

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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**APPLICATIONS FOR LEAVE TO  
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Schaefer**

Paul Slansky

v. (30106)

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

Graham Reynolds, Q.C.  
A.G. of Canada

FILING DATE 31.5.2004

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**George Agazarian**

Edwin G. Kroft  
McCarthy Tétrault

v. (30399)

**Her Majesty the Queen (F.C.)**

Robert H. Carvalho  
A.G. of Canada

FILING DATE 21.6.2004

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**Marc-André Bouliane**

Claude Marchand  
Pouliot L'Ecuyer

c. (30401)

**Le Procureur général du Québec, et autre (Qc)**

Jean-Yves Bernard  
Bernard, Roy & Associés

DATE DE PRODUCTION 22.6.2004

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**Chester Waxman, et al.**

Gary Graham  
Gowling Lafleur Henderson

v. (30418)

**Morris Waxman, et al. (Ont.)**

Robert Harrison  
Fasken Martineau DuMoulin

FILING DATE 22.6.2004

- and between -

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

**Robert Waxman, et al.**

Alan J. Lenczner, Q.C.  
Lenczner Slaght Royce Smith Grifffin

v. (30418)

**Morris Waxman, et al. (Ont.)**

Robert Harrison  
Fasken Martineau DuMoulin

FILING DATE 25.6.2004

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**Sa Majesté la Reine**

Guy Bilodeau  
Boutin & Associés

c. (30409)

**Luis Deschênes (Qc)**

Claude Dussault  
Bouchard, Pagé, Tremblay

DATE DE PRODUCTION 23.6.2004

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**Pham, The-Trinh**

Pham, The-Trinh

c. (30419)

**Hydro-Québec (Qc)**

Julie Lapierre  
Marchand Lemieux

DATE DE PRODUCTION 23.6.2004

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**Forac Consultants Inc.**

Jacques Jeansonne  
Deslauriers Jeansonne

c. (30407)

**St. Laurent Paperboard Inc., et autre (Qc)**

François Fontaine  
Ogilvy Renault

DATE DE PRODUCTION 24.6.2004

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**Gérard Dodier**

Christian Labonté

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DATE DE PRODUCTION 25.6.2004

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Rod Holloway

Legal Services Society

v. (30415)

**The Director of Adult Forensic Psychiatric Service,  
et al. (B.C.)**

Barbara Fisher, Q.C.

Blake, Cassels & Graydon LLP

FILING DATE 25.6.2004

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**Robert Wade Noftall**

Delmar Doucette

Ruby & Edwardh

v. (30416)

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

Jamie Klukach

A.G. of Ontario

FILING DATE 25.6.2004

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**Richard Wayne Gillingham**

Roger P. Thirkell

Thirkell & Company

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**The United States of America, et al. (B.C.)**

Kenneth J. Yule, Q.C.

A.G. of Canada

FILING DATE 28.6.2004

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**Charles B. Loewen**

A. Christina Tari

Richler and Tari

v. (30412)

**Her Majesty the Queen (F.C.)**

Jean-Paul Malette, Q.C.

A.G. of Canada

FILING DATE 28.6.2004

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**Jean-Marc Béliveau**

Josselin Breton

c. (30420)

**Barreau de Montréal (Qc)**

Maurice Boileau

Barreau de Montréal

DATE DE PRODUCTION 28.6.2004

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**Shaw Communications Inc.**

Howard Levitt

Lang Michener

v. (30421)

**Don Lum (N.B.)**

Mel K. Norton

Lawson & Creamer

FILING DATE 28.6.2004

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**S.P.**

S.P.

v. (30385)

**Director of Child Welfare for the Province of  
Prince Edward Island (P.E.I.)**

Denise Dorion

A.G. of Prince Edward Island

FILING DATE 14.6.2004

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**Imperial Tobacco Canada Limited**

William S. Berardino, Q.C.  
Berardino & Harris

v. (30411)

**Her Majesty the Queen in Right of British  
Columbia, et al. (B.C.)**

Daniel A. Webster, Q.C.  
Bull, Housser & Tupper

- and between -

**Rothmans, Benson & Hedges Inc.**

James A. Macaulay, Q.C.  
Macaulay McColl

v. (30411)

**Her Majesty the Queen in Right of British  
Columbia, et al. (B.C.)**

Daniel A. Webster, Q.C.  
Bull, Housser & Tupper

- and between -

**JTI-Macdonald Corp.**

Jack Giles, Q.C.  
Farris, Vaughan, Wills & Murphy

v. (30411)

**Her Majesty the Queen in Right of British  
Columbia, et al. (B.C.)**

Daniel A. Webster, Q.C.  
Bull, Housser & Tupper

- and between -

**Canadian Tobacco Manufacturers' Council**

Loryl D. Russell, Esq.  
L.D. Russell & Company

v. (30411)

**Her Majesty the Queen in Right of British  
Columbia (B.C.)**

Daniel A. Webster, Q.C.  
Bull, Housser & Tupper

- and between -

**British American Tobacco (Investments) Limited**

John J.L. Hunter, Q.C.  
Sugden, McFee & Roos

v. (30411)

**Her Majesty the Queen in Right of British  
Columbia (B.C.)**

Daniel A. Webster, Q.C.  
Bull, Housser & Tupper

- and between -

**Philip Morris Incorporated, et al.**

D. Ross Clark  
Davis & Company

v. (30411)

**Her Majesty the Queen in Right of British  
Columbia (B.C.)**

Daniel A. Webster, Q.C.  
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FILING DATE 22.6.2004

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**David John Sharpe**

Robert H. Johnston, Q.C.  
Roy, Johnston & Co.

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**Yvette Jacqueline Kirk (Man.)**

Susan J. Meighen  
Meighen, Haddad & Co.

FILING DATE 22.6.2004

**Dany Bouchard-Asselin**  
Louis Gélinas  
Bibeau, Brouillard, Gariépy & Associés

c. (30408)

**Her Majesty the Queen**  
Brigitte Gratl  
Gratl Law Office

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**Sa Majesté la Reine (Qc)**  
Henri-Pierre La Brie  
P.G. du Québec

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**Christopher Pickering (Ont.)**  
C. Jane Arnup  
A.G. of Ontario

FILING DATE 14.6.2004

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**Patrick Manningham**  
Paul Slanaky

v. (30223)

**Insurance Corporation of British Columbia**  
James R. Schmidt  
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v. (30426)

**United States of America, et al. (Ont.)**  
Bradley Reitz  
A.G. of Canada

FILING DATE 11.6.2004

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**J.F. Raymond Chouinard, et al. (B.C.)**  
William B. McAllister, Q.C.  
Boughton Peterson Yang Anderson

FILING DATE 28.6.2004

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**Catherine Fagan**  
Bernard Faribault  
Faribault & Associés

c. (30423)

**Rainer Zenner**  
Peter C. Ghiz  
Peter C. Ghiz Law Corporation

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DATE DE PRODUCTION 29.6.2004

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**Prince Edward Island College of Optometrists (P.E.I.)**  
John R. Diamond, Q.C.

FILING DATE 24.6.2004

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**André Tremblay**  
Alain Tremblay  
Ouellet, Nadon & Associés

c. (30424)

**Sa Majesté la Reine, et autre (C.F.)**  
Chantal Sauriol  
P.G. du Canada

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

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

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**JULY 5, 2004 / LE 5 JUILLET 2004**

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

**Larry Fisher**

**v. (30228)**

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

**NATURE OF THE CASE**

Criminal law (non *Charter*) - Evidence - Whether the Court of Appeal erred by finding the charge to the jury on the DNA evidence satisfactory - Whether the Court of Appeal erred by upholding the trial judge's ruling regarding similar fact evidence.

**PROCEDURAL HISTORY**

September 29, 2003  
Court of Appeal for Saskatchewan  
(Cameron, Gerwing and Sherstobitoff JJ.A.)

Appeal dismissed

March 24, 2004  
Supreme Court of Canada

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

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**V. (Q.V.)**

**v. (30271)**

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

**NATURE OF THE CASE**

Criminal law - Appeals - Trial - Burden of proof - Whether Court of Appeal for Ontario erred in applying section 686(1)(b)(iii) of the *Criminal Code* to a verdict reached by a trial judge sitting alone where the judge was found by the Court of Appeal to have reversed the burden of proof .

**PROCEDURAL HISTORY**

October 5, 2001  
Ontario Court of Justice  
(Rosemay J.)

Conviction: assault with a weapon and wounding

February 10, 2004  
Court of Appeal for Ontario  
(Rosenberg, Moldaver and Simmons JJ.A.)

Appeal dismissed

April 13, 2004  
Supreme Court of Canada

Application for leave to appeal filed

**John Susin**

**v. (30298)**

**Baker and Baker and Mang & Steinberg (Ont.)**

**NATURE OF THE CASE**

Procedural law - Action - Trial - *Rules of Civil Procedure* - Whether the motions judge had jurisdiction to dismiss the action for delay under all the circumstances - Whether a judge or, the Court of Appeal, can excuse the defendant's breach of the order of the court which ordered that the examinations for discovery be continued to completion - Whether a judge who hears submissions on the issues relating to a Rule 20 Motion, a Rule 21 Motion and Rule 24.01 Motion, declines to express an opinion on the alternate grounds under Rules 20 and 21, can he afterwards, rely upon grounds that may have been admissible on a Rule 20 Motion or, Rule 21 Motion, as support for his decision on the Rule 24.01 Motion? - Whether the Defendants were required to meet an evidentiary obligation to provide details of prejudice to them if the action were to proceed to trial, and as this onus met? - Whether the grounds for a Rule 24.01 Motion can include alleged adverse inferences drawn from underlying actions? Whether the Court of Appeal had jurisdiction to apply and make a decision on an issue that was not under appeal?

**PROCEDURAL HISTORY**

March 18, 2003  
Ontario Superior Court of Justice  
(Henderson J.)

Respondents' motion for dismissal of the action, granted;  
Applicant's action dismissed

February 25, 2004  
Court of Appeal for Ontario  
(Weiler, Sharpe and Blair JJ.A.)

Appeal dismissed

April 20, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**The Honourable Robert H. Nelson, Founder President of Public Defenders for himself and as representative of  
all those also improperly denied benefits**

**v. (30297)**

**Her Majesty the Queen as represented by the Right Honourable Paul Martin (F.C.)**

**NATURE OF THE CASE**

Procedural law - Did lower court err in disposition of case?

**PROCEDURAL HISTORY**

April 14, 2004  
Federal Court of Canada  
(Tremblay-Lamer J.)

Applicant's motion dismissed

April 20, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**The Honourable Robert H. Nelson, founder president of public defenders for himself and as representative of all those also improperly denied benefits**

v. (30315)

**Her Majesty the Queen as represented by the Right Honourable Paul Martin (F.C.)**

**NATURE OF THE CASE**

Procedural law - Did lower court err in disposition of case?

**PROCEDURAL HISTORY**

April 28, 2004  
Federal Court of Canada  
(Martineau J.)

Applicant's motion for leave to commence proceedings denied

May 14, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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

**Gerry Joseph Leiding**

v. (30329)

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

**NATURE OF THE CASE**

Criminal Law (Non Charter) - Trial - Appeal - Solicitor incompetence - Whether test for ineffective representation is met by establishing that trial counsel is no longer a member in good standing with the Law Society - Whether Court of Appeal erred by refusing a cross-examination of trial counsel on his affidavit - Whether Court of Appeal erred by applying a test of prejudice to determine whether there was a reasonable probability the verdict would have been different had the accused testified.

**PROCEDURAL HISTORY**

February 19, 2001  
Supreme Court of British Columbia  
(Bennett J.)

Applicant convicted by jury of second degree murder

December 9, 2003  
Court of Appeal for British Columbia  
(Finch, Braidwood and Lowry JJ.A.)

Appeal against conviction dismissed

May 19, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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June 10, 2004  
Supreme Court of Canada  
(Arbour J.)

Extension of time to file and serve leave application  
granted

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**Antony Tsai**

**v. (30318)**

**Theodore Pochwalowski (Ont.)**

**NATURE OF THE CASE**

Torts - Defamation - Did lower courts properly decide case?

**PROCEDURAL HISTORY**

January 7, 2003  
Ontario Superior Court of Justice  
(Wright J.)

Respondent's action in defamation allowed: Applicant  
ordered to pay \$3,000 to the Respondent; Applicant's  
counterclaim dismissed

November 18, 2003  
Ontario Superior Court of Justice (Divisional Court)  
(Cunningham A.C.J., McRae and Archibald JJ.A)

Applicant's motion to introduce fresh evidence, dismissed;  
Applicant's motion to adjourn appeal, dismissed; Appeal  
dismissed

March 12, 2004  
Court of Appeal for Ontario  
(Labrosse, Laskin and Goudge JJ.A.)

Motion for leave to appeal dismissed

April 26, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Antony Tsai**

**v. (30307)**

**Theodore Pochwalowski (Ont.)**

**NATURE OF THE CASE**

Procedural law - Actions - Did lower courts properly decide case?

**PROCEDURAL HISTORY**

November 20, 2002  
Ontario Superior Court of Justice (Small Claims Court)  
(Winer, Deputy J.)

Applicant's claim struck out; Applicant's action stayed;  
Applicant given until February 3, 2003 to file amended  
statement of claim

March 13, 2003  
Ontario Superior Court of Justice (Small Claims Court)  
(Thomson, Deputy J.)

Applicant's action for harassment, intimidation, invasion  
of privacy and stalking dismissed; Respondent's motion to  
strike granted

October 27, 2003  
Ontario Superior Court of Justice (Divisional Court)  
(Esptein J.)

Appeal dismissed

March 12, 2004  
Court of Appeal for Ontario  
(Labrosse, Laskin and Goudge JJ.A.)

Application for leave to appeal dismissed

April 26, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**9117-4912 Québec Inc., Thérèse Boniferro et Tony Lacognata**

**c. (30212)**

**Les Immeubles Dandurand Inc. (Qc)**

**NATURE DE LA CAUSE**

Procédure – Preuve – Exception déclinatoire – Règle *audi alteram partem* – Droit d’être représenté par avocat – Entente sur le déroulement de l’instance – Articles 151.1 et 151.6(4) C.p.c. – Les instances inférieures ont-elles nié aux demandeurs leurs droits d’être entendu et d’être représentés par avocat? – La Cour supérieure pouvait-elle fonder son jugement sur la lettre du procureur Gagnon déposée au dossier?

**HISTORIQUE DES PROCÉDURES**

Le 26 septembre 2003  
Cour supérieure du Québec  
(Le juge Jolin)

Requête de l’intimée en délaissement forcé et vente sous contrôle de la justice d’un immeuble et de biens, accueillie

Le 16 février 2004  
Cour d’appel du Québec  
(Les juges Gendreau, Otis et Rochette)

Requête en rejet d’appel accueillie et appel rejeté

Le 25 mars 2004  
Cour d’appel du Québec  
(Le juge Baudouin)

Requête en sursis d’exécution pour permettre de se pourvoir devant la Cour suprême, accueillie

Le 16 avril 2004  
Cour suprême du Canada

Demande d’autorisation d’appel déposée

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**Joanna Tang**

**c. (30213)**

**David Tsui et 9039-4479 Québec Inc. (Qc)**

**NATURE DE LA CAUSE**

Droit commercial - Procédure - Prêt - Preuve - Inscription de faux - La Cour d’appel a-t-elle erré en droit en concluant que les intimés n’étaient pas tenus d’inscrire en faux avant de contredire les faits contenus dans les actes notariés? - Vu la preuve documentaire déposée au dossier de première instance, la Cour d’appel a-t-elle erré en droit en concluant que les intimées n’étaient pas endettées envers la demanderesse et en imposant à cette dernière l’obligation de prouver sa

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réclamation selon un degré de preuve supérieur à celui de la balance des probabilités? - La Cour d'appel a-t-elle erré en droit en s'écartant des conclusions de faits tirées par le juge de première instance, fondées sur son analyse de la preuve et de la crédibilité des témoignages? - La Cour d'appel avait-elle raison d'intervenir dans le jugement de première instance, en concluant que le juge de première instance avait commis une erreur palpable et dominante, en omettant de conclure que le prêt de 200 000\$ était en fait le même prêt que celui attesté par le biais d'une traite bancaire?

### **HISTORIQUE DES PROCÉDURES**

Le 13 octobre 2000  
Cour supérieure du Québec  
(Le juge Morneau)

Intimés condamnés à payer la somme de 240 708, 95\$ en capital et intérêts; intimés condamnés à payer la somme de 15 000\$ pour les honoraires et déboursés extra-judiciaires; demande reconventionnelle des intimés rejetée

Le 20 janvier 2004  
Cour d'appel du Québec  
(Les juges Beauregard, Nuss et Biron)

Appel accueilli; jugement de la Cour supérieure infirmé; action de la demanderesse rejetée; demande reconventionnelle des intimés accueillie en partie

Le 13 avril 2004  
Cour suprême du Canada

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

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**Paul Martineau**

**c. (30296)**

**Sous-Ministre du revenu du Québec (Qc)**

### **NATURE DE LA CAUSE**

Droit fiscal - Cotisation - Appel - Compétence - Responsabilité civile - Dommages-intérêts exemplaires - Est-ce que, dans le cadre d'une loi fiscale, le juge de première instance est tenu d'exercer sa juridiction relativement à une demande de réparation en vertu de l'article 24(1) de la *Charte canadienne des droits et libertés* et ce conformément aux articles 7, 15, 33 et 52 de la *Charte*? - Est-ce que la loi habilitante permet au juge de première instance de statuer sur l'adjudication de dommages exemplaires?

