

SUPREME COURT
OF CANADA



COUR SUPRÊME
DU CANADA

BULLETIN OF
PROCEEDINGS

BULLETIN DES
PROCÉDURES

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August 20,
20041256 -
1273le 20 août
2004

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

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

Slawomir Drozdowski

Slawomir Drozdowski

v. (30454)

FILING DATE: 4.8.2004

**Workers Compensation Board of Nova Scotia
(N.S.)**

Paula Arab

Workers' Compensation Board of Nova
Scotia

FILING DATE: 29.7.2004

Sun Life Assurance Company of Canada

Avon M. Mersey

Fasken Martineau DuMoulin

v. (30464)

Connie Fidler (B.C.)

Faith E. Hayman

Murphy, Battista

FILING DATE: 16.8.2004

**Local Union No. 1005 United Steel Workers of
America, et al.**

David Jacobs

Watson Jacobs McCreary

v. (30447)

Stelco Inc., et al. (Ont.)

Michael E. Barrack

McCarthy Tétrault LLP

FILING DATE: 3.8.2004

CIT Financial Ltd.

Warren J. A. Mitchell, Q.C.

Thorsteinssons

v. (30445)

Her Majesty the Queen (F.C.)

Alexandra K. Brown

A.G. of Canada

Kodiak Construction Ltd.
Kenneth B. Haluschak
Bryan & Company

v. (30446)

M. David Lepofsky
A.G. of Ontario

v. (30456)

Sharon Mugford, et al. (Alta.)
Michael J. Hussey
Kay Shipley

Yagianath Maharaj (Ont.)
Yagianath Maharaj

FILING DATE: 11.8.2004

FILING DATE: 4.8.2004

Lynn Sherwood
Jean Carol Boucher
Boucher & Associés

Chief Allan Apsassin, on his own behalf and on behalf of the members of the Saulteau First Nations

Robert J.M. Janes
Cook Roberts

c. (30451)

v. (30463)

Jean St-Jacques (Qc)
Michel Isabelle
Dufour, Isabelle Leduc et Ass.

The British Columbia Oil and Gas Commission et al. (B.C.)

Ted Gouge, Q.C.
A.G. of British Columbia

DATE DE PRODUCTION: 5.8.2004

FILING DATE: 13.8.2004

Her Majesty the Queen

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

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

AUGUST 16, 2004 / LE 16 AOÛT 2004

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

Viet Hoan Nguyen

v. (30373)

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

NATURE OF THE CASE

Criminal Law (Non Charter) - Evidence - Whether verdict unreasonable and unsupported by the evidence - Whether trial judge misapprehended the evidence.

PROCEDURAL HISTORY

May 23, 2002
Court of Queen's Bench of Alberta
(Smith J.)

Applicant convicted of manslaughter and possession of a weapon contrary to sections 236 and 88(1) of the *Criminal Code*

March 11, 2004
Court of Appeal of Alberta
(Conrad, McFadyen and Berger JJ.A.)

Appeal against conviction dismissed

May 28, 2004
Supreme Court of Canada

Applications for extension of time to apply for leave to
appeal and for leave to appeal filed

Najeeb Majed Saad

v. (30340)

United States of America (Ont.) (Crim.)

NATURE OF THE CASE

Canadian Charter - Criminal Law - Criminal Law (Non Charter) - Extradition - Controlled Drugs and Substances - Trafficking - Constitutionality of offence of trafficking by giving - Whether an Authority to Proceed to seek an order for committal provided sufficient notice to person sought for extradition and complied with the rule of specialty - Whether trafficking by holding out a controlled substance is established by evidence that the recipient or purchaser believed the substance was a controlled substance - Whether evidence supported committal for extradition on count of trafficking in cocaine by means of distribution and transportation - Whether the offence of trafficking by giving violates s. 7 of the *Charter* and is unconstitutional.

PROCEDURAL HISTORY

May 1, 2003
Ontario Superior Court of Justice
(Chapnik J.)

