

**SUPREME COURT  
OF CANADA**



**COUR SUPRÊME  
DU CANADA**

**BULLETIN OF  
PROCEEDINGS**

**BULLETIN DES  
PROCÉDURES**

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John A. MacDonald  
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FILING DATE: 18.3.2004

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FILING DATE: 19.3.2004

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(Y.T.)**

Mark A. Radke  
Attorney General of Canada

FILING DATE: 22.3.2004

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Kevin Wilson  
Attorney General of Canada

FILING DATE: 22.3.2004

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Raynold Langlois  
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FILING DATE: 22.3.2004

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Government of Canada (Alta.)**

Kerry E.S. Boyd  
Attorney General of Canada

FILING DATE: 22.3.2004

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

Franco Calabrese  
Attorney General of Canada

FILING DATE: 26.3.2004

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FILING DATE: 23.3.2004

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Paul Shenher  
Department of Justice of Edmonton  
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FILING DATE: 23.3.2004

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Anthony B. Gerein  
Attorney General for Saskatchewan

FILING DATE: 24.3.2004

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FILING DATE: 25.3.2004

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FILING DATE: 26.3.2004

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Sternthal, Katznelson, Montigny

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**Procureur Général du Québec (Qc)**

Mario Normandin  
Bernard, Roy & Associés

DATE DE PRODUCTION : 26.3.2004

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Bruce Johnstone

FILING DATE: 26.3.2004

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**Alberta Veterinary Medical Association**

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FILING DATE: 29.3.2004

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Ronald MacLeod  
Gaudet, Dorsey & Macleod

FILING DATE: 29.3.2004

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J. Richard McKee

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- and between -

**The City of Calgary**

Brian K. O'Ferrall  
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Clifford D. O'Brien, Q.C.  
Bennett, Jones

FILING DATE: 29.3.2004

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**Cosmas Rowel**

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Alvin R. McGregor, Q.C.

FILING DATE: 29.3.2004

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**Lawrence Cecil Robbins**

John R. Mann III

v. (30241)

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

Michal Fairburn  
Attorney General of Canada

FILING DATE: 29.3.2004

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**Frank Kim**

Frank Kim

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

W.J. Scott Bell  
Attorney General of British Columbia

FILING DATE: 31.3.2004

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**Wavel Ventures Corp., et al.**

Valerie Morrow

v. (30255)

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James T. Eamon  
Code, Hunter

FILING DATE: 31.3.2004

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**Kevin Albert Ducharme**

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

Brian Bell  
Manitoba Justice

FILING DATE: 2.4.2004

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**Steve Vassilantopoulos**  
Johanne Gagnon  
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**Ville de Montréal (Qc)**  
Gilles Dubé  
Jalbert, Séguin, Caron

DATE DE PRODUCTION : 2.4.2004

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**Sa Majesté la Reine**  
Germain Tremblay  
Cour Municipale de Montréal

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**Éric Boucher (Qc)**  
Marco Labrie  
Lord, Labrie, St-Onge, Boucher, Huet

DATE DE PRODUCTION : 2.4.2004

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**Super Kal Construction Inc.**  
Serge Segal  
Segal, Laforest

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**Her Majesty the Queen (Que.)**  
Pierre Salois  
Cote, Marcoux, Joyal

FILING DATE: 2.4.2004

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**Association des professionnels et professionnelles  
de la vidéo du Québec**  
Daniel Payette  
Cabinet Payette

c. (30257)

**Productions du Petit Bonhomme Inc., et autres  
(C.F.)**

Roch Guertin

DATE DE PRODUCTION : 2.4.2004

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**Timothy Wilford**  
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**Her Majesty the Queen (Ont.)**  
Rosella M. Cornaviera  
Attorney General of Ontario

FILING DATE: 2.4.2004

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**Lawrence Joseph Joyea**  
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**Her Majesty the Queen (Sask.)**  
Barry J. Hornsberger, Q.C.  
Attorney General for Saskatchewan

FILING DATE: 5.4.2004

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**Regent Millette**  
Regent Millette

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**Frank (Francesco) Rodi, et autre (Qc)**  
Pina Mancuso  
Yanofsky, Gelber, Mancuso

DATE DE PRODUCTION : 5.4.2004

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**Richard Morin**  
Richard Morin

c. (30250)

**Gilles Tourigny, et autres (Qc)**  
Lise Boily-Monfette  
Deveau, Lavoie et Associés

DATE DE PRODUCTION : 5.4.2004

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**APRIL 13, 2004 / LE 13 AVRIL 2004**

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

**Warren Hitzig, Alison Myrden, Mary-Lynne Chamney, Catherine Devries, Jari Dvorak, Stephen Van de Kemp, Deborah Anne Stultz-Giffin and Marco Renda**

**v. (30120)**

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

**NATURE OF THE CASE**

*Canadian Charter* - Criminal - Criminal Law - Remedies - Whether the court should have retained a supervisory role in its constitutional remedy - Whether severing provisions from the *Marihuana Medical Access Regulations* was the appropriate remedy for constitutional defects - Whether the case should have been remitted to the motions judge to ensure that new exemption scheme resulting from the Court of Appeal's order would adequately address the needs of seriously ill Canadians?

**PROCEDURAL HISTORY**

January 9, 2003  
Ontario Superior Court of Justice  
(Lederman J.)

Applicants' applications for declarations granted in part; *Marihuana Medical Access Regulations*, SOR 2001-227 declared constitutionally invalid and of no force and effect.

October 7, 2003  
Court of Appeal for Ontario  
(Doherty, Goudge and Simmons JJ.A.)

Appeal dismissed; cross-appeals allowed in part, Sections 4(2)(c), 7, 34(2), 41(b) and 54 of *Marihuana Medical Access Regulations* declared constitutionally invalid and of no force and effect.

January 7, 2004  
Supreme Court of Canada

Applications for extension of time and leave to appeal filed

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**Sydney Abrahams, Frank Bartelen, Dorie Franz Bartelen, Nicholas Bartolomucci, Jack D. Beaton, Kai Yee Chow, Yiu Kee Chow, Alan Ying Tsi Chung, Ping Mei Chung, Nick Cianci, Mila Cueva, Brigida M. Cueva, Frank Gentile, Millie Gentile, Nicholas Gray, Robert James Hart, Dale S. Humphrey, Girdhari L. Pedata, Robert Lee, Shu Wha Lee, John Arthur Lewis, Kenneth Sascha, Yusuf Abdulgani Shaikh, Leonard Schechtman, Beverley Schechtman, Donald Acria Tsuji, Gary Akikazu Tsuji, Elaine Starr, Ronald E. Starr, also known as Ron E. Starr, Paul Sachimi Tokiwa, Marten Vanderbroek and Linda Vanvendbroek**

**v. (30147)**

**Bank of Montreal (Ont.)**

**NATURE OF THE CASE**

Commercial law - Bills of exchange - Promissory note - Holder in due course - Bank taking assignment of alleged promissory notes - Whether *Range v. Belvedere* [1969] S.C.R. applies to real estate transactions - whether the Court of Appeal erred in failing to correctly apply the decision in *Range* to the facts of this case - Whether the Court of Appeal

erred in concluding that this case was factually distinguishable from *Range* - Whether the Applicants were entitled not to have their “promissory notes” read independently of their purchase contract documentation - Whether, given the total failure of consideration, the “notes” were simply evidence of debt capable of assignment to the Respondent, only subject to the equities existing between the original parties.