### **HISTORIQUE DES PROCÉDURES**

Le 30 août 2002  
Cour du Québec  
(Le juge Lavergne)

Requête du demandeur pour annulation d'une cotisation émise pour l'année 1994, accordée; demande accessoire du demandeur pour dommages exemplaires, rejetée

Le 1 mars 2004  
Cour d'appel du Québec  
(Les juges Chamberland, Rochette et Rayle)

Appel rejeté

Le 16 avril 2004  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**JULY 12, 2004 / LE 12 JUILLET 2004**

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

**R.W.C., a young person within the meaning of the Youth Criminal Justice Act**

**v. (30302)**

**Her Majesty the Queen (Crim.) (N.S.)**

**NATURE OF THE CASE**

Criminal law - Young offenders - Primary designated offence - Mandatory DNA sample - Exception - Conviction entered on charge assault causing - Whether Court of Appeal erred in its application of section 487.051(2) of the *Criminal Code* of Canada in allowing the appeal and issuing a DNA order - Whether Court of Appeal erred in its interpretation and application of the law as to whether ruling that the “principles and purposes of the *Youth Criminal Justice Act*, S.C. 2002, c. 1 inform or otherwise modify the application of section 487.051(1)(a) and (2) as between adult and young offender”.

**PROCEDURAL HISTORY**

June 6, 2003 Supreme Court of Nova Scotia (Gass J.)	Respondent’s application under s. 487.051 of the <i>Criminal Code</i> for DNA sample dismissed
February 17, 2004 Nova Scotia Court of Appeal (Bateman, Roscoe and Hamilton JJ.A.)	Appeal allowed; order for DNA sample issued
April 19, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Timothy Wilford**

**v. (30258)**

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

**NATURE OF THE CASE**

Canadian Charter - Criminal - Impaired driving - Care or control - Whether the Applicant was in care or control of his vehicle so as to be able to cause the vehicle to become a danger whether by putting it in motion or in some other way - Whether the law of right to counsel should be clarified relating to the question and answer period between the first and second breath samples - Whether the Applicant’s arrest was lawful and whether the Crown failed to show the demand for a breath sample of the Applicant was reasonable

**PROCEDURAL HISTORY**

April 19, 2002 Ontario Court of Justice (Brophy J.)	Applicant convicted of impaired driving and having care or control of a motor vehicle with more than 80 mg of alcohol per 100 ml of blood contrary to sections 253(a) and (b) of the <i>Criminal Code</i>
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May 15, 2003 Ontario Superior Court of Justice (Snowie J.)	Summary conviction appeal dismissed
February 2, 2004 Court of Appeal for Ontario (Sharpe, Armstrong and Blair JJ.A.)	Appeal dismissed
April 2, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Gabor L. Zsoldos**

**v. (30286)**

**Ontario Association of Architects, Hillel Roebuck, Brian Watkinson, Paul Martel, Frank Camenzuli,  
Cristopher Shepherd, David Croft and Charles Greenberg (Ont.)**

**NATURE OF THE CASE**

*Canadian Charter* - Civil - Procedural Law - Civil Procedure - Whether the Court of Appeal erred in not allowing enough time for the Applicant to argue his case - Whether there is apprehension of bias created by appointments of judges to panels during the Applicant's previous appeals? - Whether there was a breach of ss. 7, 11(d), 15(1) and 24(1) of the *Charter* - Appearances of prejudgment of issues - *Charter* rights to pursuit of livelihood, fair and impartial court or tribunal, equal benefit of law without discrimination, and *Charter* remedies

**PROCEDURAL HISTORY**

October 20, 1993 Discipline Committee of Ontario Association of Architects (Sievenpiper, Tawadros and Goldenberg, Members)	Applicant found guilty of professional misconduct; certificate of practice suspended for four months; Ordered to attend seminars, write exams and pay the sum of \$18,000
February 11, 1997 Ontario Court (General Division), Divisional Court (Southey J.)	Motion for extension of time to appeal order of October 20, 1993, dismissed
September 15, 1998 Discipline Committee of Ontario Association of Architects (Martel, Bacon and Camenzuli, Members)	Applicant's licence and certificate of practice suspended; Applicant ordered to pay the sum of \$20,000 for failure to comply with order of October 20, 1993
February 11, 1999 Ontario Court (General Division), Divisional Court (Rosenberg J.)	Motion to stay decision of September 15, 1998, dismissed
August 12, 1999 Ontario Superior Court, Divisional Court (MacFarland, Ferrier and Wrinkler, JJ.)	Motions to accept fresh evidence, to set aside order of February 11, 1999 and to stay appeal, dismissed; Appeal from decision of September 15, 1998, dismissed
August 27, 1999 Ontario Superior Court, Divisional Court (Nordheimer, J.)	Application for judicial review of decision of August 12, 1999, dismissed

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February 22, 2000 Ontario Court of Appeal (Finlayson J.A.)	Motions to adjourn dismissed; Motion to extend time to appeal from decisions of August 12, 1999 and August 27, 1999, dismissed
July 6, 2000 Court of Appeal for Ontario (Finlayson J.A.)	Motion to adjourn re-hearing of decision of February 22, 2000, dismissed
July 6, 2000 Court of Appeal for Ontario (Morden, Catzman and Moldaver JJ.A.)	Motion to refuse adjournment affirmed; Decision of February 22, 2000 refusing extension of time, affirmed
May 31, 2001 Supreme Court of Canada (Gonthier, Major and Binnie JJ.)	Application for motion for extension of time, allowed; Application for leave to appeal, dismissed
May 13, 2002 Ontario Superior Court of Justice (Wright J.)	Applicant's action stayed and dismissed
June 28, 2002 Ontario Superior Court of Justice (Spiegel J.)	Applicant's motion to vary or set aside the order of Wright J., dismissed
June 12, 2003 Ontario Superior Court of Justice (O'Connell J.)	Applicant's motion for permission to examine a witness, dismissed; Applicant's motion for an order setting aside Wright J.'s decision, dismissed
February 9, 2004 Court of Appeal for Ontario (Laskin, Simmons and Armstrong JJ.A.)	Applicant's application to introduce fresh evidence, dismissed; Applicant's appeal dismissed
April 13, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Ken Pauli, Linda and Keith Barker, Ruth E. Cabrera, Tracey Connatty, Carla Church and David Dressel, Heather Davies (formerly known as Lee), Shawn Eckes, Tanya Ellis, Ellen Evangeliston, Jonathan Helm, Tammy Marie Helwig, Brad Henderson, Grace Lee, Perry Lindberg, Ryan Manson, Ervin Martens, Bill Oldynski, Doug Sandor, Darlene Schile, Wilbert Leslie Short, Bruce F. Smith, Katherine Strugari, Giselle Tetrault, Dawn Titterington and Morley Walbaum**

**v. (30276)**

**Ace INA Insurance Company, Ace INA Insurance, Alberta Motor Association Insurance Company, Allianz Insurance Company of Canada, Allstate Insurance Company of Canada, Allstate Insurance Company, American Bankers Insurance Company of Florida, American Home Assurance Company, American Reinsurance Company, American Road Insurance Company, Ascentus Insurance Ltd., AXA Corporate Solutions Assurance, AXA Insurance of Canada, AXA Pacific Insurance Company, Belair Insurance Company Inc., BCCA Insurance Corporation, Canadian Northern Shield Insurance Company, Canadian Petroleum Insurance Exchange, CGU Insurance Company of Canada, CGU International Insurance Company, Centennial Insurance Company, Certas Direct Insurance Company, Chubb Insurance Company of Canada, Citadel General Assurance Company, Commerce and Industry Insurance Company of Canada, The Commerce Group Insurance Company, Continental Casualty Company, The Continental Insurance Company, Co-operators General Insurance Company, Commonwealth Insurance Company, Coseco Insurance Company,**

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**Cumis General Insurance Company, DaimlerChrysler Insurance Company, The Dominion of Canada General Insurance Company, Economical Mutual Insurance Company, Eagle Star Insurance Company Ltd., Ecclesiastical Insurance Office Public Limited Company, Echelon General Insurance Company, Everest Insurance Company of Canada, Elite Insurance Company, Employers Insurance Company of Wausau, A Mutual Company, Federated Insurance Company of Canada, Federation Insurance Company of Canada, Federal Insurance Company, First North American Insurance Company, Gerling Canada Insurance Company, Gore Mutual Insurance Company, Grain Insurance and Guarantee Company, Great American Insurance Company, Great American Insurance Company of New York, The Guarantee Company of North American, The Halifax Insurance Company, Hartford Fire Insurance Company, ING Novex Insurance Company of Canada, ING Wellington Insurance Company, ING Western Union Insurance Company, Innovative Insurance Corporation, Jevco Insurance Company, Kingsway General Insurance Company, Langdon Insurance Company, Liberty Insurance Company of Canada, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company, Lloyd's Underwriters, Lombard General Insurance Company of Canada, Lombard Insurance Company, London and Midland General Insurance Company, London Guarantee Insurance Company, Loyalist Insurance Company, Lumbermans Mutual Casualty Company, Markel Insurance Company of Canada, Mennonite Mutual Insurance Co. (Alberta) Ltd., Millennium Insurance Company, The Missisquoi Insurance Company, Royal & Sun Alliance Insurance Company of Canada, HSBC Canadian Direct Insurance Incorporated, Markham General Insurance Company, Mitsui Marine and Fire Insurance Company Limited, Mitsui Sumitomo Insurance Company Ltd., Motors Insurance Corporation, Nationwide Mutual Insurance Company, New Hampshire Insurance Company, Niagara Fire Insurance Company, The Nippon Fire & Marine Insurance Company Limited, Nipponkoa Insurance Company Ltd., The Nordic Insurance Company of Canada, North Waterloo Farmers Mutual Insurance Company, Old Republic Insurance Company of Canada, Optimum West Insurance Company, Peace Hills General Insurance Company, Pembridge Insurance Company, Peopleplus Insurance Company, The Personal Insurance Company of Canada, Perth Insurance Company, The Phoenix Insurance Company, The Portage la Prairie Mutual Insurance Company, Primmum Insurance Company, Protective Insurance Company, Progressive Casualty Insurance Company, Providence Washington Insurance Company, RBC General Insurance Company, Reliance Insurance Company, Saskatchewan Mutual Insurance Company, Scotia General Insurance Company, Scottish and York Insurance Co. Limited, Security Insurance Company of Hartford, Security National Insurance Company, Security Insurance Company of Hartford, Sentry Insurance a Mutual Company, The Sovereign General Insurance Company, Specialty National Insurance Company, St. Paul Fire and Marine Insurance Company, The State Farm Fire and Casualty Company, State Farm Mutual Automobile Insurance Company, The Sumitomo Marine and Fire Insurance Company Limited, TD General Insurance Company, Temple Insurance Company, Thompson General Insurance Incorporated, TIG Insurance Company, The Tokio Marine and Fire Insurance Company Limited, Traders General Insurance Company, Trafalgar Insurance Company of Canada, Transatlantic Reinsurance Company, Transit Insurance Company, Trans Global Insurance Company, Travelers Casualty and Surety Company of Canada, The Travelers Indemnity Company, Unifund Assurance Company, Utica Mutual Insurance Company, Virginia Surety Company Inc., Waterloo Insurance Company Limited, The Wawanesa Mutual Insurance Company, Western Assurance Company, The Yasuda Fire and Marine Insurance Company Limited, Zenith Insurance Company, XL Reinsurance America Inc., Zurich Insurance Company, John Doe Insurance Company (Alta.)**

**AND BETWEEN:**

**Susan Reiger, on behalf of herself, and all other members of a class having a claim against the defendant ING Western Union Insurance Company**

**v. (30276)**

**ING Western Union Insurance (Alta.)**

**NATURE OF THE CASE**

Commercial law - Insurance - Statutes - Interpretation - Deductibles - Salvage - Insured vehicle damaged beyond repair - Insurer pays actual cash value of vehicle before loss less deductible and takes title to salvage - Insured claiming deductible



should not have been taken off actual cash value he received - Do the words “actual cash value” contained in Statutory Condition 4(7) of s. 614 of the Alberta *Insurance Act*, R.S.A. 2000, c. I-3 permit an insurance company to charge a deductible against the actual cash value in a total loss situation and keep the salvage - Contradictory interpretations by the Ontario Court of Appeal and the Alberta Court of Appeal.

**PROCEDURAL HISTORY**

February 7, 2003  
Court of Queen’s Bench of Alberta  
(Rooke J.)

Applicant’s application for legal determination : insurance company permitted to charge a deductible against the actual cash value in a total loss situation and keep the salvage pursuant to statutory condition 4(7) of the Alberta *Insurance Act*

February 27, 2004  
Court of Appeal of Alberta  
(Fruman, Wittmann and Rawlins JJ.A.)

Appeal dismissed

March 30, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Northern Alberta Institute of Technology Academic Staff Association**

**v. (30284)**

**Board of Governors of the Northern Alberta Institute of Technology (Alta.)**

**NATURE OF THE CASE**

Commercial Law - Labour Law - Property Law - Insurance - Trusts and trustees - Agency - Fiduciary duties - Collective agreement - Compensation - Insurance policies - Whether employer paid benefits form part of an employee’s compensation? - What is the impact of the Court of Appeal’s decision on collective bargaining? - What is the role of an employer in obtaining and maintaining an insurance policy? - Whether an employer has a legal interest in a group insurance policy? - Whether the Respondent was acting as an agent or in some other fiduciary capacity?

**PROCEDURAL HISTORY**

August 19, 2002  
Court of Queen’s Bench of Alberta  
(Wilson J.)

Applicant’s action for entitlement granted; declaration: Applicant entitled to proceeds in the amount of \$825,837.81 as a result of the demutualization of the Respondent

February 18, 2004  
Court of Appeal of Alberta  
(Côté, McFadyen and Clackson JJ.A.)

Appeal dismissed; question of *quantum* remitted to Court of Queen’s Bench for redetermination

April 15, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Dianne Goulet**

**v. (30645)**

**Graham Howard (Ont.)**

**NATURE OF THE CASE**

Procedural Law - Appeal - Limitation of actions - Prescription - Discoverability - Whether the discoverability rule applies in the circumstances of this case? - Whether the deputy judge erred in not extending the limitation period pursuant to the *Limitations Act*, S.O. 2002, c. 24? - Whether the Respondent examined the condominium declaration? - Whether the Respondent knew the implication in exchanging a parking space between unit 203 and 603 of the condominium? - Whether there was carelessness on behalf of the Applicant?

**PROCEDURAL HISTORY**

November 13, 2001 Ontario Superior Court of Justice (Galligan, Deputy Judge)	Applicant's action for damages for breach of contract and professional negligence, dismissed
May 9, 2003 Ontario Superior Court of Justice (Divisional Court) (McWilliam J.)	Appeal dismissed
March 12, 2004 Court of Appeal for Ontario (McMurtry C.J.O., Moldaver and Cronk JJ.A.)	Motion for leave to appeal dismissed
May 11, 2004 Supreme Court of Canada	Application for leave to appeal filed

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

**Sa Majesté la Reine**

**c. (30256)**

**Éric Boucher (Crim.) (Qc)**

**NATURE DE LA CAUSE**

Droit criminel - Preuve - Preuve contraire - Témoignage de l'accusé - Témoin-expert - Doute raisonnable - La Cour d'appel du Québec a-t-elle erré en droit, en statuant que l'opinion d'un témoin-expert, qui ne repose sur aucune preuve admissible soutenant une preuve contraire, peut être pris en compte aux fins de soulever un doute raisonnable permettant de contrer la présomption légale de l'article 258(1)c) du *Code criminel*? - Le témoignage d'un défendeur, dont la version des faits fut rejetée en bloc par un tribunal de première instance, doit-il tout de même être pris en considération, en conjonction avec le témoignage d'un témoin-expert, afin d'évaluer une preuve contraire présentée afin de contrer la présomption prévue à l'art. 258(1)c) du *Code criminel*? - Est-il erroné pour un tribunal, dans son évaluation de la preuve contraire, de retenir l'opinion d'un témoin-expert qui ne s'appuierait dès lors que sur des faits hypothétiques ou sur des conjectures? - Un tribunal peut-il considérer une absence de symptômes manifestes d'ébriété chez un défendeur, et ce sans qu'aucune expertise ne soit venue établir le degré de tolérance à l'alcool de ce défendeur?

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**HISTORIQUE DES PROCÉDURES**

Le 2 octobre 2001 Cour supérieure du Québec (Le juge Downs)	Intimé acquitté de conduite d'un véhicule à moteur alors qu'il avait consommé une quantité d'alcool dépassant 80 mg contrairement à l'art. 253b) du <i>Code criminel</i>
Le 2 février 2004 Cour d'appel du Québec (Les juges Beauregard, Rothman, et Forget [ <i>dissident</i> ])	Appel rejeté
Le 2 avril 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**Richard Thibault**

**c. (30195)**

**Sa Majesté la Reine (Ont.)**

**NATURE DE LA CAUSE**

*Charte canadienne* (criminel) - Droit criminel - Détention - Droit administratif - Brefs de prérogative - Est-ce que le défaut de la police de conduire le demandeur devant un juge de paix en Nouvelle-Écosse en vertu de l'article 503 du *Code criminel* a rendu sa détention initiale et subséquente illégale et arbitraire? - Est-ce que les accusations portées contre le demandeur auraient dû l'être en Nouvelle-Écosse, endroit parmi d'autres où les infractions alléguées de complot se sont produites et, conséquemment, qu'il s'agit d'une violation de son droit d'être présumé innocent?