Applicant's application for declaration ss. 2(1) and 5(1) of *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, in part in breach of *Charter* and of no force and effect dismissed May 1, 2003
Ontario Superior Court of Justice
(Chapnik J.)

Applicant committed into custody to await surrender to respondent on three of six offences and discharged in respect of three other offences

March 26, 2003
Minister of Justice
(The Honourable Martin Cauchon)

Order to surrender applicant to respondent on counts of trafficking in a substance held out to be ecstasy, trafficking in a substance held out to be cocaine, and sexual assault

March 19, 2004
Court of Appeal for Ontario
(Rosenberg, Moldaver and Simmons JJ.A.)

Appeal allowed in part, committal on count of trafficking in a substance held out to be ecstasy set aside and order to surrender applicant set aside; Matter referred back to the Minister

May 18, 2004
Supreme Court of Canada

Application for leave to appeal filed

The Canadian Union of Public Employees, Local 2745

v. (30342)

Her Majesty the Queen in Right of the province of New Brunswick (N.B.)

NATURE OF THE CASE

Administrative Law - Statutes - Judicial review - Schools - Interpretation - *Public Service Labour Relations Act*, R.S.N.B. 1973, c. P-25 - Whether the Labour and Employment Board negated the provision of s. 43.1 of the *Public Service Labour Relations Act* by giving the Respondent the unilateral power to determine the appropriate level of service to be provided during a strike? - Whether the Labour and Employment Board erred in holding that it was appropriate to look at particular duties which would be performed by employees in the event of the continued operation of the enterprise, rather than examining the nature of the services provided by the bargaining unit in the event of a strike? - Whether the Court of Appeal erred in holding that the Labour and Employment Board did not give s. 43.1 of the *Public Service Labour Relations Act* a patently unreasonable interpretation?

PROCEDURAL HISTORY

April 5, 2002
New Brunswick Labour and Employment Board
(McGinley, Chairperson)

Respondent's application pursuant to s. 43.1 of the *Public Service Labour Relations Act*, granted; Applicant's services deemed essential in the interest of the health, safety and security of the public.

May 22, 2003
Court of Queen's Bench of New Brunswick
(Garnett J.)

Application for judicial review granted

March 25, 2004
Court of Appeal of New Brunswick
(Ryan, Larlee and Robertson JJ.A)

Appeal allowed; decision on judicial review set aside

May 19, 2004
Supreme Court of Canada

Application for leave to appeal filed

H.J. Pfaff Motors Inc.

v. (30278)

**Corporate Cars, a limited partnership of Tracmount/Glojack Leasing Ltd.,
1063179 Ontario Ltd., and 676490 Alberta Limited (Ont.)**

NATURE OF THE CASE

Commercial law - Sale of personal property - Fraud - Estoppel - Whether the Court of Appeal erred in its wide interpretation of the concept of preclusion found in s. 22 of the *Sale of Goods Act*, R.S.O. 1990, c. S-1 - Whether the Court of Appeal erred in finding that a document fraudulently obtained from the true owner could be the basis for

estoppel against that person - Whether the Court of Appeal erred when it substituted its finding that the copy of the Certificate of Registration in the name of Corporate Cars was *prima facie* evidence that Reynolds had authority to sell the vehicle.

PROCEDURAL HISTORY

March 21, 2003
Ontario Superior Court of Justice
(Brennan J.)

Respondent's application and counter-application dismissed; Respondent not entitled to the proceeds of sale

February 10, 2004
Court of Appeal for Ontario
(McMurtry C.J.O., Catzman and Abella JJ.A.)

Appeal allowed.

April 8, 2004
Supreme Court of Canada

Application for leave to appeal filed

Epscan Industries Ltd.

v. (30330)

Bartin Pipe & Piling Supply Ltd. (Alta.)