**PROCEDURAL HISTORY**

April 24, 2002 Ontario Superior Court of Justice (Lissaman J.)	Respondent’s claim for payment of monies owing on Promissory Notes given by the Applicants allowed
November 20, 2003 Court of Appeal for Ontario (Simmons, Gillese and Armstrong JJ.A.)	Appeal dismissed
January 21, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Attorney General of Canada**

**v. (30137)**

**Donald Gladstone and William Gladstone (B.C.)**

**NATURE OF THE CASE**

Statutes - Interpretation - Fiduciary duty - Proceeds from sale of fish seized under *Fisheries Act*, R.S.C. 1970, c. F-14 deposited into Consolidated Revenue Fund - Whether Crown must pay interest on proceeds held for eight years before returned to Respondents - Whether the Court erred in failing to consider that s. 73.1 of the *Fisheries Act*, R.S.C. 1985, c. F-14 providing for the return of the proceeds realized from the disposition of perishables lawfully seized and dealt with under the *Act*, is a complete statutory code setting out the Crown’s obligations - Whether the Court erred in imposing a fiduciary duty on the Crown on the basis of the Crown’s role under the *Financial Administration Act*, R.S.C. 1985, c. F-10, as amended, as administrator of special purpose monies - Whether the Court erred in applying the common law doctrine of fiduciary duty to override a statutory provision.

**PROCEDURAL HISTORY**

October 15, 2002 Supreme Court of British Columbia (Taylor J.)	Respondents’ action against the Applicant for the interest or equivalent compensation on the proceeds of the sale of fish the Applicant seized from the Respondents under the <i>Fisheries Act</i> , dismissed
November 17, 2003 Court of Appeal for British Columbia (Prowse, Huddart and Low JJ.A.)	Appeal allowed; judgment below set aside; Applicant ordered to pay interest in the amount of \$132,000.00 to the Respondents
January 16, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**CORAM: Iacobucci, Binnie and Arbour JJ.**  
**Les juges Iacobucci, Binnie et Arbour**

**Oswaldo Minchella**

**v. (30014)**

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

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal Law - Procedural Law - Evidence - Exclusion of evidence - *R. v. Stillman*, [1997] 1 S.C.R. 607 - Whether the Court of Appeal erred in concluding that the inevitable subsequent discovery of the documents seized by search warrant rendered the evidence of the search of his personal office, including its “communicative aspect”, non-conscriptive - Whether the Court of Appeal erred in law in not concluding that the trial judge had erred in finding that the conduct of the investigators was in the “utmost good faith” - Whether the Court of Appeal erred in its application of the “predominate purpose” test and in finding the *Charter* breach did not occur when Special Investigations began directly and personally investigating the corporation and its general partner

**PROCEDURAL HISTORY**

December 9, 1999 Ontario Court of Justice (Chapnik J.)	Applicant convicted by jury of two counts of fraud and two counts of uttering forged documents
October 14, 2003 Court of Appeal for Ontario (MacPherson, Sharpe and Cronk JJ.A.)	Appeals against conviction and sentence dismissed
February 25, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Steven John Schneeberger**

**v. (30124)**

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

**NATURE OF THE CASE**

Administrative law - Citizenship - Appeals - Courts - Jurisdiction - Applicant declared to have obtained Canadian citizenship by false representation or by knowingly concealing material circumstance from RCMP - Federal Court Trial Division in a reference proceeding pursuant to s. 18 of the *Citizenship Act* granting summary judgment - Motion to quash Applicant’s appeal granted - Whether Trial Division should have granted summary judgment in context of s. 18(1) citizenship reference - Whether Federal Court of Appeal had jurisdiction to hear Applicant’s appeal from an order of the Trial Division - *Citizenship Act*, R.S.C. 1985, c. C-29.

**PROCEDURAL HISTORY**

August 25, 2003 Federal Court of Canada, Trial Division (Dawson J.)	Motion for summary judgment granted: Applicant declared to have obtained his Canadian citizenship by false representation or by knowingly concealing a material circumstance from the RCMP
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November 10, 2003  
Federal Court of Appeal  
(Stone, Rothstein and Sharlow JJ.A.)

Motion to quash the Applicant's appeal granted

January 9, 2004  
Supreme Court of Canada

Application for leave to appeal filed

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**Eugene Kaulius, Steven M. Cook, Charles E. Beil, Craig C. Sturrock, Amalio De Cotiis, John N. Gregory,  
347059 B.C. Ltd., Frank Mayer, John R. Owen, Verlaan Investments Inc., William John Millar, NSFC  
Holdings Ltd., TFTI Holdings Limited, Douglas H. Mathew, Ian H. Pitfield, The Estate of the Late Lorne A.  
Green and Innocenzo De Cotiis**

**v. (30067)**

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

**NATURE OF THE CASE**

Taxation – Income Tax – General anti-avoidance rule (GAAR) – Whether it is necessary for this Court to consider what interpretative rules and guidelines are to be employed when the “clear and unambiguous policy” standard is applied so as to yield a standard which is fair and which provides certainty in tax affairs? – Whether these rules and guidelines should consider what evidence must exist for a court to determine with confidence that a particular policy exists in the *Act*? – Whether these rules and guidelines should consider what evidence must exist for a court to determine that a particular policy is “clear and unambiguous”? – Whether these rules and guidelines should consider how courts are to determine the “relevant policy” where more than one “clear and unambiguous” policy is evident? – Whether these rules and guidelines should consider how conflicts between competing or inconsistent policies are to be resolved? – *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.), s. 245.

**PROCEDURAL HISTORY**

May 3, 2002  
Tax Court of Canada  
(Dussault J.)

Applicants' appeals from assessments made under the *Income Tax Act* for the 1993, 1994, 1995, 1996 and 1997 taxation years, dismissed

October 7, 2003  
Federal Court of Appeal  
(Linden, Rothstein and Sexton JJ.A.)

Appeal dismissed

December 8, 2003  
Supreme Court of Canada

Motion to extend time to file and/or serve leave application to January 9, 2004, granted.

January 9, 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**

**Pharmascience Inc. et Morris S. Goodman**

**c. (30188)**

**Jocelyn Binet et Procureur général du Québec (Qc)**

**NATURE DE LA CAUSE**

Procédure - Sursis - La Cour d'appel a-t-elle erré en refusant d'appliquer le test de *Manitoba (Procureur général) c. Metropolitan Stores (MTS) Ltd.*, [1987] 1 R.C.S. 110, et, par conséquent, en refusant le sursis interlocutoire recherché ?