**HISTORIQUE DES PROCÉDURES**

Le 20 juin 2003 Cour supérieure de justice de l'Ontario (Le juge Maranger)	Demande d'une ordonnance de libération rejetée
Le 6 novembre 2003 Cour d'appel de l'Ontario (Les juges Weiler, Sharpe, et Rivard [ad hoc])	Appel rejeté
Le 10 février 2004 Cour suprême du Canada	Demandes de prorogation de délai et d'autorisation d'appel déposée

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**Casurina Limited Partnership, First Wave Inc. and JMM Trading LLP**

**v. (30234)**

**Rio Algom Limited, James Thompson Black, William Elwood Bradford, Derek H. Burney, Gordon Cecil Gray, Patrick Michael James, David S.R. Leighton, William Atwood Macdonald, James Edward Newall, James E. Perrella, Ross J. Turner, James D. Wallace,, Michael H. Wilson, Billiton PLC, David Charles Brink, Michael Lawrence Davis, Brian Patrick Gilbertson, Cornelius Antonius Johannes Herkstroter, John Bernard Haysom Jackson, Steve Bodgan Kesler, Derek Lyle Keys, David John Charles Munro,, Robin William Renwick, Barry David Romeril, Miklos Salamon, Matthys Hendrik Visser and Billiton Copper Holdings Inc. (Ont.)**

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**NATURE OF THE CASE**

Commercial law - Contracts - Securities - Creditors and debtors - Compulsory sale of shares - Debentureholders' rights - Action for oppressive conduct - Whether the Court of Appeal erred in failing to correct the trial judge's interpretation of the Trust Indenture which effectively permitted the Respondent and Billiton to contract out of the oppression remedy - Whether the Court of Appeal erred in failing to correct the trial judge's interpretation of the Trust Indenture, thus revising the common law doctrine of privity of contract which provides that no one but the parties to a contract can be bound by it or entitled under it.

**PROCEDURAL HISTORY**

August 22, 2002 Ontario Superior Court of Justice (Spence J.)	Applicants' application for relief under oppression remedy provisions of the <i>Business Corporation Act</i> , dismissed
January 21, 2004 Court of Appeal for Ontario (Abella, Moldaver and Feldman JJ.A.)	Appeal dismissed
March 19, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Toyota Canada Inc., 2972344 Canada Inc., 9123-2165 Québec Inc., 1850-9315 Québec Inc., 9124-5704 Québec Inc., Automobiles J.D.A. Inc., 9051-4290 Québec Inc., Houle Automobile Ltée, 1857-2123 Québec Inc., 9122-8171 Québec Inc., 9125-0902 Québec Inc., Groupe Chassé Inc., Alix Automobile Inc., Toyota Richmond Inc., Blainville Toyota Inc., Automobile Pierre Lefebvre Inc., Auto Sénateur Inc., 2709970 Canada Inc., Automobiles Maheu & Mathieu Inc., Autos Excelsior Inc., Les Agences Kyoto Ltée, Toyota Pie IX Inc., Joliette Toyota Inc., Montestrie Autorama Inc., Garage Réjean Roy Inc., 9076-7567 Québec Inc., Toyota Drummondville (1982) Inc., Automobiles Relais 2000 Inc., 9020-3027 Québec Inc., Complexe de l'Auto Park Avenue Inc., 166606 Canada Inc., Lachute Auto 53056 Inc., 3566072 Canada Inc., 3948391 Canada Inc., 9122-4568 Québec Inc., Dery Automobile Ltée, G. Couillard Automobile Inc., Woodland Verdun Ltée et Automobiles Léveillé Inc.**

**c. (30269)**

**André Harmegnies (Qc)**

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Appel - Compétence - Recours collectif - La Cour d'appel a-t-elle erré en concluant que le refus du premier juge de permettre aux demanderesse de présenter une preuve n'a pas porté atteinte à leur droit à une défense pleine et entière protégé par la *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12? - La Cour a-t-elle erré en concluant que cette décision n'était pas susceptible d'appel? - *Code de procédure civile*, L.R.Q., ch. C-25, art.1002, 1010.

**HISTORIQUE DES PROCÉDURES**

Le 10 février 2004 Cour supérieure du Québec (Le juge Nadeau)	Requête des demanderesse pour produire une contestation écrite à la requête en autorisation d'exercer un recours collectif rejetée
Le 24 mars 2004 Cour d'appel du Québec (Le juge Baudouin)	Requête en autorisation d'appel rejetée

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Le 8 avril 2004  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Le 11 mai 2004  
Cour suprême du Canada  
(Le juge Bastarache)

Requête en sursis d'exécution rejetée

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**Tr'ondëk Hwëch'in**

**v. (30227)**

**Her Majesty the Queen in Right of Canada, Government of Yukon, Canadian United Minerals Inc. (Y.T.)**

**NATURE OF THE CASE**

Procedural law - Courts - Aboriginal treaty - Role of the courts in resolving disputes over the construction and interpretation of modern treaties - Whether courts should refuse to resolve disputes where it has been determined that there exists a justiciable dispute as to the correct construction of a modern treaty within the meaning of s. 35 of the *Constitution Act, 1982* - Whether Court of Appeal erred in reversing the findings of the Chambers Judge that the dispute regarding the correct construction of the Tr'ondëk Hwëch'in Final Agreement constituted a justiciable issue.

**PROCEDURAL HISTORY**

July 8, 2002  
Yukon Territory Supreme Court  
(Hudson J.)

Respondents' motions to dismiss the Applicant's petition dismissed

January 17, 2003  
Yukon Territory Supreme Court  
(Hudson J.)

Application of Applicant allowed in part; Application of Respondent allowed; Declaratory relief granted regarding interpretation of land claims agreement

January 23, 2004  
Yukon Territory Court of Appeal  
(Ryan, Newbury and Hall JJ.A.)

Appeal dismissed; cross-appeal dismissed

March 22, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Paul Nathan et Anne Montplaisir**

**c. (30309)**

**Syndicat de la Copropriété Villas du Castel (Qc)**

**NATURE DE LA CAUSE**

Droit des biens - Biens immeubles - Copropriété - Copropriété divise - Déclaration de copropriété - Résolution en modification - Destination d'un immeuble - Promoteur - Art. 1093, *Code civil du Québec* - Est-ce que les instances inférieures ont erré en statuant que la destination de l'immeuble demeurerait inchangée en dépit de la décision prise par l'assemblée des copropriétaires d'augmenter le nombre des fractions dans l'immeuble? - Est-ce que les instances inférieures ont erré dans leur détermination du promoteur?

**HISTORIQUE DES PROCÉDURES**

Le 11 novembre 2003  
Cour supérieure du Québec  
(Le juge Lanctôt)

Action des demandeurs en annulation d'une résolution  
adoptée par l'intimé, rejetée

Le 23 février 2004  
Cour d'appel du Québec  
(Les juges Morin, Hilton et Lemelin [*ad hoc*])

Appel rejeté

Le 22 avril 2004  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**JUDGMENTS ON APPLICATIONS  
FOR LEAVE**

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

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**JULY 8, 2004 / LE 8 JUILLET 2004**

**30052**            **Oswald Duncan Macleod, agent for Paul Joseph O'Leary and Duncan Ross Moodie v. Catherine Josephine Macleod** (Alta.) (Civil) (By Leave)

Coram:            McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 01-00490, dated October 21, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 01-00490, daté du 21 octobre 2003, est rejetée avec dépens.

**NATURE OF THE CASE**

Taxation - Statutes - Interpretation - S. 220(4) of the *Income Tax Act* - Whether s. 220(4) of the *Income Tax Act* allows taxpayers to place a *caveat*, on behalf of the Minister, against their property in order to secure the debts owed to Revenue Canada? - Whether s. 220(4) of the *Income Tax Act* allows the Minister to accept, by means of a *caveat*, payment of any amount that may become payable under the *Act*? - Whether s. 220(4) of the *Income Tax Act* allows the Minister's right to prevail in a conflict with the right of any creditor in request to the payment of bills of equal degree? - Whether s. 220(4) of the *Income Tax Act* allows the Minister to take security without restriction, including the lack of requirement for consideration, to secure the payment of any amount that is payable or may become payable?

**PROCEDURAL HISTORY**

September 19, 2001 Court of Queen's Bench of Alberta (McIntyre J.)	Applicant's appeal against Master Alberstat's order granted on February 28, 2001, dismissed
October 21, 2003 Court of Appeal of Alberta (Conrad, Russell and Berger JJ.A.)	Appeal dismissed
February 6, 2004 Supreme Court of Canada (Bastarache J.)	Motion to extend time to file and/or serve the leave application, granted
March 8, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**30251**            **Roger Andrew Hebert, Joan Marie Hebert and John Joseph Hebert v. Her Majesty the Queen in Right of the Government of Canada, the Department of National Revenue (as they once were), the Minister of the Department of National Revenue, R. Dressler, A. Neilsen, Cheryl Ritchie, John Doe and Richard Roe** (Alta.) (Civil) (By Leave)

Coram:            McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 0301-0078-AC, dated February 3, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 0301-0078-AC, daté du 3 février 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Procedural Law - Statutes - Civil procedure - Appeal - Prescription - Whether the Court of Appeal should have made a ruling on all remaining issues before them which were previously before the trial judge? - Whether the Court of Appeal should have used its own free and unfettered discretion to do what justice requires, between the parties to the circumstances of each particular case, by making a final decision based on the facts and not just shuffle the responsibility back to the lower courts?

**PROCEDURAL HISTORY**

December 24, 2002 Court of Queen's Bench of Alberta (Waller, Master)	Applicants' application to amend Statement of Claim, dismissed
March 11, 2003 Court of Queen's Bench of Alberta (Rowbotham J.)	Applicants' request for extension of time for leave to appeal denied
February 3, 2004 Court of Appeal of Alberta (O'Leary, Picard and Wittmann JJ.A.)	Appeal allowed; new hearing on whether time extension to appeal should be ordered
March 22, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**30268**            **Christopher J. Harrington v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram:            McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C40595, dated February 2, 2004, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C40595, daté du 2 février 2004, est rejetée.

**NATURE OF THE CASE**

Criminal law (non-*Charter*) - Preliminary inquiry - Natural justice - Accused being committed on charge of attempted murder - In *certiorari*, preliminary inquiry judge held to have denied accused natural justice - Whether the Court of Appeal erred in holding that the denial of natural justice was a "procedural irregularity" and hence amenable to the curative proviso in s. 686(1)(b)(iv) of the *Criminal Code* - Whether the Court of Appeal erred in exercising its discretion to dismiss the appeal where justice was not seen to be done.

**PROCEDURAL HISTORY**

April 17, 2003 Ontario Superior Court of Justice (Earle-Renton J.)	Committal of the Applicant for trial on five charges ordered
August 11, 2003 Ontario Superior Court of Justice (Stong J.)	Applicant's application for <i>certiorari</i> to set aside the committal order dismissed

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February 2, 2004  
Court of Appeal for Ontario  
(Sharpe, Armstrong and Blair JJ.A.)

Appeal dismissed

April 5, 2004  
Supreme Court of Canada

Application for leave to appeal filed

June 9, 2004  
Supreme Court of Canada  
(Arbour J.)

Application for an extension of time granted

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**30277**      **Walter Ricky Filewich and J.J.H. Enterprises Ltd. doing business as Rent-A-Reck v. Debra Batchelder, Philip Batchelder, Jarrod Batchelder, an infant by his guardian Ad Litem Philip Batchelder and Jackson Batchelder, an infant by his guardian Ad Litem Philip Batchelder** (B.C.)  
(Civil) (By Leave)

Coram:      McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA030423, dated February 2, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA030423, daté du 2 février 2004, est rejetée avec dépens.

#### **NATURE OF THE CASE**

Commercial law - Insurance - Contracts - Statutes - Interpretation - Whether the appellate court erred in law in finding the power of attorney and undertaking filed by the insurer does not require it to pay no-fault accident benefits to the Respondents to the limits set out in Part 7 of the Revised Regulation (1984) under the *Insurance (Motor Vehicle) Act*, B.C. Reg. 447/83 - Whether the appellate court erred in law in finding the Out of State Coverage clause in the insurance policy did not require the insurer to pay no-fault accident benefits to the Respondents to the limits set out in Part 7 of the Revised Regulation - Whether the learned chambers judge erred in the application of section 25 of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1996, c. 231.

#### **PROCEDURAL HISTORY**

November 28, 2002  
Supreme Court of British Columbia  
(Holmes J.)

Respondents' application for compensation for medical expenses arising from injuries suffered in a motor vehicle accident, granted in part

February 2, 2004  
Court of Appeal for British Columbia  
(Hall, Low and Lowry JJ.A.)

Appeal dismissed

April 2, 2004  
Supreme Court of Canada

Application for leave to appeal filed

**30236**            **Karen Webb v. 3584747 Canada Inc.** (Ont.) (Civil) (By Leave)

Coram:            Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C39473, dated January 29, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C39473, daté du 29 janvier 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Procedural law - Civil procedure - Judgments and orders - Statutes - Interpretation - Whether it was within the authority of a motion judge to appoint a Deputy Judge of the Small Claims Court or Judges and Masters of the Ontario Superior Court to act as referee to hear individual claims from a class action - Whether s. 14(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 prevails over s. 25(1)(b) of the *Class Proceedings Act*, 1992, S. O. 1992, c. 6.

**PROCEDURAL HISTORY**

June 25, 2001 Ontario Superior Court of Justice Brockenshire J.	Applicant's motion to alter the process to resolve individual issues in a class proceeding resulting in interlocutory order
June 26, 2002 Superior Court of Justice, Divisional Court (Blair, Lane and Epstein JJ.A.)	Respondent's appeal from interlocutory order allowed
January 29, 2004 Court of Appeal for Ontario (O'Connor A. C. J.O., Weiler and Goudge JJ.A.)	Applicant's appeal dismissed
March 25, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**30239**            **Lee Edward Fingold v. The Law Society of Upper Canada** (Ont.) (Civil) (By Leave)

Coram:            Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C40250, dated January 21, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C40250, daté du 21 janvier 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Statutes - Interpretation - Professions - Barristers and Solicitors - Did lower courts err in finding that Applicant was engaged in practice of law?

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**PROCEDURAL HISTORY**

March 1, 2002 Ontario Superior Court of Justice (Scott J.)	Applicant found in contempt of a consent court order prohibiting him from contravening s.50 of the <i>Law Society Act</i> by acting, holding himself out as, representing himself or practising as a barrister or solicitor
January 21, 2004 Court of Appeal for Ontario (Labrosse, Moldaver and Gillese JJ.A.)	Appeal dismissed
March 23, 2004 Supreme Court of Canada	Application for leave to appeal filed
May 14, 2004 Supreme Court of Canada (Bastarache J.)	Extension of time granted

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**30244**      **Alberta Veterinary Medical Association v. Louis Pequin** (Alta.) (Civil) (By Leave)

Coram:      Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Edmonton), Number 0203 0408-AC, dated January 28, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 0203 0408-AC, daté du 28 janvier 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Statutes - Interpretation - Professional associations - Whether the appellate court erred in holding that the *Veterinary Profession Act*, S.A. 1984, c. V - 3.1 did not preclude the Respondent's practice of equine dentistry - Contradictory appellate court decisions - Regulation of professionals - Mobility rights - *Pauze v. Gauvin*, [1954] S.C.R. 15 - *Laporte v. College of Pharmacists of Quebec*, [1976] 1 S.R.C. 101.

**PROCEDURAL HISTORY**

September 25, 2002 Court of Queen's Bench of Alberta (Bielby J.)	Applicant's application for an injunction to prevent the Respondent from practising equine dentistry, dismissed.
January 28, 2004 Court of Appeal of Alberta (McClung, Conrad and Berger JJ.A.)	Appeal dismissed
March 29, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**30266**            **James Darren Bennett v. Her Majesty the Queen** (B.C.) (Criminal) (By Leave)

Coram:            Iacobucci, Binnie and Arbour JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA027010, dated October 17, 2002, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA027010, daté du 17 octobre 2002, est rejetée.

**NATURE OF THE CASE**

Criminal law - Sentencing - Appeal - Did the Court of Appeal err in ruling that despite the error of the trial judge in refusing to consider the Long-Term Offender provisions, the decision to declare the Applicant a Dangerous Offender should be upheld on the basis that the record did not disclose any prospect for counsel to have developed "evidence of treatability" sufficient to bring the Applicant within the Long-Term Offender guidelines in light of this Court's ruling in *R. v. Johnson*?

**PROCEDURAL HISTORY**

February 28, 2000  
Supreme Court of British Columbia  
(Parrett J.)

Conviction: 5 counts of sexual assault, 3 counts of administering a stupefying drug with intent to commit sexual exploitation and 3 counts of making child pornography respectively contrary to ss. 271, 246(b) and 163.1(2) of the *Criminal Code*;  
Sentence: Applicant designated a dangerous offender and sentenced to imprisonment for an indeterminate period

October 17, 2002  
Court of Appeal for British Columbia  
(Esson, Huddart and Smith JJ.A.)