NATURE OF THE CASE

Commercial Law - Sale of goods - Whether the Court of Appeal erred in its statement and application of the legal test for wilful blindness pursuant to s. 26(1) of the *Sale of Goods Act* - What is the proper test for wilful blindness in a civil context or commercial transaction - *Sale of Goods Act*, R.S.A. 2000, c. S-2, s. 26(1).

PROCEDURAL HISTORY

April 4, 2002
Court of Queen's Bench of Alberta
(Moshansky J.)

Applicant's action on the grounds of conversion, granted

February 18, 2004
Court of Appeal of Alberta
(Wittmann, Paperny and MacLeod JJ.A.)

Appeal allowed; Applicant's claim dismissed

May 13, 2004
Supreme Court of Canada

Application for leave to appeal and Motion to extend time filed

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

Dany Bouchard-Asselin

c. (30408)

Sa Majesté la Reine (Qc) (Crim.)

NATURE DE LA CAUSE

Droit criminel - Procès - Procès devant jury - Preuve - Contre-interrogatoire de l'accusé - Plaidoirie - Conduite du substitut du procureur général - Preuve de propension d'un tiers à la violence - La conduite abusive et les remarques illégales du procureur de la Couronne en première instance, tant dans le contre-interrogatoire du demandeur que dans la plaidoirie devant jury, ont-elles gravement porté atteinte au droit du demandeur à un procès juste et équitable? - Les principes fondamentaux du droit au silence et du privilège de non-incrimination ont-ils été compromis en l'espèce? - La juge du procès a-t-elle erré en droit en restreignant l'utilisation que voulait faire la défense d'une preuve de propension d'un tiers à la violence? - La Cour d'appel du Québec a-t-elle erré en rejetant l'appel du demandeur en statuant que, malgré la conduite abusive et les propos illégaux du substitut du procureur général, le droit à un procès juste et équitable avait été sauvegardé en l'espèce par les directives du juge au jury? - Un verdict de culpabilité peut-il se justifier en regard des principes de justice fondamentale lorsque la conduite d'un substitut du procureur général est intentionnellement et malicieusement abusive au point de porter atteinte à l'équité du procès?

HISTORIQUE DES PROCÉDURES

Le 9 mars 2001
Cour supérieure du Québec
(La juge Côté)

Demandeur reconnu coupable de meurtre au 1^{er} degré;
condamné à l'emprisonnement à perpétuité sans
éligibilité à la libération conditionnelle pour 25 ans

Le 10 février 2004
Cour d'appel du Québec
(Les juges Gendreau, Morin et Rayle)

Appel rejeté

Le 23 juin 2004
Cour suprême du Canada

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

Christian Vincent

c. (30400)

Moulage d'aluminium Howmet Ltée et Howmet Corporation (Qc)

NATURE DE LA CAUSE

Procédure – Requête en irrecevabilité – Chose jugée – Les instances inférieures ont-elles erré en accueillant la requête en irrecevabilité et la requête en rejet d'appel déposées par les intimées?

HISTORIQUE DES PROCÉDURES

APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST
ISSUE

DEMANDES SOUMISES À LA COUR
DEPUIS LA DERNIÈRE PARUTION

Le 13 novembre 2003
Cour supérieure du Québec
(Le juge Fournier)

Requête en irrecevabilité des intimées accueillie

Le 26 avril 2004
Cour d'appel du Québec
(Les juges Nuss, Mailhot et Morissette)

Requête en rejet d'appel accueillie et appel rejeté

Le 18 juin 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Penncorp Life Insurance Company

v. (30293)

André Veilleux (Que.)

NATURE OF THE CASE

Procedural law – Evidence – Video surveillance – Right to privacy – Disability insurance – Whether the lower court erred by disallowing the applicant insurer's video surveillance evidence – Whether the lower courts erred in ruling that the applicant was incapacitated during the insurance period.

PROCEDURAL HISTORY

February 6, 2003
Superior Court of Quebec
(Gendreau J.)