**HISTORIQUE DES PROCÉDURES**

Le 10 octobre 2003  
Cour supérieure du Québec  
(La juge Morneau)

Requête des demandeurs pour faire surseoir à l'exécution d'une demande de production de documents rejetée

Le 6 février 2004  
Cour d'appel du Québec  
(Les juges Mailhot, Rousseau-Houle et Lemelin [*ad hoc*])

Appel rejeté

Le 23 février 2004  
Cour d'appel du Québec  
(Le juge Forget)

Requête en sursis d'exécution du jugement de la Cour d'appel rejetée

Le 26 février 2004  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Le 17 mars 2004  
Cour suprême du Canada  
(La juge Arbour)

Requête en sursis d'exécution du jugement de la Cour d'appel rejetée

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**David Hilewitz**

**v. (30125)**

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

**NATURE OF THE CASE**

Immigration law - Application for permanent residence - Medical inadmissibility - Excessive demands on the social system - Whether an assessment under s. 19(1)(a)(ii) of the *Immigration Act* requires consideration of the actual probability of excessive demands being placed on social services, including in particular the requirement, ability and intention of the Applicant to pay for or obtain those services privately - *Immigration Act*, R.S.C. 1985, c. I-2, s. 19(1)(a)(ii) (repealed).

**PROCEDURAL HISTORY**

September 15, 2000 (Hugues, Designated Immigration Officer)	Applicant's application for permanent residence denied pursuant to s. 19(1)(a)(ii) of the <i>Immigration Act</i>
August 8, 2002 Federal Court of Canada, Trial Division (Gibson J.)	Applicant's application for judicial review of the officer's decision allowed; officer's decision set aside; Applicant's application for permanent residence referred back to the Respondent for redetermination by a different officer
November 12, 2003 Federal Court of Appeal (Linden, Evans and Malone JJ.A.)	Respondent's appeal allowed; decision of the applications judge reversed; application for judicial review dismissed; decision of the visa officer refusing the Applicant's application for a visa restored
January 12, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**Dirk De Jong**

**v. (30127)**

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

**NATURE OF THE CASE**

Immigration law - Application for permanent residence - Medical inadmissibility - Excessive demands on the social system - Whether an assessment under s. 19(1)(a)(ii) of the *Immigration Act* requires consideration of the actual probability of excessive demands being placed on social services, including in particular the requirement, ability and intention of the Applicant to pay for or obtain those services privately - *Immigration Act*, R.S.C. 1985, c. I-2, s. 19(1)(a)(ii) (repealed).

**PROCEDURAL HISTORY**

November 17, 1999 (Valotaire, Visa Officer)	Applicant's application for permanent residence denied pursuant to subparagraph 19(1)(a)(ii) of the <i>Immigration Act</i>
November 13, 2002 Federal Court of Canada, Trial Division (Pinard J.)	Applicant's application for judicial review of the officer's decision dismissed
November 12, 2003 Federal Court of Appeal (Linden, Evans and Malone JJ.A.)	Appeal dismissed
January 12, 2004 Supreme Court of Canada	Application for leave to appeal filed

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**JUDGMENTS ON APPLICATIONS  
FOR LEAVE**

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

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**APRIL 15, 2004 / LE 15 AVRIL 2004**

**29841**            **Roy Allan Sabotiak v. Her Majesty the Queen** (Alta.) (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 of Alberta (Edmonton), Number 9103-0646-A, dated May 31, 1994, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 9103-0646-A, daté du 31 mai 1994, est rejetée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Section 7 - Right to Silence - Section 10(b) - Right to Counsel - Whether the Alberta Court of Appeal erred in law in concluding that the Applicant's right to remain silent under section 7 of the *Canadian Charter of Rights and Freedoms* was not violated. - Whether the Alberta Court of Appeal erred in law in concluding that the actions of the police in this case did not violate the repute and integrity of the judicial process, contrary to the principles of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms* - Whether the Alberta Court of Appeal erred in law in concluding that the accused's right to counsel under section 10 b) of the *Canadian Charter of Rights and Freedoms* was not violated.

**PROCEDURAL HISTORY**

July 11, 1991 Court of Queen's Bench of Alberta (Cooke J)	Applicant convicted on a charge of second degree murder
May 31, 1994 Court of Appeal of Alberta (Fraser C.J.A., Kerans and McFadyen JJ.A.)	Appeal against conviction dismissed
June 24, 2003 Supreme Court of Canada	Applications for extension of time and leave to appeal filed

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**29999**            **Sandra Murray v. Her Majesty the Queen in Right of Ontario** (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 C38617, dated August 20, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C38617, daté du 20 août 2003, est rejetée avec dépens.

**NATURE OF THE CASE**

Crown law - Crown liability - Statement of claim alleging Crown liability for torts committed prior to September 1, 1963 - Whether all litigants who have causes of action against Her Majesty the Queen in Right of Ontario for events which occurred prior to September 1, 1963, must apply to the Lieutenant Governor by way of a petition of right under the former Rules of Practice and rather than by way of a Statement of Claim under the contemporary *Rules of Civil Procedure* - If so, whether all such litigants are prohibited from proceeding in the Ontario Superior Court of Justice against Her Majesty

the Queen in Right of Ontario unless the Lieutenant Governor grants a *fiat* giving permission for “justice to be done” - Whether, prior to September 1, 1963, claims in equity, contract and statute based non-delegable duty were the proper subject matter of a petition of right, subject to the granting of a *fiat*.

**PROCEDURAL HISTORY**

June 20, 2003 Ontario Superior Court of Justice (Coo J.)	Respondent’s motion to strike Applicant’s statement of claim allowed in part: all paragraphs except paras. 1(h) and 17 are struck
August 20, 2003 Court of Appeal for Ontario (McMurtry C.J.O., O’Connor and Simmons JJ.A.)	Applicant’s appeal dismissed
October 17, 2003 Supreme Court of Canada	Application for leave to appeal filed

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**30059**                    **Canadian Union of Public Employees, Local 1560 v. Avalon East School Board** (N.L.) (Civil) (By Leave)

Coram:                    Iacobucci, Binnie and Arbour JJ.

The application for leave to appeal from the judgment of the Supreme Court of Newfoundland and Labrador - Court of Appeal, Number 02/72, dated September 22, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour suprême de Terre-Neuve et Labrador - Cour d'appel, numéro 02/72, daté du 22 septembre 2003, est rejetée avec dépens.