Appeal dismissed

April 5, 2004  
Supreme Court of Canada

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

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**30061**            **Leon's Furniture Limited v. 1497777 Ontario Inc.** (Ont.) (Civil) (By Leave)

Coram:            Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C38579, dated September 24, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38579, daté du 24 septembre 2003, est rejetée avec dépens.

**NATURE OF THE CASE**

Property law - Landlord tenant - Leases - Remedies - Relief from forfeiture - Subleases - Application of prior consent to sublease to new sublease - What is the extent to which parties to leases, and contracts generally, must perform their contractual obligations to each other, and exercise any remedies available to them pursuant to the contract or lease, in good faith? - Can a court invoke its general equitable jurisdiction to grant relief from forfeiture where another statutory provision appears to preclude equitable relief?

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**PROCEDURAL HISTORY**

June 21, 2002 Ontario Superior Court of Justice (Rivard J.)	Respondent's application for declaration that lease was terminated by Applicant's actions dismissed
September 24, 2003 Court of Appeal for Ontario (Morden, Weiler and Charron JJ.A.)	Appeal allowed and a declaration that the lease was terminated was issued. A trial of the issue of the claim for relief from forfeiture was directed.
November 24, 2003 Supreme Court of Canada	Application for leave to appeal filed
April 26, 2004 Supreme Court of Canada (Fish J.)	Motion to extend the time to file and/or serve leave application granted

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**30170**      **ING Canada Inc. v. Aegon Canada Inc., Transamerica Life Canada, Pyar Dossal and Jane Benn on their own behalf and on behalf of those persons who are members and former members of the NN Life Insurance Company of Canada Pension Plan for Employees, and also past members and former members of the Employees Pension Plan of the Halifax Insurance Companies or the beneficiaries of such persons** (Ont.) (Civil) (By Leave)

Coram:      Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C39652, dated December 8, 2003, is dismissed with costs to the Respondents Aegon Canada Inc. and Transamerica Life Canada on a substantial indemnity basis, and costs to the Respondents Pyar Dossal and Jane Benn, to the extent, if any, that their costs are not paid out of the assets of the NN Life Plan that relate to the Past Members and Former Members of the Halifax Plan and are traceable to the Halifax Plan trust fund.

La demande d'autorisation d'appel visant l'arrêt de la Cour d'appel de l'Ontario, numéro C39652, daté du 8 décembre 2003, est rejetée avec dépens, selon le barème d'indemnisation substantielle, en faveur des intimées Aegon Canada Inc. et Transamerica Vie Canada, et avec dépens en faveur des intimés Pyar Dossal et Jane Benn, à la condition, s'il y a lieu, que leurs dépens ne soit pas payés sur les éléments d'actif du régime de la NN Vie ayant trait aux anciens participants au régime de Halifax et aux rentiers de ce régime, ou pouvant être attribués au fonds en fiducie du régime de Halifax.

**NATURE OF THE CASE**

Property law - Trusts and trustees - Commercial law - Contracts - Breach of warranties - Despite separation of assets and liabilities, two combined pension plans treated as a single entity for purposes of funding - Surplus in one part of pension plan used to justify contribution holiday with respect whole entity, despite other part of pension plan having deficit - When formerly discrete pension plans are combined and administered as a single plan, in what circumstances can one conclude that a merger has occurred - Under what circumstances can an employer take a contribution holiday in a merged plan - To what extent do the provisions of the federal *Income Tax Act* and provincial pension benefits legislation determine the contribution obligations of employers in merged plans - Does an actuarial surplus become an actual surplus upon a merger - What is the proper relationship between trust and contract law in the administration of pension plans - In what circumstances should trust obligations be permitted to override and negate contractual terms in pension plan documents that purport to regulate the parties' rights and obligations - How should the statutory scheme for the regulation of pension plans affect the court's analysis of trust obligations - Does an underlying pension trust provide plan members with an entitlement to plan surplus prior to wind up.

**PROCEDURAL HISTORY**

January 28, 2003  
Ontario Superior Court of Justice  
(Lane J.)

Applicant found in breach of warranties of the Share Purchase Agreement and of the Pension and Employee Benefits Agreement; Respondents to be indemnified for costs, damages and losses

December 8, 2003  
Court of Appeal for Ontario  
(Weiler, Goudge and Sharpe JJ.A.)

Appeal dismissed

February 6, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**30206**            **Audrey Sero v. Her Majesty the Queen** (FC) (Civil) (By Leave)

Coram:            Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-375-01, dated January 12, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-375-01, daté du 12 janvier 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Native law - Taxation - Income tax - Statutes - Interpretation - Whether interest earned on investments deposited in bank branch located on reserve is exempt from taxation - Whether the Federal Court of Appeal erred in finding that subsection 461(4) of the *Bank Act*, S.C. 1991, c. 46 was limited to the purposes of the *Bank Act* and did not override the “connecting factors” test in *Williams v. The Queen*, [1992] 1 S.C.R. 877 in determining the *situs* of the interest income earned on the deposits for the purpose of the tax exemption in s. 87 of the *Indian Act*, R.S.C. 1985, c. I-5 - Whether the Federal Court of Appeal erred in its application of the “connecting factors” test by placing the greatest weight on the activities of the Royal Bank itself whose relationship with the Applicant was one of debtor-creditor.

**PROCEDURAL HISTORY**

May 25, 2001  
Tax Court of Canada  
(Hamlyn J.)

Applicant’s appeal from the assessment made under the *Income Tax Act* for the 1995 taxation year, dismissed

January 12, 2004  
Federal Court of Appeal  
(Stone, Rothstein and Sharlow JJ.A.)

Appeal dismissed

March 12, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**30215**                    **Arthur Froom v. The Minister of Justice** (FC) (Civil) (By Leave)

Coram:                    Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-570-03, dated March 4, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-570-03, daté du 4 mars 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Procedural law - Appeal - Evidence - Contents of appeal book - Motion to strike - Whether orders have truncated a material ground of appeal for the Applicant - Whether orders have thrown into confusion the extent of the grounds being presented to the Federal Court of Appeal Whether orders appealed from failed to deal with a material issue relating to the content of the Appeal Books necessary to clarify the issues for the appeal Whether Court of Appeal erred in failing to hold either an oral hearing on the issue and in failing to direct the Respondent to file an affidavit sworn by Ms.Kothe specifying what documentary material was in her possession on the date that the Authority to Proceed was issued - Whether orders appealed from affirmed lower court ruling on a contested and material issue involving a substantial right of the Applicant - Whether orders appealed from resulted in a miscarriage of justice in the conduct of the judicial review application

**PROCEDURAL HISTORY**

November 7, 2003  
Federal Court of Canada, Trial Division  
(Layden-Stevenson J.)

Applicant's application for judicial review of a decision to issue an authority to proceed under the *Extradition Act* dismissed

February 19, 2004  
Federal Court of Appeal  
(Malone J.A.)

Order settling the contents of the appeal book

March 4, 2004  
Federal Court of Appeal  
(Malone J.A.)

Applicant's request for an oral and evidentiary hearing with *viva voce* evidence, dismissed; Applicant's motion for reconsideration of the February 19, 2004 order, dismissed; time for Applicant to serve and file his memorandum of fact and law extended to April 15, 2004

April 19, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**30216**                    **Cyril Frazer v. Her Majesty the Queen** (FC) (Civil) (By Leave)

Coram:                    Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-376-01, dated January 12, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-376-01, daté du 12 janvier 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Native law - Taxation - Income tax - Statutes - Interpretation - Whether interest earned on investments deposited in bank branch located on reserve is exempt from taxation - Whether the Federal Court of Appeal erred in finding that subsection 461(4) of the *Bank Act*, S.C. 1991, c. 46 was limited to the purposes of the *Bank Act* and did not override the “connecting factors” test in *Williams v. The Queen*, [1992] 1 S.C.R. 877 in determining the *situs* of the interest income earned on the deposits for the purpose of the tax exemption in s. 87 of the *Indian Act*, R.S.C. 1985, c. I-5 - Whether the Federal Court of Appeal erred in its application of the “connecting factors” test by placing the greatest weight on the activities of the Royal Bank itself whose relationship with the Applicant was one of debtor-creditor.

**PROCEDURAL HISTORY**

May 25, 2001 Tax Court of Canada (Hamlyn J.)	Applicant’s appeal from assessment made under the <i>Income Tax Act</i> for the 1996 taxation year, dismissed
January 12, 2004 Federal Court of Appeal (Stone, Rothstein and Sharlow JJ.A.)	Appeal dismissed
March 12, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**30291**      **Canadian Photonic Labs, Specialized Systems Inc., Canadian Photonic Lab Inc. et Mark Wahoski c. Simbol Test Systems Inc.** (Qc) (Civile) (Autorisation)

Coram:      Les juges Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-014182-042, daté du 17 février 2004, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-014182-042, dated February 17, 2004, is dismissed with costs.

**NATURE DE LA CAUSE**

Procédure - Procédure civile - Exception déclinatoire - Appel - Compétence - Le juge de la Cour d'appel a-t-il erré dans son interprétation des art. 29 et 511 du *Code de procédure civile*, L.R.Q., ch. C-25, et dans son appréciation du jugement de première instance en énonçant seulement qu'il n'est entaché d'aucune erreur d'appréciation de la preuve? - A-t-il erré en passant sous silence l'aveu du président de l'intimée qui reconnaît invoquer l'entente de confidentialité intervenue entre les parties au soutien de son action? - A-t-il erré en référant à la décision du juge Forget rendue le 25 janvier 2002 dans ce dossier? - A-t-il erré en basant sa décision sur des motifs subjectifs et en ne fournissant aucune précision?

**HISTORIQUE DES PROCÉDURES**

Le 6 janvier 2004 Cour supérieure du Québec (Le juge Isabelle)	Requête des demandeurs en exception déclinatoire rejetée
Le 17 février 2004 Cour d'appel du Québec (Le juge Morissette)	Requête pour permission d'en appeler rejetée

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Le 19 avril 2004  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**30220**            **Blue Mountain Collision Ltd. and Al Mansukh v. Insurance Corporation of British Columbia**  
(B.C.) (Civil) (By Leave)

Coram: Bastarache, LeBel and Deschamps JJ.

The application for an extension of time to apply for leave to appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA029785, dated January 5, 2004, is dismissed with costs. In any event, had such application been granted, the application for leave to appeal from the said judgment would have been dismissed with costs.

La demande de prorogation de délai pour le dépôt d'une demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029785, daté du 5 janvier 2004, est rejetée avec dépens. Quoiqu'il en soit, même si la demande de prorogation avait été accueillie, la demande d'autorisation d'appel aurait été rejetée avec dépens.

**NATURE OF THE CASE**

Procedural law - Evidence - Whether the Court of Appeal erred by concluding that the Applicants' argument failed on the issue that the Applicants produce only those portions of the transcripts the Applicants deemed necessary for their part of the appeal and the Respondent produce those portions they deem necessary for their part of the appeal - Whether the Court of Appeal erred by not accepting the uncertified, real time transcripts prepared by an Official Court Reporter, which transcripts were produced and relied upon at trial in the lower Court and the Applicants proposed to use in the appeal - Whether the Court of Appeal erred by failing to sever the issue of damages from the rest of appeal issues

**PROCEDURAL HISTORY**

May 6, 2002 Supreme Court of British Columbia (Macaulay J.)	Respondent's action for fraud, allowed; damages awarded to the Respondent
October 6, 2003 Court of Appeal for British Columbia (Levine J.A.)	Applicants' application for orders concerning the conduct of the proceedings, dismissed
January 5, 2004 Court of Appeal for British Columbia (Southin, Rowles and Prowse JJ.A.)	Application to vary the order, dismissed
March 12, 2004 Supreme Court of Canada	Applications for extension of time and for leave to appeal filed

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**JULY 15, 2004 / LE 15 JUILLET 2004**

**29929**            **Nicolaas Koks v. HIVO Enterprises Ltd., Harry Griffin and Wilhelmina Griffin** (Alta.) (Civil) (By Leave)

Coram:            McLachlin C.J. and Major and Fish JJ.

The motion by Nicolaas Koks to represent Koks Euromotors Ltd. is dismissed. The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 01-00190, dated September 3, 2003, is dismissed with costs.

La requête de Nicolaas Koks pour représenter Koks Euromotors Ltd. est rejetée. La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 01-00190, daté du septembre 2003, est rejetée avec dépens.

**NATURE OF THE CASE**

Commercial Law - Company Law - Shareholders' Agreements - Whether the "shareholder oppression" remedy provisions in s. 242 and other provisions of the Alberta *Business Corporations Act* are, in effect, a "Charter of Rights" for shareholders and should be interpreted with that principle in mind - Whether, on the facts of this case, the Court of Appeal erred in not upholding the Applicant's rights as a shareholder in light of the principle described in paragraph (a) above - Whether the Court of Appeal erred in not correcting the trial judge's non-consideration of the Respondents' breach of a court order and subsequent interference with valuation evidence - Whether, in any event, the errors of the Court of Appeal are of such magnitude as to merit the consideration of this Court.

**PROCEDURAL HISTORY**

March 13, 2001 Court of Queen's Bench of Alberta (Acton J.)	Applicants' action for breach of contract dismissed.
September 3, 2003 Court of Appeal of Alberta (Fraser, Fruman and Paperny JJ.A.)	Appeal dismissed.
November 5, 2003 Supreme Court of Canada (Major J.)	Application to extend time to file application for leave to appeal granted
November 12, 2003 Supreme Court of Canada	Application for leave to appeal filed

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**30168**            **Her Majesty the Queen in Right of the Province of Ontario, as represented by the Minister of Health and Long-Term Care v. S. Joyce Attis, A. Tesluk, The Attorney General of Canada, Dow Corning Corporation, Dow Corning Wright and Dow Corning Canada Inc. AND BETWEEN The Attorney General of Canada v. S. Joyce Attis, A. Tesluk, Dow Corning Corporation, Dow Corning Wright and Dow Corning Canada Inc., and Her Majesty the Queen in Right of the Province of Ontario, as represented by the Minister of Health and Long-Term Care** (Ont.) (Civil) (By Leave)

Coram:            Iacobucci, Binnie and Arbour JJ.

The applications for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C40018, dated December 5, 2003, are dismissed with costs.

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Les demandes d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C40018, daté du 5 décembre 2003, sont rejetées avec dépens.

**NATURE OF THE CASE**

Procedural law - Civil procedure - Actions - Class actions - Torts - Contracts - Settlement agreements - Whether the settlement agreement in a previous class action prevented the plaintiffs' from pursuing a second class action - Whether the Court of Appeal erred in interpreting the settlement agreement as extinguishing OHIP's subrogated claim - Whether the institution of a second class action constitutes an abuse of process - Whether allowing the class action to go forward precludes the Attorney General from raising the issues again in this action and effectively exposes the Crown to a class action it cannot defend - Whether the Court of Appeal was required to give indicate its views with regard to the application of the principle of judicial economy to the instant case - Whether the Court of Appeal gave due consideration to whether permitting the second class proceeding results in a re-litigation of the same issues.

**PROCEDURAL HISTORY**

January 27, 2003 Ontario Superior Court of Justice (Winkler J.)	Motion to strike class action for damages, dismissed
December 5, 2003 Court of Appeal for Ontario (Catzman, Simmons and Gillese JJ.A.)	Appeal dismissed
February 3, 2004 Supreme Court of Canada	First application for leave to appeal
February 3, 2004 Supreme Court of Canada	Second application for leave to appeal filed

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**30233**      **Canadian Union of Public Employees Locals 1712, 3009, 2225-05, 2225-06 and 2225-12, and Service Employees International Union Locals 204 and 532 v. Ernst & Young Inc., in its capacity as trustee in bankruptcy of Royalcrest Lifecare Group, The National Life Assurance Company of Canada, Confederation Life Insurance Company in Liquidation, and Attorney General of Ontario** (Ont.) (Civil) (By Leave)

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

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C39457, dated January 21, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C39457, daté du 21 janvier 2004, est rejetée avec dépens.

**NATURE OF THE CASE**

Labour law - Labour relations - Collective agreement - Successor employer - Commercial law - Bankruptcy - Successor employer - Motion to pursue an application before the Ontario Labour Relations Board pursuant to s. 215 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 -Whether trustees in bankruptcy who carry on the business of a bankrupt are exempt from the ordinary operation of labour relations statutes? - Whether a bankruptcy judge hearing a motion under s. 215 of the *Bankruptcy and Insolvency Act* for leave to remit a question to an expert labour relations board should exercise his discretion, given that the Legislature has vested exclusive jurisdiction for the superintendent of labour relations in these specialized tribunals - Whether there is a legal basis for holding that collective agreements and bargaining rights are put into a state of "suspended animation" by the bankruptcy of an employer.

**PROCEDURAL HISTORY**

January 16, 2003 Ontario Superior Court of Justice (Farley J.)	Applicants' motion for leave to commence and pursue proceedings before the Ontario Labour Relations Board to designate the trustee as a successor employer, denied
January 21, 2004 Court of Appeal for Ontario (Borins [ <i>dissenting</i> ], MacPherson and Cronk JJ.A.)	Appeal dismissed
March 18, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**30280**      **Autobus Jean Bélanger Inc., Berchmans Bouchard et Régis Bélanger c. Syndicat du transport de la région du Grand-Portage (CSN) (Qc) (Civile) (Autorisation)**

Coram:            Bastarache, LeBel et Deschamps

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Québec), numéro 200-09-004395-031, daté du 19 janvier 2004, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Quebec), Number 200-09-004395-031, dated January 19, 2004, is dismissed with costs.

