh Multani, et al.

v. (30322)

**Commission scolaire Marguerite-Bourgeoys, et
autre (Que.)**

7.10.2004

Shane Tyrone Ferras

v. (30211)

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

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

12.10.2004

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

Christopher Orbanski

v. (29793)

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

Sheldon E. Pinx, Q.C. for the appellant in Orbanski.

Gary T. Trotter and Don Stuart for the intervener.
Criminal Lawyer's Association (Ontario).

Eugene B. Szach and Cynthia Devine for the
respondent in Orbanski.

Robert W. Hubbard and Valerie Hartney for the
intervener Attorney General of Canada.

Philip Perlmutter and Joan Barrett for the intervener
Attorney General of Ontario.

Roger F. Cutler for the intervener Attorney General of
British Columbia.

Jim Bowron for the intervener Attorney General of
Alberta.

Thomson Irvine and Alan Jacobson for the intervener
Attorney General for Saskatchewan.

Reply by Sheldon E. Pinx, Q.C.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Criminal Law - Roadside sobriety tests performed without reading Appellant a standard Charter warning and without informing him of the availability of duty counsel and legal aid - Whether the Appellant's rights under s. 10(b) of the Charter were infringed - If so, whether justified under s. 1 of the Charter.

Nature de la cause:

Charte canadienne des droits et libertés - Droit criminel - Tests de sobriété au bord de la route effectués sans que l'on fasse à l'appelant la mise en garde conforme à la Charte et sans qu'on l'informe de la possibilité d'obtenir les services d'un avocat de service et de l'aide juridique. - Les droits garantis à l'appelant par l'al. 10b) de la Charte ont-ils été violés? - Le cas échéant, la violation était-elle justifiée aux termes de l'article premier de la Charte?

12.10.2004

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

Her Majesty the Queen

v. (29920)

David Jeff Elias (Man.)(Criminal)(By Leave)

Eugene B. Szach and Cynthia Devine for the appellant in Elias.

Robert W. Hubbard and Valerie Hartney for the intervener Attorney General Canada.

Philip Perlmutter and Joan Barrett for the intervener Attorney General of Ontario.

Jacques Blais et Gilles Laporte pour l'intervenant Procureur général du Québec.

Roger F. Cutler for the intervener Attorney General of British Columbia.

Jim Bowron for the intervener Attorney General of Alberta.

Thomson Irvine and Alan Jacobson for the intervener Attorney General of Saskatchewan.

Gary T. Trotter and Don Stuart for the intervener Criminal Lawyer's Association (Ontario).

Jason Miller for the Respondent in Elias.

Reply by Eugene B. Szach.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter - Criminal - Criminal Law - Driver of motor vehicle asked by officer if he had been drinking - Whether infringement of s. 10(b) of the Charter - If so, whether reasonable limit prescribed by law - Whether breathalyzer evidence should be excluded.

Nature de la cause:

Charte canadienne - criminel - Droit criminel - Un policier demande au conducteur d'un véhicule moteur de lui dire s'il avait bu - L'alinéa 10b) de la Charte a-t-il été violé? - Si oui, s'agit-il d'une limite raisonnable prévue par la loi? - La preuve obtenue au moyen de l'alcootest doit-elle être exclue?

13.10.2004

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

House of Commons, et al.

v. (29564)

Satnam Vaid, et al.(FC)(Civil)(By Leave)

Neil Finkelstein, Jacques Emond and Lynne J. Poirier for the appellant.

Catherine Beagan Flood for the intervener The Speaker of the Legislative Assembly of Ontario.

Philippe Dufresne and R. Daniel Pagowski for the respondent Canadian Human Rights Commission.

Andrew Raven and David Yazbeck for the respondent Satnam Vaid.

Anne M. Turley for the intervener Attorney General of Canada.

Peter Engelmann and Raija Pulkkinen for the intervener Canadian Association of Professional Employees and communication, et al.

Dale Gibson for the intervener The Honorable Serge Joyal and The Honorable Mobina S.B. Jaffer.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Administrative law - Jurisdiction - Parliamentary privilege - Whether the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, is constitutionally inapplicable as a consequence of parliamentary privilege to the House of Commons and its Members with respect to parliamentary employment matters - Whether the power to appoint and manage staff is a category of parliamentary privilege - If the power to appoint and manage staff is a category of parliamentary privilege, whether claims of discrimination reduce the scope of that category permitting review of the Appellants' actions - Whether Parliament, by enacting the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c. 33 (2nd Supp.), waived its privilege over employment matters relating to the categories of employees covered by that Act.