**NATURE OF THE CASE**

Administrative law – Judicial review – Standard of review – Labour law – Labour relations – School Board deciding upon level of service to be maintained during impending teacher strike – Union disagreeing with number of non-teacher employees designated essential by School Board – Newfoundland and Labrador Labour Relations Board (LRB) finding employer School Board solely responsible for setting level of public service to be maintained during strike – LRB deciding approximately one-half of those designated by School Board met definition of essential employees under *Public Service Collective Bargaining Act*, R.S.N. 1990, c. P-42 s. 10(13), as duties were “necessary for the health, safety or security of the public” – Non-teacher employees occupying positions as cleaners, custodians, program assistants for students with disabilities, and various maintenance workers – Whether courts below erred in upholding decision of LRB – What standard of review applies to the legal question whether the doctrine of *stare decisis* applies to the interpretation by an administrative tribunal of statutory provisions previously considered by a court on an earlier application for judicial review – In what circumstances, if any, are administrative tribunals bound by prior judicial consideration of statutory provisions made by a court in the context of prior applications for judicial review – To what extent should public service essential services provisions be interpreted to require that a labour relations board determine which positions are essential to health, safety or security of the public based on the level of service an employer unilaterally decides it wishes to maintain during a labour dispute – *Public Service Collective Bargaining Act*, R.S.N. 1990, c. P-42, s. 10(13)

**PROCEDURAL HISTORY**

August 30, 2001 Newfoundland and Labrador Labour Relations Board (O’Brien, St. Aubin [ <i>dissenting</i> ] and Alcock, Members)	Respondent’s request to have 141 employees declared essential pursuant s. 10 of the <i>Public Service Collective Bargaining Act</i> , granted in part (75 employees declared essential)
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July 29, 2002 Supreme Court of Newfoundland & Labrador Trial Division (Barry J.)	Applicant's application for judicial review dismissed
September 22, 2003 Supreme Court of Newfoundland and Labrador Court of Appeal (Roberts, Welsh and Rowe JJ.A.)	Appeal dismissed
November 21, 2003 Supreme Court of Canada	Application for leave to appeal filed

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**30068**            **Gouvernement du Maroc c. Rhita El Ansari** (Qc) (Civile) (Autorisation)

Coram:            Les juges Iacobucci, Binnie et Arbour

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-012573-028, daté du 1 octobre 2003, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-012573-028, dated October 1, 2003, is dismissed with costs.

**NATURE DE LA CAUSE**

Droit international - Tribunaux - Compétence - Immunité de juridiction - Exception des activités commerciales - *Loi sur l'immunité des États*, L.R.C. (1985), ch. S-18 - La Cour d'appel a-t-elle commis une erreur en droit en considérant qu'un État étranger et l'un de ses fonctionnaires en mission diplomatique étaient liés par un « simple contrat de travail » ? - La Cour d'appel a-t-elle commis une erreur en droit en considérant qu'une personne qui résidait et travaillait en Ontario pendant plus de trois ans était, au moment de l'acte reproché, résidente ou domiciliée au Québec?

**HISTORIQUE DES PROCÉDURES**

Le 12 juillet 2002 Cour supérieure du Québec (Le juge Bélanger)	Action de l'intimée rejetée pour défaut de compétence
Le 1 octobre 2003 Cour d'appel du Québec (Les juges Otis, Rochon et Biron [ <i>ad hoc</i> ])	Appel de l'intimée accueilli et dossier retourné à la Cour supérieure
Le 28 novembre 2003 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**30094**            **Solomon Windheim c. Banque Toronto Dominion, Miriam Windheim, Ellen Windheim et les Promotions Taillon Ltée** (Qc) (Civile) (Autorisation)

Coram:            Les juges Iacobucci, Binnie et Arbour

La demande d'autorisation d'appel des arrêts de la Cour d'appel du Québec (Montréal), numéros 500-09-011265-014 et 500-09-011266-012, daté du 7 novembre 2003, est rejetée avec dépens.

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The application for leave to appeal from the judgments of the Court of Appeal of Quebec (Montreal), Numbers 500-09-011265-014 and 500-09-011266-012, dated November 7, 2003, is dismissed with costs.

**NATURE DE LA CAUSE**

Droit administratif - Contrôle judiciaire - Compétence des tribunaux d'appel - La Cour d'appel du Québec a-t-elle erré en déclarant que le jugement de première instance contenait des erreurs manifestes et dominantes au sens de l'arrêt *Housen c. Nikolaisen*, [2002] 2 R.C.S. 235? - La Cour d'appel du Québec a-t-elle erré en ne respectant pas la règle fondamentale *audi alteram partem*?

**HISTORIQUE DES PROCÉDURES**

Le 3 juillet 2001  
Cour supérieure du Québec  
(Le juge Kennedy)

Intimée Banque Toronto Dominion condamnée à payer la somme de 221 214,69\$ au demandeur; action en garantie de l'intimée Banque Toronto Dominion, accueillie : intimées Miriam et Ellen Windheim et Promotions Taillon Ltée condamnées à rembourser à l'intimée Banque Toronto Dominion la somme payée par celle-ci au demandeur

Le 7 novembre 2003  
Cour d'appel du Québec  
(Les juges Baudouin, Dalphond et Morissette)

Appel des intimées Miriam et Ellen Windheim et Promotions Taillon Ltée accueilli; jugement de la Cour supérieure infirmé; action principale du demandeur rejetée; action en garantie de l'intimée Banque Toronto Dominion rejetée

Le 22 décembre 2003  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**30095**            **Arthur Webster v. Attorney General of Canada** (F.C.) (Civil) (By Leave)

Coram:            **Iacobucci, Binnie and Arbour JJ.**

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-50-03, dated October 21, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-50-03, daté du 21 octobre 2003, est rejetée avec dépens.

**NATURE OF THE CASE**

Taxation - Assessment - Administrative Law - Judicial Review - Statutes - Interpretation - Did the Federal Court of Appeal err in its interpretation of s. 18.5 of the *Federal Courts Act* thereby insulating the Minister from any review or censure of process? - Does the *Federal Courts Act* as interpreted by the Federal Court of Appeal abrogate, abridge or infringe the rights or freedoms guaranteed in the *Canadian Bill of Rights* rendering the *Federal Courts Act* inoperative or invalid?

**PROCEDURAL HISTORY**

January 10, 2003  
Federal Court of Canada  
(Rouleau J.)

Applicant's motion for an extension of time for an application for judicial review allowed



October 21, 2003  
Federal Court of Appeal  
(Desjardins, Décaré and Sharlow JJ.A.)

Respondent's appeal allowed: motion for extension of time  
dismissed and application for judicial review quashed

December 19, 2003  
Supreme Court of Canada

Application for leave to appeal filed

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**30107**            **Joseph Marino and 1184464 Ontario Limited v. DBM Capital Corp.** (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 C39388, dated October 14, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C39388, daté du 14 octobre 2003, est rejetée avec dépens.