**NATURE DE LA CAUSE**

Droit du travail - Droit administratif - Accréditation - Contrôle judiciaire - Aliénation et concession d'entreprise - Le Tribunal du travail a-t-il commis une erreur manifestement déraisonnable en interprétant la notion de « nouvel employeur » à l'art. 45 du *Code du travail*, L.R.Q., ch. C-27? - La théorie de l'« employeur potentiel » développée dans l'affaire *Ivanhoé Inc. c. TUAC, section locale 500*, [2001] 2 R.C.S. 565, pour une concession temporaire d'entreprise est-elle applicable dans la présente affaire?

**HISTORIQUE DES PROCÉDURES**

Le 2 octobre 2002 Tribunal du travail (Le juge Plante)	Appel accueilli et décision du commissaire du travail rejetant la requête du syndicat en vertu de l'art. 45 <i>C.t.</i> infirmée
Le 21 février 2003 Cour supérieure du Québec (Le juge Corriveau)	Requête des demandeurs en révision judiciaire rejetée
Le 19 janvier 2004 Cour d'appel du Québec (Les juges Rochette, Pelletier et Morin [ <i>dissentant</i> ])	Appel rejeté
Le 17 mars 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**30305**                    **Jean Deschênes c. Sa Majesté la Reine** (Qc) (Criminelle) (Autorisation)

Coram:                    Bastarache, LeBel et Deschamps

La demande de prorogation de délai est accordée. La demande pour la nomination d'un avocat et la demande d'autorisation d'appel des arrêts de la Cour d'appel du Québec (Québec), numéro 200-10-001566-038, datés du 27 janvier 2004 et du 25 février 2004, sont rejetées.

The application for an extension of time is granted. The application to appoint counsel and the application for leave to appeal from the judgment of the Court of Appeal of Quebec (Quebec), Number 200-10-001566-038, dated January 27, 2004 and February 25, 2004, are dismissed.

**NATURE DE LA CAUSE**

Droit criminel - Procédure - Prorogation de délai - Juge de paix à pouvoirs restreints - Le demandeur était-il virtuellement forclos de présenter une demande de prorogation des délais d'appel? - Dans l'éventualité où la Cour répondrait négativement à la première question, le demandeur pouvait-il profiter des conclusions de la Cour d'appel dans l'arrêt *Pomerleau* en se fondant sur les enseignements de la cause *R. c. Wigman*, [1987] 1 R.C.S. 246, pour contester les déclarations de culpabilité prononcées le 30 juillet 2003? - Dans l'éventualité où la Cour répondrait affirmativement à la question précédente, le libellé du par. 34 de l'arrêt *Pomerleau* constitue-t-il une fin de non-recevoir à profiter des enseignements de la cause *R. c. Wigman*? - Enfin, le manquement à une condition de remise en liberté fixée par un fonctionnaire responsable, un juge de paix à pouvoirs restreints ou par un juge suite à l'émission d'un mandat d'arrestation émis par des juges de paix ne jouissant pas des garanties minimales d'indépendance pour décerner des mandats d'arrestation constitue-t-elle, en droit criminel canadien, une infraction?

**HISTORIQUE DES PROCÉDURES**

Le 27 janvier 2004 Cour d'appel du Québec (Le juge Pelletier)	Requête pour proroger les délais, pour permission d'en appeler ou appel du verdict et pour être autorisé à retirer un plaidoyer de culpabilité; rejetée
Le 25 février 2004 Cour d'appel du Québec (Les juges Rousseau-Houle, Delisle et Nuss)	Requête en révision rejetée
Le 23 avril 2004 Cour suprême du Canada	Demandes d'autorisation d'appel et de prorogation de délai déposées
Le 10 mai 2004 Cour suprême du Canada	Requête en nomination de procureur

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28.6.2004

Before / Devant : LEBEL J.

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

BY / PAR: Chicken Farmers of Canada

IN / DANS: André Pelland

c. (29805)

Fédération des producteurs de  
volailles du Québec, et al. (Qc)

**UPON APPLICATION** by the Chicken Farmers of Canada for leave to intervene in the above appeal and pursuant to the order of January 12, 2004;

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

**À LA SUITE DE LA DEMANDE** des Producteurs de poulet du Canada visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné et suite à l'ordonnance du 12 janvier 2004;

**IL EST EN OUTRE ORDONNÉ** que la plaidoirie de l'intervenant soit ainsi limitée à quinze (15) minutes.

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28.6.2004

Before / Devant : LEBEL J.

**Motion to extend the time in which to serve and file the application for leave and motion to file a memorandum of argument on leave to appeal of over 20 pages**

**Requête en prorogation du délai imparti pour signifier et déposer la demande d'autorisation et requête pour permission de déposer un mémoire sur une demande d'autorisation de plus de 20 pages**

Her Majesty the Queen

v. (30364)

James Sauvé, et al.(Ont.) (Crim.)

**GRANTED / ACCORDÉES** Time extended to June 23, 2004.

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28.6.2004

Before / Devant : LEBEL J.

**Further order on motions for leave to intervene**

**Autre ordonnance sur des requêtes en autorisation d'intervention**

BY / PAR : Canadian Superior Courts Judges Association,  
Conférence des juges du Québec,  
Canadian Association of Provincial Court Judges,  
Ontario Conference of Judges,  
Judicial Justice of the Peace Association of British Columbia,  
Association of Justices of the Peace of Ontario

IN / DANS : Her Majesty the Queen in Right of Alberta, et al.

v. (29525)

Chereda Bodner, et al. (Alta.)

**UPON APPLICATIONS** by the Canadian Superior Courts Judges Association, la Conférence des juges du Québec, the Canadian Association of Provincial Court Judges, the Ontario Conference of Judges, the Judicial Justice of the Peace Association of British Columbia and the Association of Justices of the Peace of Ontario, for leave to intervene in the above appeal pursuant to the order of March 9, 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.

**À LA SUITE DES DEMANDES** par l'Association canadienne des juges des cours supérieures, la Conférence des juges du Québec, l'Association canadienne des juges des cours provinciales, la Conférence des juges de l'Ontario, la Judicial Justices of the Peace Association of British Columbia et l'Association des juges de paix de l'Ontario, visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné et suite à l'ordonnance du 9 mars 2004;

**IL EST EN OUTRE ORDONNÉ** que la plaidoirie des intervenantes soit ainsi limitée à quinze (15) minutes chacun.

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28.6.2004

Before / Devant : THE REGISTRAR

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

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

9117-4912 Québec Inc., et al.

c. (30212)

Les Immeubles Dandurand Inc. (Qc)

**GRANTED / ACCORDÉE** Délai prorogé au 15 juin 2004.

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28.6.2004

Before / Devant : THE DEPUTY REGISTRAR

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

**Requête visant à proroger davantage le délai imparti pour signifier et déposer les mémoire et recueil de sources de l'appelant**

Daryl Milland Clark

v. (29976)

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

**GRANTED / ACCORDÉE** Time extended to June 23, 2004.

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28.6.2004

Before / Devant : LEBEL J.

**Motions for leave to intervene**

**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.)

**GRANTED / ACCORDÉES**

**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 HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

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

The motion for an extension of time to apply for leave to intervene and for leave to intervene of the applicant, the Ontario Conference of Judges, is granted and the applicant shall be entitled to serve and file a factum not to exceed 20 pages in length.

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

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

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

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29.6.2004

Before / Devant : THE CHIEF JUSTICE

**Motion to state a constitutional question**

**Requête pour formulation d'une question constitutionnelle**

Her Majesty the Queen

v. (30005)

Joshua Bernard (N.B.)

**GRANTED / ACCORDÉE**

**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. Is the prohibition on unauthorized possession of Crown timber pursuant to s. 67(1)(c) of the *Crown Lands and Forests Act*, S.N.B. 1980, c. C-38.1 and amendments, inconsistent with the treaty rights of the respondent contained in the Miramichi Mi'kmaq Treaty of June 25, 1761, and therefore of no force or effect or application to the respondent by virtue of ss. 35(1) and 52 of the *Constitution Act, 1982*?
  2. Is the prohibition on unauthorized possession of Crown timber pursuant to s. 67(1)(c) of the *Crown Lands and Forests Act*, S.N.B. 1980, c. C-38.1 and amendments, inconsistent with Mi'kmaq aboriginal title to the provincial Crown land from which the timber was cut, by virtue of (i) exclusive occupation by the Mi'kmaq at the time the British acquired sovereignty over the area, or (ii) *Belcher's Proclamation*, or (iii) the *Royal Proclamation, 1763*, and therefore of no force or effect or application to the respondent by virtue of ss. 35(1) and 52 of the *Constitution Act, 1982*?
  1. L'interdiction pour quiconque d'être en possession sans autorisation de bois qui provient des terres de la Couronne contrairement à l'article 67(1)(c) de la *Loi sur les terres et forêts de la Couronne*, L.N.-B., chap. C-38-1, telle qu'amendée, est-elle incompatible avec les droits issus de traités de l'intimé et qui figurent dans le traité conclu, le 25 juin 1761, par les Micmacs de Miramichi et, donc, inopérante ou inapplicable l'égard de l'intimé selon les articles 35(1) et 52 de la *Loi constitutionnelle de 1982*?
  2. L'interdiction pour quiconque d'être en possession sans autorisation contrairement à l'article 67(1)(c) de la *Loi sur les terres et forêts de la Couronne*, L.N.-B., 1980, chap. C-38-1, telle qu'amendée, est-elle incompatible avec le titre aborigène des Micmacs sur les terres de la Couronne provinciale où le bois a été coupé en vertu de (i) l'occupation exclusive de ces terres par les Micmacs lorsque la Couronne y a acquis souveraineté ou en vertu de (ii) la *Proclamation de Belcher* ou (iii) de la *Proclamation royale de 1763* et, donc, inopérante ou inapplicable à l'égard de l'intimé selon les articles 35(1) et 52 de la *Loi constitutionnelle de 1982*?
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29.6.2004

Before / Devant : THE CHIEF JUSTICE

**Motion to state a constitutional question**

**Requête pour formulation d'une question constitutionnelle**

Her Majesty the Queen

v. (30063)

Stephen Frederick Marshall, et al. (N.S.)

**GRANTED / ACCORDÉE**

**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. Is the prohibition on cutting or removing timber from Crown lands without authorization pursuant to s. 29 of the *Crown Lands Act*, R.S.N.S. 1989, c. 114, inconsistent with the treaty rights of the respondents/appellants on cross-appeal contained in the Mi'kmaq Treaties of 1760-61, and therefore of no force or effect or application to them, by virtue of ss. 35(1) and 52 of the *Constitution Act, 1982*?
  2. Is the prohibition on cutting or removing timber from Crown lands without authorization pursuant to s. 29 of the *Crown Lands Act*, R.S.N.S. 1989, c. 114, inconsistent with Mi'kmaq aboriginal title to the provincial Crown land from which the timber was cut or removed, by virtue of (i) exclusive occupation by the Mi'kmaq at the time the British acquired sovereignty over the area, or (ii) the *Royal Proclamation, 1763*, and therefore of no force or effect or application to the respondents/appellants on cross-appeal by virtue of ss. 35(1) and 52 of the *Constitution Act, 1982*?
  1. L'interdiction pour quiconque de couper le bois se trouvant sur les terres de la Couronne ou de l'enlever de ces terres sauf autorisation donnée en vertu de l'article 29 de la *Loi sur les terres de la Couronne*, L.R.N.-B. 1989, chap. 114, est-elle incompatible avec les droits issus de traités des intimés/appellants dans l'appel incident, et qui figurent dans les traités conclus par les Micmacs en 1760 et 1761 et, donc, inopérante ou inapplicable à leur égard selon les articles 35(1) et 52 de la *Loi constitutionnelle de 1982*?
  2. L'interdiction pour quiconque de couper le bois se trouvant sur les terres de la Couronne ou de l'enlever de ces terres sauf autorisation donnée en vertu de l'article 29 de la *Loi sur les terres de la Couronne*, L.R.N.-B., 1989, chap. 114 est-elle incompatible avec le titre aborigène des Micmacs sur les terres de la Couronne provinciale où a eu lieu la coupe du bois ou son enlèvement en vertu de (i) l'occupation exclusive de ces terres par les Micmacs lorsque la Couronne y a acquis la souveraineté ou en vertu de la (ii) *Proclamation royale de 1763* et, donc, inopérante ou inapplicable à l'égard des intimés/appellants dans l'appel incident, selon les articles 35(1) et 52 de la *Loi constitutionnelle de 1982*?
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30.6.2004

Before / Devant : LEBEL J.

**Motions to extend the time in which to serve and file the applications for leave**

**Requêtes en prorogation du délai imparti pour signifier et déposer les demandes d'autorisation**

Wavel Ventures Corp., et al.

v. (30255)

Albert Gene Constantini (Alta.)

**DISMISSED / REJETÉES**

**UPON APPLICATIONS** by the applicant for an order:

- 1) extending the time to serve and file an application for leave to appeal from the judgment of the Court of Appeal of Alberta dated September 20, 2002 to March 31, 2004; and
- 2) extending the time to serve and file an application for leave to appeal from the judgment of the Court of Appeal of Alberta dated June 10, 2003 to June 3, 2004.

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

The applications for an order extending the time to serve and file two applications for leave to appeal from the decisions of the Court of Appeal of Alberta dated September 20, 2002 and June 10, 2003, are dismissed. The motions fail to state any valid ground for extensions of time.

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30.6.2004

Before / Devant : LEBEL 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 : Canada Post Corporation

IN / DANS : Air Canada

v. (30323)

Canadian Human Rights  
Commission, et al. (FC)

**DISMISSED / REJETÉE**

**UPON APPLICATION** by the Canada Post Corporation for leave to intervene in the above mentioned application for leave to appeal;

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

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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.

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7.7.2004

Before / Devant : THE DEPUTY REGISTRAR

**Motion for substitutional service**

**Requête en substitution de signification**

Keyvan Nourhaghi

v. (30350)

Canadian Human Rights Commission, et al. (FC)

**GRANTED / ACCORDÉE**

**UPON MOTION** by the Respondent the Attorney General of Canada for an order for:

- a) substituted service by regular mail of the within Motion Record on the Applicant at his home address;
- b) an extension of time within which to file the Response of the Attorney General of Canada;
- c) substituted service by regular mail of the Response of the Attorney General of Canada on the Applicant; and
- d) substituted service by regular mail of future documents in this proceeding required to be served by the *Rules of the Supreme Court of Canada*;

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

- a) the service of the within motion materials by regular mail is deemed good and sufficient service upon the Applicant;
  - b) the period within which the Attorney General of Canada may serve and file its Response is hereby retroactively extended by one day to June 1, 2004;
  - c) the service of the Response of the Attorney General of Canada by regular mail is deemed good and sufficient service upon the Applicant; and
  - d) the service of future documents in this proceeding by regular mail is deemed good and sufficient service upon the Applicant, such documents being deemed served on the date they are received.
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8.7.2004

Before / Devant : DESCHAMPS J.

**Motion to extend the time in which to serve and file the factum and book of authorities of the intervener the Speaker of the Legislative Assembly of Ontario, 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 de l'intervenant le Président de l'Assemblée législative de l'Ontario, et pour présenter une plaidoirie lors de l'audition de l'appel**

House of Commons, et al.

v. (29564)

Satnam Vaid, et al. (FC)

**GRANTED / ACCORDÉE**

**UPON APPLICATION** by the intervener, the Speaker of the Legislative Assembly of Ontario, for an order extending the time to serve and file its factum and book of authorities to June 4, 2004 and for an order permitting the said intervener to present oral argument at the hearing of this appeal.

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

The motion of the intervener, the Speaker of the Legislative Assembly of Ontario, to serve and file its factum and book of authorities to June 4, 2004, is granted.

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

8.7.2004

Before / Devant : DESCHAMPS J.

**Further order on motions for leave to intervene****Autre ordonnance sur des requêtes en autorisation d'intervention**

**BY / PAR :** Honourable Senator Serge Joyal and the Honourable Senator Mobina S.B. Jaffer,  
Canadian Association of Professional Employees and the Communications, Energy and Paperworkers Union of Canada,  
Speaker of the Legislative Assembly of Ontario

**IN / DANS :** House of Commons, et al.

v. (29564)

Satnam Vaid, et al. (FC)

**UPON APPLICATIONS** by the Honourable Senator Serge Joyal and the Honourable Senator Mobina S.B. Jaffer, the Canadian Association of Professional Employees and the Communications, Energy and Paperworkers Union of Canada and the Speaker of the Legislative Assembly of Ontario, for leave to intervene in the above appeal and pursuant to the order of April 6, 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.

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8.7.2004

Before / Devant : DESCHAMPS J.

**Motion for leave to intervene**

**Requête en autorisation d'intervention**

BY / PAR : Attorney General of Canada

IN / DANS : E.B.

v. (29890)

Order of the Oblates of Mary  
Immaculate in the Province of British  
Columbia (B.C.)

**GRANTED / ACCORDÉE**

**UPON APPLICATION** by the Attorney General of Canada 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 Attorney General of Canada, 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.