Respondent's claim for disability payments allowed

March 30, 2004
Court of Appeal of Quebec
(Otis, Thibault and Rayle JJ.A.)

Appeal dismissed

May 28, 2004
Supreme Court of Canada

Application for leave to appeal filed

Karen Pelissier

c. (30339)

Calian Ltd 3951243 (Qc)

NATURE DE LA CAUSE

Procédure – Autorisation d'exercer un recours collectif – Le juge de première instance a-t-il exercé son pouvoir discrétionnaire de façon raisonnable lorsqu'il a refusé d'autoriser la demanderesse à exercer un recours collectif dans les circonstances?

HISTORIQUE DES PROCÉDURES

Le 6 février 2003 Cour supérieure du Québec (Le juge Landry)	Requête en autorisation d'exercer un recours collectif rejetée
Le 23 mars 2004 Cour d'appel du Québec (Les juges Gendreau, Otis et Rochette)	Appel rejeté
Le 17 mai 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Maçonnerie Demers inc.

c. (30386)

Agence métropolitaine de transport (Qc)

NATURE DE LA CAUSE

Droit des biens – Droits réels – Hypothèques – Hypothèque légale de la construction (art. 2724 C.c.Q. et suiv.) – Personne morale de droit public – Biens affectés à l'utilité publique – Les instances inférieures ont-elles erré lorsqu'elles ont déterminé que le sous-traitant ne pouvait faire inscrire un avis d'hypothèque légale de la construction sur les biens de l'intimée? – Le terme « obligation » prévu à l'art. 2 de la *Loi sur l'Agence métropolitaine de transport*, L.R.Q., ch. A-7.02, inclut-il l'obligation légale de l'art. 2728 C.c.Q.?

HISTORIQUE DES PROCÉDURES

Le 20 décembre 2001 Cour supérieure du Québec (Le juge Reeves)	Requêtes de la demanderesse en délaissement forcé et prise en paiement rejetées
Le 29 avril 2004 Cour d'appel du Québec (Les juges Rothman, Chamberland et Lemelin [<i>ad hoc</i>])	Appel rejeté
Le 15 juin 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Daniel Marcoux et Marianne Joly

c. (30310)

Me Paul Monty, ès qualités de Commissaire à la déontologie policière (Qc)

NATURE DE LA CAUSE

Droit administratif – Contrôle judiciaire – Norme de contrôle – Droit disciplinaire – Législation – Interprétation – Éléments requis pour démontrer un manquement au *Code de déontologie des policiers du Québec*, L.R.Q., ch. O-8.1, r.1 – La Cour d’appel a-t-elle erré en confirmant le jugement de la Cour supérieure? – Quels sont les critères d’intervention de la Cour du Québec siégeant en appel d’une décision du Comité de déontologie policière? – La Cour d’appel a-t-elle erré en jugeant que le *Code de déontologie* n’exigeait pas la preuve de l’intention coupable quant à l’infraction reprochée (manque de politesse)?

HISTORIQUE DES PROCÉDURES

Le 20 mars 2000
Cour du Québec
(Le juge Désormeau)

Décisions du Comité de déontologie policière
infirmées

Le 28 février 2001
Cour supérieure du Québec
(Le juge Monast)

Requête de l’intimé en révision judiciaire, accueillie;
jugement infirmé

Le 25 février 2004
Cour d’appel du Québec
(Les juges Morin, Hilton et, Lemelin [*ad hoc*])

Appel rejeté

Le 23 avril 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

AUGUST 19, 2004 / LE 19 AOÛT 2004

30121 **Stephen Fazekas v. Her Majesty the Queen** (Ont.) (Criminal) (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 C40155, dated November 25, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C40155, daté du 25 novembre 2003, est rejetée.