**NATURE OF THE CASE**

Property law – Contract law – Mortgages – Real property – Power of sale – Right to redeem – *Mortgages Act*, R.S.O. 1990, c. M.40 – Whether the Court of Appeal erred in finding that the agreement of purchase and sale in question became unconditional, and therefore a “sale” within the meaning of s. 22(1) of the *Mortgages Act*, occurred on May 3, 2002? – Whether the Court of Appeal erred further in finding that certain steps were necessary pre-conditions for relief under s. 22(1) of the *Act* and those steps were not taken prior to the agreement of purchase and sale becoming unconditional? – Whether the Court of Appeal erred in not addressing the issue of whether or not a conditional sale is a “sale” under s. 22 of the *Act*? – Whether the Court of Appeal erred in applying the proper principles in its statutory interpretation of “sale” in s. 22 of the *Act*? – Whether the Court of Appeal, by reason of this decision, and its decision in other cases, has adopted differing approaches to the application and interpretation of s. 22 of the *Act* and the equitable remedies available to a mortgagor? – Whether the Court of Appeal, by reason of this decision, is inconsistent with the Supreme Court of Canada in its interpretation of contracts concerning the purchase and sale of land?

**PROCEDURAL HISTORY**

November 27, 2002  
Ontario Superior Court of Justice  
(Marshall J.)

Applicant's motion dismissed; Order made on April 29,  
2002 expired and Respondent allowed to complete sale  
transaction as per Agreement of Purchase and Sale

October 14, 2003  
Court of Appeal for Ontario  
(Moldaver, Borins and MacPherson JJ.A.)

Appeal dismissed

December 23, 2003  
Supreme Court of Canada

Application for leave to appeal filed

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**30114**                    **Abattoir A. Trahan Transformation Inc. et Abattoir St-Alexandre (1982) Inc. c. Fédération des producteurs de porcs du Québec et Régie des marchés agricoles et alimentaires du Québec (Qc)**  
(Civile) (Autorisation)

Coram:                    Les juges Iacobucci, Binnie et Arbour

La demande d'autorisation d'appel des arrêts de la Cour d'appel du Québec (Montréal), numéros 500-09-011134-012 et 500-09-011135-019, datés du 5 novembre 2003, est rejetée avec dépens à la Fédération des producteurs de porcs du Québec seulement.

The application for leave to appeal from the judgments of the Court of Appeal of Quebec (Montreal), Numbers 500-09-011134-012 and 500-09-011135-019, dated November 5, 2003, is dismissed with costs to Fédération des producteurs de porcs du Québec only.

**NATURE DE LA CAUSE**

Droit administratif - Contrôle judiciaire - Définition de la norme de contrôle de l'erreur manifestement déraisonnable - Décision de la Régie intimée à l'effet que la Fédération intimée a le pouvoir de modifier unilatéralement l'équation de rendement de l'appareil électronique utilisé par les demanderesse pour mesurer le poids des carcasses de porcs et leur classe de rendement - La Cour d'appel, à la majorité, a-t-elle erré en déclarant que la décision de la Régie n'était affectée d'aucune erreur de compétence ni d'aucune erreur manifestement déraisonnable justifiant l'exercice du pouvoir de révision judiciaire ?

**HISTORIQUE DES PROCÉDURES**

Le 1 <sup>er</sup> décembre 2000 Régie des marchés agricoles et alimentaires (Busque, Bergeron et Hovington)	Demanderesse condamnées à payer à la Fédération intimée 440 685\$ et 483 097\$ respectivement
Le 5 juin 2001 Cour supérieure du Québec (La juge Richer)	Requête en révision judiciaire accueillie
Le 5 novembre 2003 Cour d'appel du Québec (Les juges Rousseau-Houle, Delisle et Rayle [ <i>dissidente</i> ])	Appel principal de la Fédération intimée accueilli, appel incident des demanderesse rejeté, jugement de la Cour supérieure infirmé et requête en révision judiciaire rejetée
Le 31 décembre 2003 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**30145**                    **Réserve de la Petite Nation Inc. c. Serge Bruneau, John Marshall, Éric Charbonneau, Gérard Sévigny, Guy Caubel, et Éric Therrien, Alexandre Alarie, Ryan Ward, Paul Savard, Francis Alarie, Martin Beaucage, Gilles Caubel, Procureur général du Québec et La Société de la Faune et des Parcs du Québec (Qc)** (Civile) (Autorisation)

Coram:                    Les juges Iacobucci, Binnie et Arbour

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-013838-032, daté du 19 novembre 2003, est rejetée avec dépens aux intimés sauf à la Société de la Faune et des Parcs du Québec.

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The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-013838-032, dated November 19, 2003, is dismissed with costs to the respondents except La Société de la Faune et des Parcs du Québec.

### **NATURE DE LA CAUSE**

Procédure - Jugements et ordonnances - Procédure civile - Procédure préalable au procès - Opposabilité d'un jugement - Requête en intervention - Autorité de la chose jugée - La Cour d'appel a-t-elle erré en refusant la permission d'appeler du jugement de première instance, lequel permet que soit attaqué indirectement le jugement rendu en 1938 sur lequel la demanderesse fonde son droit de propriété ? - La Cour d'appel a-t-elle erré en considérant que la permission d'appeler ne pouvait être accordée du fait que le litige nécessitait l'examen d'une preuve au fond pour décider du sens et de la portée du jugement rendu en 1938 ? - La Cour d'appel a-t-elle erré en considérant que l'intérêt de la justice ne justifiait pas que la permission d'appeler soit accordée du fait qu'il serait toujours loisible à la demanderesse de faire valoir, lors du procès au fond, les arguments de droit quant à l'effet du jugement rendu en 1938 ? - Est-ce que le principe de l'autorité de la chose jugée soulève une question d'intérêt national ? - Est-ce que la présente demande d'autorisation d'appel doit être accordée, bine que le jugement en cause soit de nature interlocutoire ? - Cette Cour possède-t-elle la compétence pour instruire tant le pourvoi contre la décision de la Cour d'appel de ne pas accorder l'appel que celui contre le jugement de la Cour supérieure de rejeter les requêtes en irrecevabilité de la demanderesse ?

### **HISTORIQUE DES PROCÉDURES**

Le 12 septembre 2003  
Cour supérieure du Québec  
(La juge Trudel)

Requête en irrecevabilité de l'intervention de l'intimé  
Procureur général du Québec, rejetée;  
Requête en irrecevabilité du plaidoyer et de la demande  
reconventionnelle des intimés, rejetée.

Le 19 novembre 2003  
Cour d'appel du Québec  
(La juge Morissette)

Requête amendée de la demanderesse pour permission  
d'appeler, rejetée; requête en irrecevabilité du plaidoyer  
et de la demande reconventionnelle des intimés Serge  
Bruneau, John Marshall, Éric Therrien, Éric  
Charbonneau, Gérard Sévigny, Guy Caubel, Alexandre  
Alarie, Ryan Ward, Paul Savard, Francis Alarie, Martin  
Beaucage, Gilles Caubel, rejetées

Le 19 janvier 2004  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**30146**                    **Réjeanne Gagnon c. Ville de Montréal** (Qc) (Civile) (Autorisation)

Coram:                Les juges Iacobucci, Binnie et Arbour

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-012110-029, daté du 19 novembre 2003, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-012110-029, dated November 19, 2003, is dismissed with costs.