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 their intervention.

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9.7.2004

Before / Devant : LEBEL J.

**Motion for a stay of execution**

**Requête en vue de surseoir à l'exécution**

Her Majesty the Queen

v. (30005)

Joshua Bernard (N.B.)

**GRANTED / ACCORDÉE**

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**UPON APPLICATION** by counsel on behalf of the Appellant for an order staying the judgment of the New Brunswick Court of Appeal dated August 28, 2003;

**AND UPON** reading the pleadings and proceedings herein, together with the affidavits of Thomas L. Spinney and Richard C. Munroe and considering that the Appellant has satisfied all tests for the granting of a stay and that such stay would be appropriate and justified under the circumstances;

**IT IS HEREBY ORDERED THAT:**

A stay suspending the effect of the judgment of the New Brunswick Court of Appeal dated August 28, 2003, be granted immediately upon the expiry of the stay suspending the effect of this judgment granted by the New Brunswick Court of Appeal, which stay shall continue until the final disposition of this appeal or other Order of this Court on the disposition of this appeal.

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**NOTICE OF APPEAL FILED SINCE  
LAST ISSUE**

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

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24.6.2004

**David Hilewitz**

**v. (30125)**

**The Minister of Citizenship and Immigration  
(F.C.)**

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24.6.2004

**Dirk De Jong**

**v. (30127)**

**The Minister of Citizenship and Immigration  
(F.C.)**

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6.7.2004

**Harry Dikranian**

**v. (30243)**

**Procureur général du Québec (Qc)**

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**NOTICES OF INTERVENTION FILED  
SINCE LAST ISSUE**

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

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24.6.2004

BY/PAR: Attorney General of British Columbia  
Attorney General of Canada

IN/DANS: **Government of Saskatchewan**

**v. (29973)**

**Rothmans Benson & Hedges Inc. (Sask.)**

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Reasons for judgment are available

Les motifs de jugement sont disponibles

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JULY 16, 2004 / LE 16 JUILLET 2004

29370

Carl Anderson v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Empress Gas Corp. Ltd., Encor Energy Corporation Inc., Gulf Canada Resources Limited, Home Oil Company Limited, Imperial Oil Resources, Imperial Oil Resources Limited, Imperial Oil Resources Production Limited, Jethro Development Ltd., Kerr-McGee Canada Ltd., McColl-Frontenac Inc., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Petro-Canada, Royal Trust Energy Resources II Corporation, RTEC One Resources Inc. and Suncor Inc. - and between - Carl Anderson and Richard W. C. Anderson, Co-executors of the Estate of Chris Anderson, deceased, Carl Anderson, Laureen Anderson, Richard W. C. Anderson, Gonda Humble, Margaret May Newland, Mary Ross and Lillian Rowles v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Canol Resources Ltd., Dominion Explorers Inc., Empress Gas Corp. Ltd., Gentra One Resources Inc., Gulf Canada Resources Limited, Home Oil Company Limited, International Oiltex Ltd., Jethro Development Ltd., Kerr-McGee Canada Ltd., Mobil Oil Canada, Mobil Oil Canada Ltd., Mobil Resources Ltd., Murphy Oil Company Ltd., Ocelot Energy Inc., Petro-Canada, Suncor Inc., Talisman Energy Inc. and Westrock Energy Resources II Corporation - and between - Marguerite J. Bouskill, Executrix of the Estate of Thomas Charles Bouskill, deceased, Marguerite J. Bouskill, Geraldine Sadie McArthur and May Eleanor Winter v. Canadian Fina Oil Limited, Home Oil Company Limited, Petrofina Canada Ltd., Petro-Canada Enterprises Inc., Petro-Canada Inc. and Petro-Canada - and between - Bruce Wesley Burns, Executor of the Estate of Wycliffe Thomas Burns, deceased, Bruce Wesley Burns, Robert Lyle Burns and Stanley Roy Burns v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Apache Corporation, Canadian Gulf Oil Company, Canadian Pacific Limited, Empress Gas Corp. Ltd., Encor Energy Corporation Inc., Gulf Canada Limited, Gulf Canada Properties Limited, Gulf Canada Resources Limited, Home Oil Company Limited, Imperial Oil Resources, Jethro Development Ltd., Kerr-McGee Canada Ltd., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., PanCanadian Petroleum Limited, Petro-Canada, Royal Trust Energy Resources II Corporation, RTEC One Resources Inc. and Suncor Inc. - and between - Roy Hoven and Adolph Hoven, Co-executors of the Estate of Theresa Hoven, deceased v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Canol Resources Ltd., Canadian Gulf Oil Company, Dominion Explorers Inc., Empress Gas Corp. Ltd., Gulf Canada Limited, Gulf Canada Properties Limited, Gulf Canada Resources Limited, Home Oil Company Limited, International Oiltex Ltd., Jethro Development Ltd., Kerr-McGee Canada Ltd., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Ocelot Energy Inc., Petro-Canada, Royal Trust Energy Resources II Corporation, RTEC One Resources Inc., Suncor Inc. and Talisman Energy Inc. - and between - Robert John Fielding King, Executor of the Estate of Dorothy Jessie Walker, deceased, and Robert John Fielding King v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Apache Corporation, Canadian Gulf Oil Company, Canadian Pacific Limited, Empress Gas Corp. Ltd., Encor Energy Corporation Inc., Gulf Canada Limited, Gulf Canada Properties Limited, Gulf Canada Resources Limited, Home Oil Company Limited, Imperial Oil Resources, Jethro Development Ltd., Kerr-McGee Canada Ltd., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., PanCanadian Petroleum Limited, Petro-Canada, Royal Trust Energy Resources II Corporation, RTEC One Resources Inc. and Suncor Inc. - and between - Robert Michael Logan, Executor of the Estate of Wilbert Logan, deceased v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Canol Resources Ltd., Dominion Explorers Inc., Empress Gas Corp. Ltd., Gulf Canada Resources Limited, Home Oil Company Limited, Imperial Oil Limited, International Oiltex Ltd., Jethro Development Ltd., Kerr-McGee Canada Ltd., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Ocelot Energy Inc., Petro-Canada, Royal Trust Energy Resources

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II Corporation, RTEC One Resources Inc., Suncor Inc. and Talisman Energy Inc. - and between - Angus McNeil v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Canadian Gulf Oil Company, Canadian Pacific Limited, Empress Gas Corp. Ltd., Encor Energy Corporation Inc., Gascan Resources Ltd., Gulf Canada Limited, Gulf Canada Properties Limited, Gulf Canada Resources Limited, Home Oil Company Limited, Imperial Oil Resources, Imperial Oil Resources Limited, Imperial Oil Resources Production Limited, Jethro Development Ltd., Kerr-McGee Canada Ltd., Lincoln-McKay Development Company Ltd., McColl-Frontenac Inc., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., PanCanadian Petroleum Limited, Petro-Canada, Royal Trust Energy Resources II Corporation, RTEC One Resources Inc. and Suncor Inc. - and between - David Lloyd McNeil v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Canol Resources Ltd., Dominion Explorers Inc., Empress Gas Corp. Ltd., Gulf Canada Resources Limited, Home Oil Company Limited, Imperial Oil Resources Limited, International Oiltex Ltd., Jethro Development Ltd., Kerr-McGee Canada Ltd., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Ocelot Energy Inc., Petro-Canada, Royal Trust Energy Resources II Corporation, RTEC One Resources Inc., Suncor Inc., Talisman Energy Inc. and Union Pacific Resources Inc. - and between - James William Murdoch and Andrew John Murdoch v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Canadian Gulf Oil Company, Canadian Pacific Limited, Empress Gas Corp. Ltd., Encor Energy Corporation Inc., Gascan Resources Ltd., Gulf Canada Limited, Gulf Canada Properties Limited, Gulf Canada Resources Limited, Home Oil Company Limited, Imperial Oil Resources, Imperial Oil Resources Limited, Imperial Oil Resources Production Limited, Jethro Development Ltd., Kerr-McGee Canada Ltd., Lincoln-McKay Development Company Ltd., McColl-Frontenac Inc., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., PanCanadian Petroleum Limited, Petro-Canada, Royal Trust Energy Resources II Corporation, RTEC One Resources Inc. and Suncor Inc. - and between - Andrew Patterson Murray v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Empress Gas Corp. Ltd., Encor Energy Corporation Inc., Gulf Canada Resources Limited, Home Oil Company Limited, Imperial Oil Resources, Imperial Oil Resources Limited, Imperial Oil Resources Production Limited, Jethro Development Ltd., Kerr-McGee Canada Ltd., McColl-Frontenac Inc., Mobil Oil Canada, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Petro-Canada, Royal Trust Energy Resources II Corporation, RTEC One Resources Inc. and Suncor Inc. - and between - David Lloyd McNeil, Executor of the Estate of Ada McNeil, deceased, David Lloyd McNeil, Evelyn McNeil, Beatrice Ann Philips and Ethel Ada Thornton v. Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd., Canol Resources Ltd., Dominion Explorers Inc., Empress Gas Corp. Ltd., Gentra One Resources Inc., Gulf Canada Resources Limited, Home Oil Company Limited, International Oiltex Ltd., Jethro Development Ltd., Kerr-McGee Canada Ltd., Mobil Oil Canada, Mobil Oil Canada, Ltd., Mobil Resources Ltd., Murphy Oil Company Ltd., Ocelot Energy Inc., Petro-Canada, Suncor Inc., Talisman Energy Inc. and Westrock Energy Resources II Corporation - and between - Elias Dyrlund v. 227096 Oil & Gas Ltd., Atlantic Richfield Company, Canadian Gulf Oil Company, Gulf Canada Limited, Gulf Canada Properties Limited, Gulf Canada Resources Limited, Husky Oil Operations Ltd., Conwest Exploration Company Limited, Canadian Pacific Limited, PanCanadian Petroleum Limited and Petro-Canada - and between - Roy Edward Engen, Roy Edward Engen, Executor of the Estate of Oscar Huseby, deceased, and Allan Henri Posti v. Atlantic Richfield Company, Canadian Pacific Limited, Crestar Energy, Gulf Canada Resources Limited, Lincoln-McKay Development Company Ltd., PanCanadian Petroleum Limited, Petro-Canada and Sulpetro Limited - and between - Ronald Hall and Leanne Hall, Executors of the Estate of Constance Huseby, deceased, Dorothy Jean Matthews and Norma June Cherniak, Executors of the Estate of Muriel Engen, deceased, Violet Carroll, Norma June Cherniak, Holly Muriel French, Harvey Raymond Huseby, Kelly Marlene Judson and Dorothy Jean Matthews v. Atlantic Richfield Company, Canadian Pacific Limited, Crestar Energy, Gulf Canada Resources Limited, Lincoln-McKay Development Company Ltd., PanCanadian Petroleum Limited and Petro-Canada - and between - Alick Lawton, Executor of the Estate of Roger Lawton, deceased, and Alick Lawton v. 227096 Oil & Gas Ltd., Atlantic Richfield Company, Canadian Gulf Oil Company,

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**Gulf Canada Limited, Gulf Canada Properties Limited, Gulf Canada Resources Limited, Husky Oil Operations Ltd., Conwest Exploration Company Limited, Canadian Pacific Limited, PanCanadian Petroleum Limited and Petro-Canada - and between - Russell E. Thorp and William J. Thorp, Co-executors of the Estates of Hilmer Magnus Thorp and Pearl Mary Thorp, deceased, Russell E. Thorp and William J. Thorp v. 227096 Oil & Gas Ltd., Atlantic Richfield Company, Canadian Gulf Oil Company, Gulf Canada Limited, Gulf Canada Properties Limited, Gulf Canada Resources Limited, Husky Oil Operations Ltd., Conwest Exploration Company Limited, Canadian Pacific Limited, PanCanadian Petroleum Limited and Petro-Canada - and between - Ada Irene McKenzie and Robert Douglas Wallace, Executor of the Estate of Elizabeth D. Wallace, deceased v. Canadian Pacific Limited, Canadian Rampart Oil & Gas Ltd., J & K Petroleum Land Management Ltd., LL & E Canada Holdings, Inc., PanCanadian Petroleum Limited, Rocky River Resources Ltd. and Sunlite Oil Company Limited - and between - Mary Diane Peterson, Executrix of the Estate of Evelyn Lucinda Macey, deceased, Mary Diane Peterson, Larry John Macey and Lorna Jean Macey v. Canada Northwest Energy Limited, Canadian Pacific Limited, Canpar Holdings Ltd., PanCanadian Petroleum Limited and Serenpet Exploration Inc. - and between - Violet Anne Safron v. Apache Corporation, Sunray DX Northern Oil Co. Ltd., Sun Oil Company Limited and Suncor Inc. - and between - Verdie Ann Lian and Janet Lee Ann Kostiw, Executrices of the Estate of Marjorie E. Stone, deceased v. Bralorne Resources Limited, Bonanza Oil & Gas Ltd., Canadian Hunter Exploration Ltd., Lochend Partnership, Lochwest Resources Ltd., Serenpet Exploration Inc., Serenpet Inc., Serenpet Partnership and Shiningbank Energy Ltd. - and - Freehold Petroleum & Natural Gas Owners Association (Alta.)**

**2004 SCC 49 / 2004 CSC 49**

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

The appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 98-17974, dated June 26, 2002, heard on April 22, 2004 is dismissed with costs.

L'appel interjeté contre l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 98-17974, en date du 26 juin 2002, entendu le 22 avril 2004 est rejeté avec dépens.

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**29769**                    **Walter Raponi v. Her Majesty the Queen** (Alta.) (Crim.)  
**2004 SCC 50 / 2004 CSC 50**

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

The appeal from the judgment of the Court of Appeal of Alberta (Edmonton), Number 0203-0079-A3, 2003 ABCA 128, dated April 16, 2003, heard on May 17, 2004 is allowed, and the order of the Court of Appeal set aside without prejudice to the parties' rights to proceed in the proper manner. Each party will bear its own costs.

L'appel interjeté contre l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 0203-0079-A3, 2003 ABCA 128, en date du 16 avril 2003, entendu le 17 mai 2004 est accueilli et l'ordonnance de la Cour d'appel est annulée, sans préjudice du droit des parties de procéder de manière appropriée. Chaque partie assumera ses propres dépens.

\* Arbour J. took no part in the judgment. / La juge Arbour n'a pas pris part au jugement.

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**29649**            **Nova Scotia Power Inc. v. Her Majesty the Queen** (FC)  
**2004 SCC 51 / 2004 CSC 51**

Coram: McLachlin C.J. and Major, Binnie, LeBel and Deschamps JJ.

The appeal from the judgment of the Federal Court of Appeal, Number A-108-02, dated January 23, 2003, was heard on June 11, 2004 and on that day the following judgment was rendered:

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

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

The appeal should be dismissed with costs.

L'appel interjeté contre l'arrêt de la Cour d'appel fédérale, numéro A-108-02, en date du 23 janvier 2003, a été entendu le 11 juin 2004 et la Cour a prononcé le même jour le jugement suivant :

[TRANSLATION]

LA JUGE EN CHEF (oralement) — Nous sommes tous d'avis que le présent pourvoi doit être rejeté. Motifs à suivre.

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

Le pourvoi est rejeté avec dépens.

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*Carl Anderson, et al. v. Amoco Canada Oil and Gas, et al.* (Alta.) (29370)

**Indexed as: Anderson v. Amoco Canada Oil and Gas /**

**Répertorié : Anderson c. Amoco Canada Oil and Gas**

**Neutral citation: 2004 SCC 49. / Référence neutre : 2004 CSC 49.**

Judgment rendered July 16, 2004 / Jugement rendu le 16 juillet 2004

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Present: McLachlin C.J. and Major, Bastarache, Binnie and Deschamps JJ.

*Real property – Split Title Lands – Oil and gas – Petroleum rights reserved by railway company in sale of land to settlers in early twentieth century – Effect of reservation of petroleum rights on present entitlement to oil and gas from lands encumbered by reservation – Determination of respective rights of “petroleum owners” and “non-petroleum owners” – Whether initial conditions of natural underground reservoir govern relative ownership between parties to original contracts – Rule of capture.*

For connecting the west coast with the rest of Canada, the Canadian Pacific Railway (CPR) was paid in money and land by the Canadian government. The CPR then entered into agreements with settlers for the transfer of title to this land. Under these agreements the CPR reserved its right to petroleum, creating “Split Title Lands”. This appeal deals with contracts entered into between 1907 and 1912 and with the ownership of hydrocarbons produced from wells drilled on Split Title Lands. A natural underground reservoir (“pool”) may contain hydrocarbons in both liquid and gas phases. Prior to human intervention, a pool will be under relatively stable pressure and temperature conditions, and the ratio of gas phase to liquid phase hydrocarbons will remain fairly constant. When a pool is drilled into, the pressure changes, causing phase changes which alter this ratio. Some of the hydrocarbons originally found in liquid phase will, if there is a reduction in pressure, “evolve” into gas phase. Once this evolution happens it is impossible to distinguish evolved gas from those hydrocarbons which were originally in a gas phase. Depending on the initial pool conditions and other factors including production techniques, the amount of hydrocarbons that change phase can be quite significant.