NATURE OF THE CASE

Canadian Charter - Criminal Law - Offences - Trial - Evidence - Defence - Sentencing - Whether the trial judge erred in his determination of the appropriate sentence? - Whether the trial judge failed to apply the correct test for the *mens rea* for uttering a threat set out in *R. v. Clemente* [1994] 2 S.C.R. 758? - Whether the trial judge erred in his conviction for causing a disturbance in light of *R. v. Lohmes* [1992] 1 S.C.R. 167? - Whether evidence of prior convictions violates the *Charter*? - Whether the trial judge erred in sentencing by failing to properly credit "dead time"?

PROCEDURAL HISTORY

June 25, 2002 Ontario Court of Justice (Bishop J.)	Applicant convicted of uttering a death threat and of causing a disturbance and sentenced to 12 months imprisonment consecutive to any sentence being served
March 11, 2003 Ontario Superior Court of Justice (DeFrate J.)	Appeal from conviction dismissed; appeal from sentence varied; period of probation deleted
November 25, 2003 Court of Appeal for Ontario (McMurtry C.J.O., Laskin and Rosenberg JJ.A.)	Application for leave to appeal granted; appeal dismissed
December 29, 2003 Supreme Court of Canada	Application for leave to appeal and motion to extend time to file and/or serve leave application, filed
June 15, 2004 Supreme Court of Canada (Arbour J.)	Application for an order extending the time to serve application for leave to appeal, granted

30122 **Stephen Fazekas v. Her Majesty the Queen** (Ont.) (Criminal) (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 C38710, dated May 5, 2003, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38710, daté du 5 mai 2003, est rejetée.

NATURE OF THE CASE

Canadian Charter - Criminal Law - Trial - Evidence - Defence - Sentencing - Right to fair and full defence - Right to fair trial - Whether the Applicant was prejudiced and denied the right to a fair and full defence due to the limited time available at trial? - Whether the trial judge erred in drawing inferences in her reasons for judgment and sentencing? - Whether the trial judge erred in her determination of the appropriate sentence? - Whether evidence of prior convictions violates *Charter* rights? - Whether verdict was reasonable? - Whether trial judge should credit pre-sentence custody in sentence? - Whether Crown violated publication ban by giving media details of Applicant's prior criminal record - Whether Crown gave full disclosure?

PROCEDURAL HISTORY

August 8, 2002
Ontario Superior Court of Justice
(Gauthier J.)

Applicant found guilty on four counts of criminal harassment, one count of breach of probation and two counts of breach of court orders

August 29, 2002
Ontario Superior Court of Justice
(Gauthier J.)

Applicant sentenced to 33 months of imprisonment consecutive to any sentence currently being served

May 5, 2003
Court of Appeal for Ontario
(Charron, Moldaver and Feldman JJ.A.)

Appeal against conviction allowed in part: conviction for failing to comply with probation quashed; appeal against conviction dismissed in all other respects; appeal against sentence dismissed

December 4, 2003
Supreme Court of Canada

Application for leave to appeal and motion to extend time to file and/or serve leave application, filed

June 15, 2004
Supreme Court of Canada
(Arbour J.)

Application for an order extending the time to serve application for leave to appeal, granted

30207 **R. Kent Remington, a.k.a. B. Kent Remington, a.k.a. Barry Kent Remington v. Robert G. Peter** (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 (Calgary), Number 01-00346, dated January 13, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 01-00346, daté du 13 janvier 2004, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law - Bankruptcy - Whether a claim of contribution by a co-surety survives the bankruptcy of the other co-surety - Effect of the disallowance of a co-surety's proof of claim on the basis that it offended the rule against double proofs.

PROCEDURAL HISTORY

June 26, 2001 Court of Queen's Bench of Alberta (Kent J.)	Judgment for the Respondent in the sum of \$205,019.30
January 13, 2004 Court of Appeal of Alberta (Picard, Wittmann and Ritter JJ.A.)	Appeal dismissed
March 12, 2004 Supreme Court of Canada	Application for leave to appeal filed

30248 **Ruben Jimmie v. Her Majesty the Queen** (B.C.) (Criminal) (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 CA029249, dated January 28, 2004, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029249, daté du 28 janvier 2004, est rejetée.