### **NATURE DE LA CAUSE**

Responsabilité civile - Droit municipal - Municipalité - Négligence - Dommages intérêts - Chute sur le trottoir de la ville - Piège - Danger inhérent - Les instances inférieures ont-elles commis une erreur dans l'interprétation de la notion de piège, de «dangerosité intrinsèque» et de «connotation d'anormalité et de surprise» tel qu'énoncé dans l'arrêt *Rubis c. Grey Rocks Inn Ltd*, [1982] 1 R.C.S. 452 ? - Les instances inférieures ont-elles commis une erreur en n'appliquant pas la norme

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de diligence ? - La Cour d'appel a-t-elle commis une erreur en concluant qu'il était impossible de déterminer si la plainte de la commerçante avait été transmise à l'intimée ? - Les instances inférieures ont-elles mal évalué la preuve ? - Les instances inférieures ont-elles commis une erreur relative au lien de causalité entre la négligence ou la faute de la Ville et la chute de la demanderesse?

### **HISTORIQUE DES PROCÉDURES**

Le 14 mars 2002 Cour supérieure du Québec (La juge Rayle)	Action de la demanderesse en dommages intérêts, rejetée
Le 19 novembre 2003 Cour d'appel du Québec (Les juges Brossard, Morissette et, Lemelin [ <i>ad hoc</i> ])	Appel rejeté
Le 19 janvier 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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**30179**            **Brent G. McClelland v. Her Majesty the Queen** (F.C.) (Civil) (By Leave)

Coram:            **Iacobucci, Binnie and Arbour JJ.**

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-403-02, dated December 17, 2003, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-403-02, daté du 17 décembre 2003, est rejetée avec dépens.

### **NATURE OF THE CASE**

Taxation - Assessment - Business income - Deductions - Reasonable expectation of profit - Artistic endeavour - Whether a business exists during the development phase of an arts project - Whether individuals involved in the arts are engaged in a business when they are inventing and creating original works and must they sell before their endeavours qualify as a business - Whether the number of years spent on developing an arts project is relevant to the determination of the existence of a business - Where a personal element exists, to what extent is "subjective intent to profit" and "businesslike behaviour to support that intention" relevant to the determination of the existence of a business? - Whether it is important to encourage testimony, during trial, as to the unorthodox nature of the arts as business

### **PROCEDURAL HISTORY**

May 27, 2002 Tax Court of Canada (Beaubier J.)	Applicant's appeals from assessments made under the <i>Income Tax Act</i> for the 1988 to 1997 taxation years, dismissed
December 17, 2003 Federal Court of Appeal (Rothstein, Noël and Malone JJ.A.)	Appeal dismissed
February 16, 2004 Supreme Court of Canada	Application for leave to appeal filed

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

L. Ted Priel, et al.

v. (20707)

Gene Arthur Francis Maurice (Sask.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Canadian Union of Public Employees - C.L.C. Ontario  
Hydro Employees Union Local 1000

v. (22387)

Ontario Labour Relations Board, et al. (Ont.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Non-Labour Lien Claimants

v. (23549)

Her Majesty the Queen in Right of Canada, et al. (Sask.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Alltrans Express Ltd.

v. (17991)

Workers' Compensation Board of British Columbia  
(B.C.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Paula Leeann Lewis, et al.

v. (24999)

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

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Bernard Weissbourd, et al.

v. (18725)

Protestant School Board of Greater Montreal, et al.  
(Que.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Sharon Marie Bracklow

v. (26178)

Frank Patrick Bracklow (B.C.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Leroy Jensen, et al.

v. (22980)

Kim Tolofson (B.C.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Fred Harvey

v. (23968)

Attorney General of New Brunswick, et al. (N.B.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

Virginia Allison Scarff, an infant by her next friend,  
Daphne Rose Scarff

v. (21329)

Gordon Bruce Wilson, et al. (B.C.)

**GRANTED / ACCORDÉE**

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**Requête en vue d'obtenir le remboursement du  
cautionnement**

2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

Ray Ray Lawson

v. (21334)

Nicole Laferrière, in her quality as testamentary  
executor of the late Mireille Fortier-Dupuis (Que.)

**GRANTED / ACCORDÉE**

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**Requête en vue d'obtenir le remboursement du  
cautionnement**

2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

Marie Sarah Eurig as Executor of the Estate of Donald  
Valentine Eurig

v. (25866)

Registrar of the Ontario Court (General Division), et al.  
(Ont.)

**GRANTED / ACCORDÉE**

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**Requête en vue d'obtenir le remboursement du  
cautionnement**



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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

University of Regina

v. (19816)

Martin L. Cohnstaedt (Sask.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

Workers' Compensation Board of British Columbia, et al.

v. (25784)

Frances Elizabeth Kovach, et al. (B.C.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

**Requête en vue d'obtenir le remboursement du cautionnement**

David Attis, et al.

v. (24002)

Human Rights Commission of New Brunswick, et al. (N.B.)

**GRANTED / ACCORDÉE**

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2.4.2004

Before / Devant : THE REGISTRAR

**Motion to reimburse the security deposit**

Telecommunication Workers Union

v. (19905)

British Columbia Telephone Company (B.C.)

**GRANTED / ACCORDÉE**

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**Requête en vue d'obtenir le remboursement du cautionnement**

5.4.2004

Before / Devant : BASTARACHE J.

**Motion to extend the time in which to serve and file the factum (to March 29, 2004) and the book of authorities (to March 31, 2004) of the intervener the Attorney General of Ontario and to present an oral argument**

Her Majesty the Queen

v. (29670)

Walter Tessler (Crim.) (Ont.)

**GRANTED / ACCORDÉE**

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**Requête en prorogation du délai imparti pour signifier et déposer les mémoires (au 29 mars 2004) et recueil de sources (au 31 mars 2004) de l'intervenant le procureur général de l'Ontario et en vue présenter une plaidoirie**

5.4.2004

Before / Devant : BASTARACHE J.

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

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

IN / DANS : David Brock Henry

v. (29952)

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

- and -

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

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Barry Wayne Riley

v. (29953)

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

**UPON APPLICATIONS** by the Attorney General of Canada and the Attorney General of Ontario, for leave to intervene in the above appeals and pursuant to the order of February 11, 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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5.4.2004

Before / Devant : BASTARACHE J.

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

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

BY / PAR : Attorney General of Ontario  
Attorney General of Quebec  
Canadian Civil Liberties Association

IN / DANS : Her Majesty the Queen

v. (29670)

Walter Tessler (Crim.) (Ont.)