In determining the respective subsurface rights of “petroleum owners” and “non-petroleum owners” under the Split Title Lands, the Alberta Court of Queen’s Bench held that the “non-petroleum owners” were entitled to: (1) primary gas cap gas; (2) primary gas cap gas which migrates from adjoining lands; and (3) condensate and natural gas liquids that derive from primary gas cap gas. The court further held that the “petroleum owners” were entitled to: (1) secondary gas cap gas; (2) secondary gas cap gas which migrates from adjoining lands; (3) solution gas that emerges from connate water; and (4) condensate and natural gas liquids that derive from secondary gas cap gas. “Primary gas cap gas” refers to those hydrocarbons in gaseous phase in a pool containing an accumulation of both gaseous and liquid hydrocarbon solutions prior to human intervention, while “secondary gas cap gas” or “evolved gas” refers to gaseous hydrocarbons which were originally liquid. The Court of Appeal dismissed the appeal, except that it did not agree that the petroleum owner was entitled to the gas from connate water; that issue is not before this Court.

*Held:* The appeal should be dismissed.

The courts below were correct to find that *Borys v. Canadian Pacific Railway*, [1953] 2 D.L.R. 65 (P.C.), decided the reservation of petroleum included all hydrocarbons which were in liquid phase in the ground at the time of the transaction. The reservation of petroleum divided the ownership interest in oil and gas on the basis of the phase the hydrocarbon was in under initial conditions at the time of the contract for the sale of the property. Any phase changes which occurred after a well is drilled into a pool do not alter the ratio of ownership created by the reservation. This applies to the parties to the original contract and also applies to those who derive their interest from these parties. Accordingly, the non-petroleum owner is entitled to all hydrocarbons which were in gas phase, and the petroleum owner to all hydrocarbons which were in liquid phase, at initial pool conditions, regardless of the phase they are in at time of recovery. This division will apply to hydrocarbons which migrate from under other lands, subject to any regulatory mitigation of the rule of capture. Dividing ownership based upon original conditions will not lead to great uncertainty in quantifying respective interests. The entire industry relies on estimates of what is under the surface, and these estimates have to suffice for dividing up ownership as well.

A broad ownership theory is not required to be determined in this appeal. Irrespective of any other rights the parties may have in relation to the hydrocarbons in the ground, they chose to divide their interest by contract. It is not open to a party to argue later that division was meaningless on the basis that no rights can attach until the substance is

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reduced to possession. When the substance, which was not in their possession at the time of the contract, is reduced to possession the date and terms of the contract govern their relative entitlement.

Lastly, the rule of capture does not apply to the division of ownership by phase as it does to divisions of ownership based on surface land ownership. Applying this rule to parties who have agreed to divide their interest under the same tract of land would defeat the purpose of the contract.

APPEAL from a judgment of the Alberta Court of Appeal (2002), 5 Alta. L.R. (4th) 54, 312 A.R. 116, 214 D.L.R. (4th) 272, [2003] 1 W.W.R. 174, [2002] A.J. No. 829 (QL), 2002 ABCA 162, affirming in part a judgment of the Court of Queen's Bench (1998), 63 Alta. L.R. (3d) 1, 225 A.R. 277, [1999] 3 W.W.R. 255, [1998] A.J. No. 805 (QL), 1998 ABQB 620. Appeal dismissed.

*Norman K. Machida and Timothy S. Meagher*, for the appellants.

*Lenard M. Sali, Q.C.*, for the respondents Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd. and Ocelot Energy Inc.

*Randall W. Block and Karen A. McHugh*, for the respondents Gulf Canada Resources Limited, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Canadian Gulf Oil Company, Gulf Canada Limited and Gulf Canada Properties Limited.

*Gwen K. Randall, Q.C.*, for the respondents Petro-Canada, Canol Resources Ltd., Dominion Explorers Inc., International Oiltex Ltd., Canadian Fina Oil Limited, Petrofina Canada Ltd., Petro-Canada Enterprises Inc. and Petro-Canada Inc.

*Mary E. Comeau*, for the respondent Talisman Energy Inc. and Encor Energy Corporation.

*William R. Pieschel, Q.C.*, for the respondents Canadian Pacific Limited and PanCanadian Petroleum Limited.

No one appeared for the respondents Empress Gas Corp. Ltd., Union Pacific Resources Inc., Crestar Energy, Sulpetro Limited, Canadian Rampart Oil & Gas Ltd., J & K Petroleum Land Management Ltd., LL & E Canada Holdings Inc., Rocky River Resources Ltd., Sunlite Oil Company Limited, Sunray DX Northern Oil Co. Ltd., Sun Oil Company Limited, Bralorne Resources Limited, Bonanza Oil & Gas Ltd., Canadian Hunter Exploration Ltd., Lochend Partnership, Lochwest Resources Ltd., Serenpet Inc., Serenpet Partnership and Shiningbank Energy Ltd.

*L. Douglas Rae and W. Tibor Osvath*, for the intervener Freehold Petroleum & Natural Gas Owners Association.

*Solicitors for the appellants: Machida Mack Shewchuk, Calgary.*

*Solicitors for the respondents Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd. and Ocelot Energy Inc.: Bennett Jones, Calgary.*

*Solicitors for the respondents Gulf Canada Resources Limited, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Canadian Gulf Oil Company, Gulf Canada Limited and Gulf Canada Properties Limited: Borden Ladner Gervais, Calgary.*

*Solicitors for the respondents Petro-Canada, Canol Resources Ltd., Dominion Explorers Inc., International Oiltex Ltd., Canadian Fina Oil Limited, Petrofina Canada Ltd., Petro-Canada Enterprises Inc. and Petro-Canada Inc.: Davis & Company, Calgary.*

*Solicitors for the respondent Talisman Energy Inc. and Encor Energy Corporation: MacLeod Dixon, Calgary.*

*Solicitors for the respondents Canadian Pacific Limited and PanCanadian Petroleum Limited: Parlee McLaws, Calgary.*

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*Solicitors for the respondents Home Oil Company Limited, 227096 Oil & Gas Ltd., Husky Oil Operations Ltd., Conwest Exploration Company Limited, Canada Northwest Energy Limited and Serenpet Exploration Inc.: Carscallen Lockwood Cormie, Calgary.*

*Solicitors for the respondents Imperial Oil Limited, Imperial Oil Resources, Imperial Oil Resources Limited, Imperial Oil Resources Production Limited, McColl-Frontenac Inc., Imperial Oil Limited and Atlantic Richfield Company: Gowling Lafleur Henderson, Calgary.*

*Solicitors for the respondents Jethro Development Ltd., Kerr-McGee Canada Ltd., Gascan Resources Ltd. and Lincoln-McKay Development Company Ltd.: Fraser Milner Casgrain, Calgary.*

*Solicitors for the respondents Mobil Oil Canada, Mobil Oil Canada Ltd., Royal Trust Energy Resources II Corporation, RTEC One Resources Inc., Suncor Inc., Genra One Resources Inc., Westrock Energy Resources II Corporation, Mobil Resources Ltd. and Canpar Holdings Ltd.: Burnet, Duckworth & Palmer, Calgary.*

*Solicitors for the respondent Apache Corporation: Peacock Linder Halt, Calgary.*

*Solicitors for the intervener Freehold Petroleum & Natural Gas Owners Association: Rae and Company, Calgary.*

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

*Biens réels – Terres à titres partagés – Pétrole et gaz – Droits relatifs aux hydrocarbures réservés par la compagnie de chemin de fer lors de la vente de terres aux colons au début du XX<sup>e</sup> siècle – Effet d’une réserve des droits relatifs aux hydrocarbures sur les droits actuels à l’égard du pétrole et du gaz présents dans les terrains grevés de cette réserve – Détermination des droits respectifs des « propriétaires du pétrole » et des « propriétaires des autres minéraux » – Les conditions initiales du réservoir naturel souterrain régissent-elles la propriété respective des parties aux contrats initiaux? – Règle du captage.*

Pour relier la côte ouest au reste du pays, le Canadien Pacifique (CP) a reçu du gouvernement du Canada de l’argent ainsi que des terres. Le CP a alors conclu des ententes avec des colons pour le transfert du titre de ces terres. Aux termes de ces ententes, le CP réservait son droit de propriété du pétrole, créant ainsi les « terres à titres partagés ». Le présent pourvoi porte sur des contrats conclus entre 1907 et 1912 et sur la propriété des hydrocarbures produits d’un puits foré sur des terres à titres partagés. Un réservoir naturel souterrain (« gisement ») peut contenir des hydrocarbures à la fois en phase liquide et gazeuse. Avant l’intervention humaine, un gisement connaît des conditions de pression et de température relativement stables, et la proportion des hydrocarbures en phase gazeuse par rapport aux hydrocarbures en phase liquide reste relativement constante. Lorsqu’un forage est fait dans un gisement, la pression change et cause des changements de phase qui modifient cette proportion. Si la pression diminue, certains hydrocarbures qui se trouvent à l’origine en phase liquide passeront de la phase liquide à la phase gazeuse. Dès que cela se produit, il est impossible de distinguer le gaz ainsi dégagé des hydrocarbures qui étaient initialement en phase gazeuse. Selon les conditions initiales du gisement et d’autres facteurs, notamment certaines techniques de production, la quantité d’hydrocarbures qui change de phase peut être très importante. En déterminant les droits souterrains respectifs des « propriétaires du pétrole » et des « propriétaires des autres minéraux » sur les terres à titres partagés, la Cour du Banc de la Reine de l’Alberta a conclu que les « propriétaires des autres minéraux » avaient droit 1) au gaz de couverture primaire; 2) au gaz de couverture primaire provenant de terrains adjacents; 3) au condensat et aux liquides du gaz naturel provenant du gaz de couverture primaire. La cour a conclu en outre que les « propriétaires du pétrole » avaient droit 1) au gaz de couverture secondaire; 2) au gaz de couverture secondaire provenant de terrains adjacents; 3) au gaz en solution qui se dégage de l’eau captive; 4) au condensat et aux liquides du gaz naturel provenant du gaz de couverture secondaire. On entend par « gaz de couverture primaire » les hydrocarbures en phase gazeuse dans un gisement contenant une accumulation de solutions d’hydrocarbures tant gazeux que liquides avant intervention humaine, alors que l’on entend par « gaz de couverture secondaire » ou « gaz dégagé » les hydrocarbures gazeux qui étaient à l’origine en phase liquide. La Cour d’appel a rejeté l’appel, sauf en ce qui a trait à la conclusion suivant laquelle le propriétaire du pétrole avait droit au gaz provenant de l’eau captive; cette question n’est pas en litige en l’espèce.



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*Arrêt* : Le pourvoi est rejeté.

Les cours d'instance inférieure ont eu raison de conclure que l'arrêt *Borys c. Canadian Pacific Railway*, [1953] 2 D.L.R. 65 (C.P.), avait établi que la réserve relative au pétrole incluait tous les hydrocarbures présents dans le sol en phase liquide au moment de la transaction. La réserve à l'égard du pétrole a partagé les droits de propriété sur le pétrole et le gaz en fonction de la phase dans laquelle se trouvaient les hydrocarbures aux conditions initiales lorsqu'a été conclu le contrat de vente du bien-fonds. Les changements de phase survenus après le forage d'un puits dans un gisement ne modifient pas la proportion de propriété créée par la réserve. Ce partage s'applique aux parties au contrat initial ainsi qu'aux tiers qui tiennent leur intérêt de ces parties. Par conséquent, le propriétaire des autres minéraux a droit à tous les hydrocarbures qui étaient en phase gazeuse, et le propriétaire du pétrole a droit à tous les hydrocarbures qui étaient en phase liquide aux conditions initiales du gisement, indépendamment de la phase dans laquelle ils se trouvent lors de leur extraction. Ce partage s'appliquera aux hydrocarbures qui proviennent d'autres terrains, sous réserve de toute limitation réglementaire de la règle du captage. Le partage de la propriété selon les conditions initiales n'engendrera pas une grande part d'incertitude en ce qui concerne la quantification des intérêts respectifs. L'industrie toute entière s'appuie sur des estimations de ce que contient le sous-sol, et ces estimations doivent également suffire pour partager la propriété.

Il n'est pas nécessaire de se prononcer dans le présent pourvoi sur une théorie générale de la propriété. Quels que soient les autres droits que les parties peuvent avoir à l'égard des hydrocarbures présents dans le sol, elles ont choisi de partager leurs intérêts par contrat. Il n'est pas loisible à une partie de soutenir ultérieurement que ce partage était sans effet parce qu'aucun droit ne peut s'y attacher tant qu'il n'y a pas eu prise de possession de la substance. Au moment du contrat, les parties n'avaient pas la substance en leur possession, mais lorsqu'elles en prennent possession, leurs droits respectifs sont régis selon la date et les conditions du contrat.

Enfin, la règle du captage ne s'applique pas au partage de la propriété fondé sur la phase de la même façon qu'elle le fait pour le partage de la propriété fondé sur la propriété des terres en surface. L'application de cette règle à des personnes qui ont accepté de partager leur intérêt à l'égard de la même parcelle de terrain irait à l'encontre de l'objectif que visait le contrat.

POURVOI contre un arrêt de la Cour d'appel de l'Alberta (2002), 5 Alta. L.R. (4th) 54, 312 A.R. 116, 214 D.L.R. (4th) 272, [2003] 1 W.W.R. 174, [2002] A.J. No. 829 (QL), 2002 ABCA 162, qui a infirmé en partie un jugement de la Cour du Banc de la Reine (1998), 63 Alta. L.R. (3d) 1, 225 A.R. 277, [1999] 3 W.W.R. 255, [1998] A.J. No. 805 (QL), 1998 ABQB 620. Pourvoi rejeté.

*Norman K. Machida et Timothy S. Meagher*, pour les appelants.

*Lenard M. Sali, c.r.*, pour les intimées Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd. et Ocelot Energy Inc.

*Randall W. Block et Karen A. McHugh*, pour les intimées Ressources Gulf Canada Limitée, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Canadian Gulf Oil Company, Gulf Canada Limitée et Gulf Canada Properties Limited.

*Gwen K. Randall, c.r.*, pour les intimées Petro-Canada, Canol Resources Ltd., Dominion Explorers Inc., International Oiltex Ltd., Canadian Fina Oil Limited, Petrofina Canada Ltd., Entreprises Petro-Canada Inc. et Petro-Canada Inc.

*Mary E. Comeau*, pour l'intimée Société d'énergie Talisman Inc. et Encor Energy Corporation.

*William R. Pieschel, c.r.*, pour les intimées Canadien Pacifique Limitée et PanCanadian Petroleum Limited.

Personne n'a comparu pour les intimées Empress Gas Corp. Ltd., Union Pacific Resources Inc., Crestar Energy, Sulpetro Limited, Canadian Rampart Oil & Gas Ltd., J & K Petroleum Land Management Ltd., LL & E Canada Holdings Inc., Rocky River Resources Ltd., Sunlite Oil Company Limited, Sunray DX Northern Oil Co. Ltd., Sun Oil Company Limited, Bralorne Resources Limited, Bonanza Oil & Gas Ltd., Canadian Hunter Exploration Ltd., Lochend Partnership, Lochwest Resources Ltd., Serenpet Inc., Serenpet Partnership et Shiningbank Energy Ltd.

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*L. Douglas Rae et W. Tibor Osvath, pour l'intervenante Freehold Petroleum & Natural Gas Owners Association.*

*Procureurs des appelants : Machida Mack Shewchuk, Calgary.*

*Procureurs des intimées Amoco Canada Oil and Gas, Amoco Canada Resources Ltd., Amoco Canada Energy Ltd., 3061434 Canada Ltd. et Ocelot Energy Inc. : Bennett Jones, Calgary.*

*Procureurs des intimées Ressources Gulf Canada Limitée, Morgan Hydrocarbons Inc., Murphy Oil Company Ltd., Canadian Gulf Oil Company, Gulf Canada Limitée et Gulf Canada Properties Limited : Borden Ladner Gervais, Calgary.*

*Procureurs des intimées Petro-Canada, Canol Resources Ltd., Dominion Explorers Inc., International Oiltex Ltd., Canadian Fina Oil Limited, Petrofina Canada Ltd., Entreprises Petro-Canada Inc. et Petro-Canada Inc. : Davis & Company, Calgary.*

*Procureurs de l'intimée Société d'énergie Talisman Inc. et Encor Energy Corporation : MacLeod Dixon, Calgary.*

*Procureurs des intimées Canadien Pacifique Limitée et PanCanadian Petroleum Limited : Parlee McLaws, Calgary.*

*Procureurs des intimées Home Oil Company Limited, 227096 Oil & Gas Ltd., Husky Oil Operations Ltd., Conwest Exploration Company Limited, Canada Northwest Energy Limited et Serenpet Exploration Inc. : Carscallen Lockwood Cormie, Calgary.*

*Procureurs des intimées Pétrolière Impériale Ressources, Pétrolière Impériale Ressources Limitée, Pétrolière Impériale Production des Ressources Limitée, McColl-Frontenac Inc., Compagnie pétrolière Impériale Limitée et Atlantic Richfield Company : Gowling Lafleur Henderson, Calgary.*

*Procureurs des intimées Jethro Development Ltd., Kerr-McGee Canada Ltd., Gascan Resources Ltd. et Lincoln-McKay Development Company Ltd. : Fraser Milner Casgrain, Calgary.*

*Procureurs des intimées Mobil Oil Canada, Mobil Oil Canada Ltd., Royal Trust Energy Resources II Corporation, RTEC One Resources Inc., Suncor Inc., Genra One Resources Inc., Westrock Energy Resources II Corporation, Mobil Resources Ltd. et Canpar Holdings Ltd. : Burnet, Duckworth & Palmer, Calgary.*

*Procureurs de l'intimée Apache Corporation : Peacock Linder Halt, Calgary.*

*Procureurs de l'intervenante Freehold Petroleum & Natural Gas Owners Association : Rae and Company, Calgary.*

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*Walter Raponi v. Her Majesty the Queen* (Alta.) (Crim.) (29769)

**Indexed as: R. v. Raponi / Répertoire : R. c. Raponi**

**Neutral citation: 2004 SCC 50. / Référence neutre : 2004 CSC 50.**

**Judgment rendered July 16, 2004 / Jugement rendu le 16 juillet 2004**

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Present: McLachlin C.J. and Major, Bastarache, Binnie, Arbour\*, Deschamps and Fish JJ.