NATURE OF THE CASE

Criminal law - Sentencing - Dangerous offender - Accused sentenced to indeterminate incarceration as a dangerous offender while at the same time receiving a life sentence - Whether the Court of Appeal erred in dismissing the appeal against sentence in respect of the trial judge's declaration that the Applicant is a dangerous offender and the imposition of an indeterminate period of incarceration - Whether the Court of Appeal erred in its interpretation of s. 753.1(4) of the *Criminal Code* in holding that the long-term offender provisions are not applicable to a person who is serving a life sentence - Whether the Court of Appeal erred in concluding on the record before it that the result would have been the same notwithstanding the fundamental error in law by the trial judge.

PROCEDURAL HISTORY

July 5, 2000 Supreme Court of British Columbia (Bennett J.)	Applicant convicted of second-degree murder; Applicant entered guilty plea for sexual assault with a weapon
July 26, 2001 Supreme Court of British Columbia (Bennett J.)	With respect to sexual assault with a weapon, Applicant found to be a dangerous offender; with respect to second-degree murder, Applicant sentenced to life imprisonment without parole eligibility for 16 years
January 28, 2004 Court of Appeal for British Columbia (Donald, Hall and Smith JJ.A.)	Sentence appeals dismissed
March 26, 2004 Supreme Court of Canada	Application for leave to appeal filed

30274 **Kingsley M. Lughas v. The Manitoba Public Insurance Corporation** (Man.) (Civil) (By Leave)

Coram: Major, Binnie and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Manitoba, Number AI 03-30-05732, dated February 9, 2004, is dismissed with costs and all ancillary motions are dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Manitoba, numéro AI 03-30-05732, daté du 9 février 2004, est rejetée avec dépens et toutes les requêtes accessoires sont rejetées.

NATURE OF THE CASE

Procedural law - Judgments and orders - Application for judicial review - Whether the lower courts erred in dismissing the Applicant's application for judicial review.

PROCEDURAL HISTORY

October 17, 2003 Court of Queen's Bench of Manitoba (Glowacki J.)	Applicant's motion for judicial review, dismissed
February 9, 2004 Court of Appeal of Manitoba (Huband, Hamilton and Freedman JJ.A.)	Appeal dismissed
April 8, 2004 Supreme Court of Canada	Application for leave to appeal filed

9.8.2004

Before / Devant : THE REGISTRAR

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

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

Her Majesty the Queen

v. (29920)

David Jeff Elias (Man.) (Crim.)

GRANTED / ACCORDÉE Time extended to September 7, 2004.

10.8.2004

Before / Devant : LEBEL J.

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

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

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

v. (30449)

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

GRANTED / ACCORDÉE Time extended to August 18, 2004.

12.8.2004

Before / Devant : THE CHIEF JUSTICE

Motion to state a constitutional question

Requête pour formulation d'une question constitutionnelle

Kirkbi AG, et al.

v. (29956)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the respondent for an order stating a constitutional question in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

Subject to not addressing the constitutional question at the time of hearing or judgment if the Court is of the view that the evidentiary record is not satisfactory, the following constitutional question is stated:

1. Is s. 7(b) of the *Trade-marks Act*, R.S.C. 1985, c. T-13, as amended, either in whole or in part within the legislative competence of the Parliament of Canada under s. 91(2) of the *Constitution Act, 1867*?
1. L'alinéa 7b) de la *Loi sur les marques de commerce*, L.R.C. 1985, ch. T-13, tel qu'amendé, relève-t-il, en tout ou en partie, de la compétence législative du Parlement du Canada en vertu du par. 91(2) de la *Loi constitutionnelle de 1867*?

If necessary, the parties may apply for leave to adduce additional evidence.