**UPON APPLICATIONS** by the Attorney General of Ontario, the Attorney General of Quebec and the Canadian Civil Liberties Association, for leave to intervene in the above appeal and pursuant to the order of February 4, 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** du Procureur général de l'Ontario, du Procureur général du Québec et de l'Association canadienne des libertés civiles, visant à obtenir l'autorisation d'intervenir dans l'appel susmentionné et suite à l'ordonnance du 4 février 2004;

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

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6.4.2004

Before / Devant : DESCHAMPS J.

**Motions for leave to intervene****Requêtes en autorisation d'intervention**

BY / PAR : The Honourable Senator Serge Joyal  
and the Honourable Senator Mobina  
S.B. Jaffer  
Professional Institute of the Public  
Service of Canada  
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. (F.C.)

**GRANTED IN PART / ACCORDÉES EN PARTIE**

**UPON APPLICATIONS** by the Honourable Senator Serge Joyal and the Honourable Senator Mobina S.B. Jaffer, the Professional Institute of the Public Service of Canada, 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 HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

The motion for leave to intervene of the applicants, the Honourable Senator Serge Joyal and the Honourable Senator Mobina S.B. Jaffer, is granted and the applicants shall be entitled to serve and file a joint factum not to exceed 20 pages in length.

The motion for leave to intervene of the applicant, the Professional Institute of the Public Service of Canada, is dismissed.

The motion for leave to intervene of the applicants, the Canadian Association of Professional Employees and the Communications, Energy and Paperworkers Union of Canada, is granted and the applicants shall be entitled to serve and file a joint factum not to exceed 20 pages in length.

The motion to extend the time to apply for leave to intervene and for leave to intervene of the applicant, the Speaker of the Legislative Assembly of Ontario, 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 are deferred to a date following receipt and consideration of the written arguments of the parties and the interveners.

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

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

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7.4.2004

Before / Devant : THE REGISTRAR

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

**Requête en prorogation du délai imparti pour signifier et déposer le recueil de sources de l'intimée**

David Brock Henry

v. (29952)

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

**GRANTED / ACCORDÉE** Time extended to March 24, 2004.

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7.4.2004

Before / Devant : THE REGISTRAR

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

**Requête en prorogation du délai imparti pour signifier et déposer le recueil de sources de l'intimée**

Barry Wayne Riley

v. (29953)

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

**GRANTED / ACCORDÉE** Time extended to March 24, 2004.

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7.4.2004

Before / Devant : THE CHIEF JUSTICE

**Motion to state a constitutional question**

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

Her Majesty the Queen

v. (29920)

David Jeff Elias (Crim.) (Man.)

**GRANTED / ACCORDÉE**

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

**AND HAVING READ** the material filed;

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

1. Does s. 76.1(1) of *The Highway Traffic Act*, S.M. 1985-86, c. 3 (H60), as amended, to the extent that it authorizes a peace officer to question the driver of a motor vehicle about his or her prior alcohol consumption, infringe s. 10(b) of the *Canadian Charter of Rights and Freedoms*?
  2. If the answer to question 1 is in the affirmative, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
  3. Do the common law powers of a police officer, to the extent that those powers authorize the police officer to question the driver of a motor vehicle about his or her prior alcohol consumption, infringe s. 10(b) of the *Canadian Charter of Rights and Freedoms*?
  4. If the answer to question 3 is in the affirmative, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- 
1. Dans la mesure où il autorise un agent de la paix à interroger le conducteur d'un véhicule automobile relativement à sa consommation préalable d'alcool, le par. 76.1(1) du *Code de la route*, L.M. 1985-86, c. 3 (H60), modifié, porte-il atteinte à l'al. 10b) de la *Charte canadienne des droits et libertés*?
  2. Dans l'affirmative, l'atteinte est-elle une limite raisonnable prescrite par une règle de droit, dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique conformément à l'article premier de la *Charte canadienne des droits et libertés*?
  3. Dans la mesure où les pouvoirs que la common law confère à l'agent de police l'autorisent à interroger le conducteur d'un véhicule automobile relativement à sa consommation préalable d'alcool, ces pouvoirs portent-ils atteinte à l'al. 10b) de la *Charte canadienne des droits et libertés*?
  4. En cas de réponse affirmative à la troisième question, l'atteinte est-elle une limite raisonnable prescrite par une règle de droit, dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique conformément à l'article premier de la *Charte canadienne des droits et libertés*?

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7.4.2004

Before / Devant : THE CHIEF JUSTICE

**Motion to state a constitutional question**

Christopher Orbanski

v. (29793)

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

**GRANTED / ACCORDÉE**

**UPON APPLICATION** by the respondent for an order extending the time to serve and file the motion to state constitutional questions and for an order stating constitutional questions in the above appeal;

**AND HAVING READ** the material filed;

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

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**IT IS HEREBY ORDERED THAT THE EXTENSION OF TIME IS GRANTED;**

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

1. Do ss. 76.1(1), 263.2 and 265 of *The Highway Traffic Act*, S.M. 1985-86, c. 3 (H60), as amended, to the extent that they authorize a peace officer to administer physical sobriety tests to the driver of a motor vehicle, infringe s. 10(b) of the *Canadian Charter of Rights and Freedoms*?
  2. If the answer to question 1 is in the affirmative, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
  3. Do the common law powers of a police officer, to the extent that those powers authorize the police officer to administer physical sobriety tests to the driver of a motor vehicle, infringe s. 10(b) of the *Canadian Charter of Rights and Freedoms*?
  4. If the answer to question 3 is in the affirmative, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
- 
1. Dans la mesure où ils autorisent un agent de la paix à faire subir des tests de sobriété au conducteur d'un véhicule automobile, le par. 76.1(1) et les art. 263.2 et 265 du *Code de la route*, L.M. 1985-86, c. 3 (H60), modifié, portent-ils atteinte à l'al. 10b) de la *Charte canadienne des droits et libertés*?
  2. Dans l'affirmative, l'atteinte est-elle une limite raisonnable prescrite par une règle de droit, dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique conformément à l'article premier de la *Charte canadienne des droits et libertés*?
  3. Dans la mesure où les pouvoirs que la common law confère à l'agent de police autorisent ce dernier à faire subir des tests de sobriété au conducteur d'un véhicule automobile, ces pouvoirs portent-ils atteinte à l'al. 10b) de la *Charte canadienne des droits et libertés*?
  4. En cas de réponse affirmative à la troisième question, l'atteinte est-elle une limite raisonnable prescrite par une règle de droit, dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique conformément à l'article premier de la *Charte canadienne des droits et libertés*?
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8.4.2004

Before / Devant : IACOBUCCI J.