*Criminal law – Detention of things seized – Further detention – Crown applying for extension of time for detention of money seized by police – Defence responding by filing motion for return of money on ground of unlawful seizure – Whether Provincial Court judge has jurisdiction to order return of money under s. 490(2) of Criminal Code or on some other basis – If not, proper procedure to be followed to obtain order for return of money.*

*Criminal law – Detention of things seized – Further detention – Crown applying for extension of time for detention of money seized by police – Provincial Court judge ordering return of money on ground of unlawful seizure – Whether Provincial Court judge had jurisdiction to make such an order under s. 490(2) of Criminal Code or on some other basis – If not, proper procedure to be followed to challenge order of Provincial Court judge – Criminal Code, R.S.C. 1985, c. C-46, s. 490(2).*

The appellant brought nearly \$35,000, in the form of a bag filled with cash, for the release of his client on bail. The police confiscated the bag as “offence-related property” pursuant to s. 11 of the *Controlled Drugs and Substances Act*, without warrant or demonstration of reasonable grounds. With the approach of the three-month detention limit for items detained by the Crown provided for by s. 490 of the *Criminal Code*, the police applied to a Provincial Court judge for an extension under s. 490(2). The appellant in response filed a motion for return of the money on the ground that it had been improperly seized contrary to ss. 8 and 9 of the Canadian Charter of Rights and Freedoms. The Provincial Court judge dismissed the Crown’s application and ordered the money returned to the appellant on the basis that it had been improperly seized and the Crown’s possession was unlawful. The Court of Queen’s Bench upheld the order, holding that there was no appeal from a s. 490(2) finding and even if the Provincial Court judge may be assumed to have acted under s. 490(9), which deals with return or forfeiture of detained items, the Crown had not established that the appellant’s possession had been unlawful. The Court of Appeal allowed the Crown’s appeal, vacated the orders of the Provincial Court and Court of Queen’s Bench, and directed that a hearing be conducted under s. 490(9) of the *Code* to determine whether the money should be returned to the appellant or forfeited to the Crown.

*Held:* The appeal should be allowed.

The seizure of money in this case failed to comply with s. 11 of the *Controlled Drugs and Substances Act* and is hence unlawful, but the Provincial Court judge could not order the return of goods on the grounds of unlawful seizure under s. 490(2). Under that provision, the only question to be considered by a Provincial Court judge is whether continued detention is required by a proceeding that has been instituted or by an investigation. Since a Provincial Court judge has no power to order the return of the money outside the *Code*, it follows that the order was made without jurisdiction. Given that all the motions in this case were brought under s. 490(2), consideration of the precise powers of a Provincial Court judge under s. 490(9) should be left for another day.

The proper procedure (1) for obtaining an order for return of the monies was an application for replevin to the Court of Queen’s Bench; and (2) for challenging the Provincial Court judge’s order was a motion for *certiorari* seeking to vacate the order for lack of jurisdiction. The appellant did not follow the proper procedure and although the Provincial Court judge made an order for the return of the money, that order under s. 490(2) is a nullity. The *Code* provides no appeal from an order under s. 490(2) and the Court of Appeal had therefore no jurisdiction to set aside the Provincial Court’s erroneous order or the order of the Court of Queen’s Bench, which was not properly seized of an appeal. Since it has not been validly appealed, the Provincial Court judge’s order for the return of the money remains in force, but it could be set aside if the proper procedure is followed.

APPEAL from a judgment of Alberta Court of Appeal (2003), 174 C.C.C. (3d) 397, [2003] 10 W.W.R. 75, 18 Alta. L.R. (4th) 34, 106 C.R.R. (2d) 119, 327 A.R. 271, [2003] A.J. No. 457 (QL), 2003 ABCA 128, allowing an

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\* Arbour J. took no part in the judgment

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appeal from a judgment of Langston J. (2002), 91 C.R.R. (2d) 361, [2002] A.J. No. 92 (QL), 2002 ABQB 67, dismissing an appeal from a judgment of Stevens-Guille Prov. Ct. J. (2001), 291 A.R. 139, [2001] A.J. No. 175 (QL), 2001 ABPC 30, dismissing the Crown's motion to extend detention of seized funds and allowing the appellant's cross-motion for the return of the seized funds. Appeal allowed.

*Peter J. Royal, Q.C., and Deborah R. Hatch, for the appellant.*

*Robert J. Frater and Marian Bryant, for the respondent.*

*Solicitors for the appellant: Royal, McCrum, Duckett & Glancy, Edmonton.*

*Solicitor for the respondent: Attorney General of Canada, Ottawa.*

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Présents : La juge en chef McLachlin et les juges Major, Bastarache, Binnie, Arbour\*\*, Deschamps et Fish.

*Droit criminel — Détention de choses saisies — Prolongation de la détention — Requête du ministère public en prolongation de la détention d'une somme d'argent saisie par les policiers — Défense répondant par le dépôt d'une requête en restitution de l'argent pour cause d'illégalité de la saisie — Le juge de la Cour provinciale a-t-il compétence pour ordonner la restitution de l'argent sous le régime du par. 490(2) du Code criminel ou sur un autre fondement? — Dans la négative, quelle est la procédure à suivre pour obtenir une ordonnance de restitution de l'argent?*

*Droit criminel — Détention de choses saisies — Prolongation de la détention — Requête du ministère public en prolongation de la détention d'une somme d'argent saisie par les policiers — Ordonnance de restitution de l'argent pour cause d'illégalité de la saisie rendue par le juge de la Cour provinciale — Le juge de la Cour provinciale avait-il compétence pour rendre une ordonnance de cette nature sous le régime du par. 490(2) du Code criminel ou sur un autre fondement? — Dans la négative, quelle est la procédure à suivre pour contester l'ordonnance du juge de la Cour provinciale? — Code criminel, L.R.C. 1985, ch. C-46, art. 490(2).*

L'appelant a apporté près de 35 000 \$ en argent comptant déposé dans un sac pour obtenir la mise en liberté sous caution de son client. Les policiers ont saisi le sac comme un « bien infractionnel » en vertu de la *Loi réglementant certaines drogues et autres substances*, sans être munis d'un mandat ni avoir démontré l'existence de motifs raisonnables. La période maximale de trois mois prévue par l'art. 490 du *Code criminel* pour la détention de biens par le ministère public devant expirer prochainement, les policiers ont demandé à un juge de la Cour provinciale de prolonger la détention en vertu du par. 490(2). L'appelant a répondu par le dépôt d'une requête en restitution de l'argent au motif que celui-ci avait été saisi irrégulièrement en contravention des art. 8 et 9 de la *Charte canadienne des droits et libertés*. Le juge de la Cour provinciale a débouté le ministère public et ordonné la restitution de l'argent à l'appelant pour cause d'irrégularité de la saisie et d'illégalité de la détention par le ministère public. La Cour du Banc de la Reine a confirmé cette ordonnance, statuant qu'une conclusion tirée sous le régime du par. 490(2) n'était pas susceptible d'appel et que, même si on pouvait supposer que le juge de la Cour provinciale avait agi en vertu du par. 490(9), qui prévoit la remise ou la confiscation des choses détenues, le ministère public n'avait pas établi que la possession de l'argent par l'appelant était illégale. La Cour d'appel a accueilli l'appel du ministère public, annulé les ordonnances de la Cour provinciale et de la Cour du Banc de la Reine et ordonné la tenue d'une nouvelle audition en application du par. 490(9) du *Code* sur la question de savoir si l'argent devait être restitué à l'appelant ou confisqué au profit de Sa Majesté.

*Arrêt* : Le pourvoi est accueilli.

En l'espèce, la saisie de l'argent ne satisfaisait pas aux exigences de l'art. 11 de la *Loi réglementant certaines drogues et autres substances* et elle était de ce fait illégale, mais le juge de la Cour provinciale ne pouvait pas ordonner la restitution des biens pour cause d'illégalité de la saisie sous le régime du par. 490(2). Le juge de la Cour provinciale ne doit trancher qu'une question en application de cette disposition, soit celle de savoir si la prolongation de la détention du bien est requise pour les besoins d'une procédure engagée ou d'une enquête. Un juge de la Cour provinciale n'ayant

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\*\* La juge Arbour n'a pas pris part au jugement.

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pas le pouvoir d'ordonner la restitution de l'argent hors du cadre établi par le *Code*, le juge n'avait pas compétence pour rendre l'ordonnance qu'il a prononcée. Comme toutes les requêtes en l'espèce ont été déposées en vertu du par. 490(2), l'examen des pouvoirs précis que peut exercer un juge de la Cour provinciale sous le régime du par. 490(9) doit être reporté.

La procédure à suivre pour obtenir une ordonnance de restitution de l'argent était une action en replevin, qui doit être intentée devant la Cour du Banc de la Reine; la procédure qu'il convenait d'engager pour contester l'ordonnance du juge de la Cour provinciale était une requête en *certiorari* demandant l'annulation de l'ordonnance pour défaut de compétence. L'appelant n'a pas procédé de manière appropriée et, bien que le juge de la Cour provinciale ait ordonné la restitution de l'argent, cette ordonnance fondée sur le par. 490(2) est frappée de nullité. Le *Code* ne prévoit pas d'appel à l'encontre d'une ordonnance fondée sur le par. 490(2) et la Cour d'appel n'avait donc pas compétence pour annuler l'ordonnance erronée rendue par la Cour provinciale ni le jugement de la Cour du Banc de la Reine, qui n'avait pas été saisie régulièrement d'un appel. Comme elle n'a pas été valablement portée en appel, l'ordonnance du juge de la Cour provinciale portant restitution de l'argent demeure en vigueur, mais elle pourrait être annulée à l'issue d'une procédure appropriée.

POURVOI contre un jugement de la Cour d'appel de l'Alberta (2003), 174 C.C.C. (3d) 397, [2003] 10 W.W.R. 75, 18 Alta. L.R. (4th) 34, 106 C.R.R. (2d) 119, 327 A.R. 271, [2003] A.J. No. 457 (QL), 2003 ABCA 128, accueillant l'appel d'un jugement du juge Langston (2002), 91 C.R.R. (2d) 361, [2002] A.J. No. 92 (QL), 2002 ABQB 67, qui avait confirmé un jugement du juge Stevens-Guille (2001), 291 A.R. 139, [2001] A.J. No. 175 (QL), 2001 ABPC 30, rejetant la requête du ministère public en prolongation de la détention d'une somme d'argent saisie et accueillant la requête reconventionnelle de l'appelant en restitution de l'argent. Pourvoi accueilli.

*Peter J. Royal, c.r., et Deborah R. Hatch, pour l'appelant.*

*Robert J. Frater et Marian Bryant, pour l'intimée.*

*Procureurs de l'appelant : Royal, McCrum, Duckett & Glancy, Edmonton.*

*Procureur de l'intimée : Procureur général du Canada, Ottawa.*

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*Nova Scotia Power Inc. v. Her Majesty the Queen* (FC) (29649)

**Indexed as: Nova Scotia Power Inc. v. Canada /**

**Répertorié : Nova Scotia Power Inc. c. Canada**

**Neutral citation: 2004 SCC 51. / Référence neutre : 2004 CSC 51.**

Hearing and judgment: June 11, 2004. / Audition et jugement : 11 juin 2004.

Reasons delivered: July 16, 2004. / Motifs déposés : 16 juillet 2004.

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Present: McLachlin C.J. and Major, Binnie, LeBel and Deschamps JJ.

*Crown – Crown agent – Immunity – Provincial power corporation – Whether corporation entitled to immunity from legislation – Whether corporation was agent of Crown acting within its purposes – Interpretation Act, R.S.C. 1985, c. I-21, s. 17 – Power Corporation Act, S.N.S. 1973, c. 47, ss. 4, 6.*

The issue in this appeal is whether the Nova Scotia Power Corporation (“NSPC”), created by the province of Nova Scotia, was an agent of the province and thereby immune from the *Income Tax Act* by virtue of s. 17 of the federal *Interpretation Act*. The Tax Court of Canada found that the province did not exercise sufficient control over NSPC for it to be a Crown agent. The Federal Court of Appeal set aside the decision, holding that NSPC was an agent of the Crown acting within its purposes and was therefore entitled to Crown immunity.

*Held:* The appeal should be dismissed.

NSPC is entitled to immunity from legislation as provided by s. 17 of the *Interpretation Act*. Section 4 of the *Nova Scotia Power Corporation Act* expressly makes NSPC an agent of the Crown and, in view of s. 6 of that Act, by acquiring and owning the assets at issue in this case, NSPC was acting within the purposes for which it was made a Crown agent.

APPEAL from a judgment of the Federal Court of Appeal, [2003] 2 C.T.C. 180, 2003 D.T.C. 5090, 299 N.R. 374, [2003] F.C.J. No. 79 (QL), 2003 FCA 33, setting aside a decision of the Tax Court of Canada, [2002] 1 C.T.C. 2276, 2002 D.T.C. 1432, [2002] T.C.J. No. 53 (QL). Appeal dismissed.

*Warren J. A. Mitchell, Q.C., and Douglas H. Mathew, for the appellant.*

*Urszula Kaczmarczyk and Michael J. Lema, for the respondent.*

*Solicitors for the appellant: Thorsteinssons, Toronto.*

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

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

*Couronne – Mandataire de l’État – Immunité – Société provinciale d’électricité – La société avait-elle droit à l’immunité à l’égard de l’application des lois? – Était-elle un mandataire de l’État agissant dans le cadre de ses objectifs? – Loi d’interprétation, L.R.C. 1985, ch. I-21, art. 17 – Power Corporation Act, S.N.S. 1973, ch. 47, art. 4, 6.*

Le pourvoi soulève la question de savoir si la Nova Scotia Power Corporation (la « NSPC »), constituée par la Nouvelle-Écosse, était un mandataire de la province et échappait de ce fait à l’application de la *Loi de l’impôt sur le revenu* en raison de l’art. 17 de la *Loi d’interprétation* fédérale. La Cour canadienne de l’impôt a conclu que le degré de contrôle exercé par la province n’était pas suffisant pour faire de la NSPC un mandataire de l’État. La Cour d’appel fédérale a annulé la décision, statuant que la NSPC était un mandataire de l’État agissant dans le cadre des objectifs sous-tendant sa désignation et avait donc droit à l’exception prévue au bénéfice de l’État.

*Arrêt :* Le pourvoi est rejeté.

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La NSPC bénéficie de l'immunité prévue à l'art. 17 de la *Loi d'interprétation* à l'égard de l'application des lois. L'article 4 de la *Nova Scotia Power Corporation Act* la désigne expressément mandataire de l'État et, compte tenu de l'art. 6 de cette loi, en acquérant et en possédant les éléments d'actif visés en l'espèce, la NSPC agissait dans le cadre des objectifs pour lesquels elle avait été désignée mandataire de l'État.

POURVOI contre un arrêt de la Cour d'appel fédérale, [2003] 2 C.T.C. 180, 2003 D.T.C. 5090, 299 N.R. 374, [2003] A.C.F. n° 79 (QL), 2003 CAF 33, qui a infirmé une décision de la Cour canadienne de l'impôt, [2002] 1 C.T.C. 2276, 2002 D.T.C. 1432, [2002] A.C.I. n° 53 (QL). Pourvoi rejeté.

*Warren J. A. Mitchell, c.r., et Douglas H. Mathew, pour l'appelante.*

*Urszula Kaczmarczyk et Michael J. Lema, pour l'intimée.*

*Procureurs de l'appelante : Thorsteinssons, Toronto.*

*Procureur de l'intimée : Sous-procureur général du Canada, Toronto.*

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## DEADLINES: APPEALS

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.

## DÉLAIS : APPELS

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 -

10/06/04

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

NOVEMBER - NOVEMBRE						
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7	8	9	10	H 11	12	13
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DECEMBER - DECEMBRE						
S D	M L	T M	W M	T J	F V	S S
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- 2005 -

JANUARY - JANVIER						
S D	M L	T M	W M	T J	F V	S S
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FEBRUARY - FÉVRIER						
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MARCH - MARS						
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APRIL - AVRIL						
S D	M L	T M	W M	T J	F V	S S
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MAY - MAI						
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JUNE - JUIN						
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5	M 6	7	8	9	10	11
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Sittings of the court:  
Séances de la cour:

Motions:  
Requêtes:

Holidays:  
Jours fériés:

18
M
H

**18 sitting weeks/semaines séances de la cour**  
**88 sitting days/journées séances de la cour**  
**9 motion and conference days/ journées requêtes.conférences**  
**2 holidays during sitting days/ jours fériés durant les sessions**