12.8.2004

Before / Devant : THE CHIEF JUSTICE

Motion to state a constitutional question

Requête pour formulation d'une question constitutionnelle

UL Canada Inc.

v. (30065)

Attorney General of Quebec, et al. (Que.)

GRANTED IN PART / ACCORDÉE EN PARTIE

UPON APPLICATION by the appellant for an order stating constitutional questions in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT THE CONSTITUTIONAL QUESTIONS BE STATED AS FOLLOWS:

1. Does s. 40(1)(c) of the *Regulation respecting dairy products substitutes*, R.R.Q. 1981, c. P-30, r. 15, infringe s. 2(b) of the *Canadian Charter of Rights and Freedoms*?
 2. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
 3. Is s. 40(1)(c) of the *Regulation respecting dairy products substitutes*, R.R.Q. 1981, c. P-30, r. 15, *ultra vires* the Province of Quebec on the ground that it relates to a subject matter which is within the exclusive jurisdiction of the Parliament of Canada under s. 91(2) of the *Constitution Act, 1867*?
 4. Is s. 40(1)(c) of the *Regulation respecting dairy products substitutes*, R.R.Q. 1981, c. P-30, r. 15, invalid or inoperable on the basis that it is inconsistent with the principles of Canadian federalism?
-
1. L'alinéa 40(1)c) du *Règlement sur les succédanés de produits laitiers*, R.R.Q. 1981, ch. P-30, r. 15, porte-il atteinte à l'al. 2b) de la *Charte canadienne des droits et libertés* ?
 2. Dans l'affirmative, cette atteinte constitue-t-elle une limite raisonnable prescrite par une règle de droit dont la justification peut se démontrer dans le cadre d'une société libre et démocratique en vertu de l'article premier de la *Charte canadienne des droits et libertés* ?
 3. L'alinéa 40(1)c) du *Règlement sur les succédanés de produits laitiers*, R.R.Q. 1981, ch. P-30, r. 15, excède-t-il les pouvoirs de la province de Québec pour le motif qu'il vise une matière relevant de la compétence exclusive du Parlement du Canada en vertu du par. 91(2) de la *Loi constitutionnelle de 1867* ?
 4. L'alinéa 40(1)c) du *Règlement sur les succédanés de produits laitiers*, R.R.Q. 1981, ch. P-30, r. 15, *est-il inconstitutionnel ou inopérant pour le motif qu'il porte atteinte aux principes du fédéralisme canadien* ?
-

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

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

13.8.2004

Jean-Paul Labaye

c. (30460)

Sa Majesté la Reine (Qc)

(De plein droit)

**NOTICES OF INTERVENTION
FILED SINCE LAST ISSUE**

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

11.8.2004

BY/PAR: Procureur général du Québec

IN/DANS: **Government of Saskatchewan**

v. (29973)

Rothmans, Benson & Hednges Inc. (Sask.)

The Fall Session of the Supreme Court of Canada will start 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.

La session d'automne de la Cour suprême du Canada commencera 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'appelant, son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les douze semaines du dépôt de l'avis d'appel ou douze semaines de la décision de la requête pour formulation d'une question constitutionnelle.

Le dossier de l'intimé (le cas échéant), son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les huit semaines suivant la signification des documents de l'appelant.

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

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

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

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2004 -

OCTOBER - OCTOBRE						
S	M	T	W	T	F	S
D	L	M	M	J	V	S
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NOVEMBER - NOVEMBRE						
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10/06/04

DECEMBER - DECEMBRE						
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- 2005 -

JANUARY - JANVIER						
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FEBRUARY - FÉVRIER						
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JUNE - JUIN						
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Sittings of the court: Séances de la cour:		18 sitting weeks/semaines séances de la cour
Motions: Requêtes:	M	88 sitting days/journées séances de la cour 9 motion and conference days/ journées requêtes.conférences
Holidays: Jours fériés:		2 holidays during sitting days/ jours fériés durant les sessions