**Motion to strike**

**Requête en radiation**

David Brock Henry

v. (29952)

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

- and -

Barry Wayne Riley

v. (29953)

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

**GRANTED IN PART / ACCORDÉE EN PARTIE**

**UPON APPLICATION** by the appellants for an order striking the factum filed by the intervener, the Attorney General of Canada and for an order permitting the filing of a reply factum by the appellants;

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

- 1) The motion striking the factum filed by the intervener, the Attorney General of Canada, is dismissed.
- 2) The motion permitting the filing of a reply factum by the appellants is granted. The appellants reply factum shall be served and filed by April 16, 2004.

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8.4.2004

Before / Devant : BINNIE J.

**Motion to strike**

**Requête en radiation**

Commission de la santé et de la sécurité du travail, et  
autre

c. (29480)

Nutribec Ltée, et autres (Qc)

**GRANTED IN PART / ACCORDÉE EN PARTIE**

**À LA SUITE D'UNE DEMANDE** des intimées visant à obtenir le rejet du mémoire déposé par l'intervenante, la Commission des lésions professionnelles ou, subsidiairement, pour déposer un mémoire en réplique;

**ET APRÈS AVOIR PRIS CONNAISSANCE** de la documentation déposée;



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**IL EST PAR LA PRÉSENTE ORDONNÉ CE QUI SUIVIT:**

- 1) La demande des intimées visant à obtenir le rejet du mémoire déposé par l'intervenante, la Commission des lésions professionnelles, est rejetée.
- 2) Les intimées et le Procureur général du Canada ont la permission de déposer un mémoire en réplique de 5 pages au plus tard le 29 avril 2004.

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8.4.2004

Before / Devant : DESCHAMPS J.

**Motion to extend to April 12, 2004 the time in which to serve and file the application for leave of the applicant the Royal Bank of Canada and to extend to May 12, 2004 the time in which to serve and file the respondent's response in both leave applications**

**Requête visant à proroger au 12 avril 2004 le délai imparti pour signifier et déposer la demande d'autorisation de la demanderesse la Banque Royale du Canada et au 12 mai 2004 pour déposer la réponse de l'intimée dans les deux demandes d'autorisation**

Michael Ian Beardall Alexander, et al.

v. (30231)

State Farm Fire and Casualty Company, et al. (Ont.)

**GRANTED / ACCORDÉE**

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8.4.2004

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**

Paramjit Singh Sodhi

v. (30154)

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

**GRANTED / ACCORDÉE** Time extended to March 22, 2004.

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8.4.2004

Before / Devant : THE REGISTRAR

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

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

Chi Cheong (Raymond) Chan

v. (29970)

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

**GRANTED / ACCORDÉE** Time extended to March 1, 2004.

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8.4.2004

Before / Devant : THE REGISTRAR

**Motion to extend the time in which to file the appellants' factum on the cross-appeal**

**Requête en prorogation du délai imparti pour déposer le mémoire des appelants sur le pourvoi incident**

The Attorney General of British Columbia, et al.

v. (29508)

Connor Auton, an Infant, by his Guardian Ad Litem,

**GRANTED / ACCORDÉE** Time extended to April 2, 2004.

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**APPEALS HEARD SINCE LAST ISSUE  
AND DISPOSITION**

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

13.04.2004

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

**Hydro-Québec**

**c. (29588)**

**Modestos Glykis, et autre (Qc) (Civile) (Autorisation)**

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Torts - Statutes - Interpretation - Hydro-Québec's power to interrupt the supply and delivery of electricity to the private residence of a customer who has failed to pay an account concerning another building owned by him - Whether a Court is authorized by some legal principles to depart from the ordinary meaning of words used in a statute and to give only partial effect to the clear meaning of statutory provisions, namely, the provisions relating to the interruption of services for a customer failing to pay an account as set out in article 99 of the *By-law no 411 establishing the conditions governing the supply of electricity* (1987) 16 G.O.Q. II, 1918, which are made pursuant to articles 22.0.1 and 48 of the *Hydro-Québec Act*, R.S.Q., c. H-5. - In the event that an interpretative approach departing from the ordinary meaning of words used in a statute is required, whether a restrictive interpretation rather than a purposive one should be given to a provision found to go beyond the rules established in the ordinary law of the province. Whether a presumption that a provision may not deviate from the ordinary law as set out in the *Civil Code of Québec* applies to *By-law no 411*.- If so, whether paragraph 99(1) of *By-law no. 411* is compatible with the provisions of the *Civil Code* governing the non-performance of obligations. - Whether the Court of Appeal is justified in disregarding a Privy Council decision on the same legal situation.

Jules Brière, Hélène Gauvin et Jacinte Lafontaine pour l'appelante.

Jérôme Choquette et Jean-Stéphane Kourie pour les intimés.

**Nature de la cause:**

Responsabilité civile - Législation - Interprétation - Pouvoir d'Hydro-Québec de couper l'alimentation en électricité à la résidence d'un client pour un compte impayé à l'égard d'un autre immeuble appartenant à ce même client - Quel principe de droit peut autoriser un tribunal à s'écarter du sens ordinaire des mots pour ne donner effet, qu'en partie seulement, à des dispositions législatives claires, en l'occurrence les dispositions relatives à l'interruption de service en cas de défaut de paiement d'un client prévues par l'art. 99 du *Règlement n° 411 établissant les conditions de fourniture de l'électricité*, (1987) 16 G.O.Q. II, 1918, pris en vertu de l'art. 22.0.1 de la *Loi sur Hydro-Québec*, L.R.Q., ch. H-5, et par l'art. 48 de cette loi? - S'il est nécessaire de procéder à une démarche d'interprétation et de s'écarter du sens ordinaire des mots, doit-on privilégier l'interprétation restrictive d'une disposition jugée exorbitante du droit commun ou l'interprétation visant à favoriser la réalisation de son objet? - Le *Règlement n° 411* doit-il être présumé ne pas déroger au droit commun tel qu'établi dans le *Code civil du Québec*? - Dans l'affirmative, y a-t-il incompatibilité entre le paragraphe 1° de l'article 99 du *Règlement n° 411* et les dispositions du *Code civil* relatives à l'inexécution des obligations? - La Cour d'appel est-elle justifiée d'écarter une décision du Conseil privé sur la même situation juridique?

## DEADLINES: APPEALS

The Spring Session of the Supreme Court of Canada started April 13, 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 du printemps de la Cour suprême du Canada a commencé le 13 avril 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

- 2003 -

04-07-2002

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

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

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

- 2004 -

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

FEBRUARY - FÉVRIER						
S D	M L	T M	W M	T J	F V	S S
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8	M 9	10	11	12	13	14
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22	23	24	25	26	27	28
29						

MARCH - MARS						
S D	M L	T M	W M	T J	F V	S S
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14	M 15	16	17	18	19	20
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28	29	30	31			

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

MAY - MAI						
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9	M 10	11	12	13	14	15
16	17	18	19	20	21	22
23	H 24	25	26	27	28	29
30	31					

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

Sittings of the court:  
Séances de la cour:

Motions:  
Requêtes:

Holidays:  
Jours fériés:

M
H

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