Nature de la cause:

Droit administratif - Compétence - Privilège parlementaire - La *Loi canadienne sur les droits de la personne*, L.R.C. 1985, ch. H-6 (la LCDP), est-elle, par l'effet du privilège parlementaire, constitutionnellement inapplicable à la Chambre des communes et à ses membres en ce qui concerne les questions d'emploi au Parlement? - Le pouvoir de nommer et de diriger les employés est-il un aspect du privilège parlementaire? - Le cas échéant, est-ce que les plaintes pour discrimination restreignent la portée de cet aspect et permettent l'examen des décisions des appelants? - En adoptant la *Loi sur les relations de travail au Parlement*, L.R.C. 1985 ch. 33 (2^e suppl.) (la LRTP), le Parlement a-t-il renoncé à son privilège sur les questions d'emploi relativement aux catégories d'employés auxquelles cette Loi s'applique?

14.10.2004

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

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 ?

14.10.2004

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

Ville de Montréal

c. (29413)

**2952-1366 Québec Inc., et al (Qc) (Civile)
(Autorisation)**

Serge Barrière pour l'appelant.

Shaun Nakatsuru for the intervener Attorney General of Ontario.

No one appearing for the Respondent.

Daniel Paquin Amicus curiae.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Canadian Charter of Rights and Freedoms - Municipal law - Freedom of expression - Municipality - By-law - Nuisance - Noise - Section 2(b) of the *Canadian Charter of Rights and Freedoms* - Articles. 9(1) and 11 of the By-law concerning noise of the Ville de Montréal, R.B.C.M., c. B-3 (*By-law*) - Whether articles 9(1) and 11 of the *By-law* are valid on the ground that the noise they define does not constitute a nuisance. - Whether articles 9(1) and 11 of the *By-law* infringe the Respondent's freedom of expression and, if so, whether they are saved under section 1 of the Charter. - Whether the Respondent's activities are protected by section 2 of the Charter. - Whether loudspeakers used to amplify noises produced by a business is a form of expression. - Whether this form of expression falls within the freedom of expression guaranteed by the *Charter of Rights and Freedoms*. If so, whether the purpose of the legislation is to restrict this form of expression. Whether the purpose of the challenged provisions is to restrict freedom of expression. - If the purpose of the challenged provisions is not to restrict freedom of expression, whether their effect is to restrict it. If the By-law effectively restricts freedom of expression, whether the challenged provisions are saved under section 1 of the *Charter*.

Nature de la cause:

Charte canadienne des droits et libertés - Droit municipal - Liberté d'expression - Municipalité - Règlement - Nuisance - Bruit - Al. 2b) de la *Charte* - Art. 9(1) et 11 du *Règlement sur le bruit* de la Ville de Montréal, R.R.V.M., c. B (*Règlement*) - Les art. 9(1) et 11 du *Règlement* sont-ils invalides parce que le bruit qu'ils définissent ne constituent pas une nuisance ? - Les articles 9(1) et 11 du *Règlement* portent-ils atteinte à la liberté d'expression et, le cas échéant, cette atteinte peut-elle se justifier selon l'art. 1 de la *Charte* ? - L'activité de l'intimée bénéficie-t-elle de la protection constitutionnelle de l'art. 2 de la *Charte* ? - L'utilisation du haut-parleur pour amplifier le bruit d'un commerce est-elle une forme d'expression ? - La garantie de la liberté d'expression englobe-t-elle cette forme d'expression ? - Dans le cas où l'activité entre dans la sphère protégée, la loi a-t-elle pour objet de restreindre la liberté d'expression ? - L'objet des dispositions attaquées est-il de restreindre la liberté d'expression ? - Même si les dispositions attaquées n'ont pas pour objet de porter atteinte à la liberté d'expression, ont-elles cet effet ? - Si le *Règlement* a pour effet de restreindre la liberté d'expression, les dispositions attaquées sont-elles justifiées selon l'art. 1 de la *Charte* ?

OCTOBER 5, 2004 / LE 5 OCTOBRE 2004

29712 William Thomas Vaughan - v. - Her Majesty the Queen and Attorney General of Alberta and Public Service Alliance of Canada (FC) (Civil)

Coram: McLachlin C.J. and Iacobucci*, Major, Bastarache, Binnie, Deschamps and Fish JJ.

A re-hearing is ordered.

Une nouvelle audition est ordonnée.

* Iacobucci J. took no part in the judgment.

Le juge Iacobucci n'a pas pris part au jugement.

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 à 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
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24 31	25	26	27	28	29	30

NOVEMBER - NOVEMBRE						
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- 2005 -

JANUARY - JANVIER						
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JUNE - JUIN						
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Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

18
9
2

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