SUPREME COURT OF CANADA

COUR SUPRÊME DU CANADA

BULLETIN OF PROCEEDINGS

BULLETIN DES PROCÉDURES

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APPLICATIONS FOR LEAVE TO APPEAL FILED

Her Majesty the Queen
James A. Bowron
A.G. of Alberta

v. (30799)

Michael P. Ritter, et al. (Alta.)
Hersh Wolch, Q.C.
Wolch, Wilson, deWit

FILING DATE: 25.02.2005

Allen Tomas Laing, et al.
Patrick G. Foy, Q.C.
Borden, Ladner, Gervais

v. (30754)

Kenneth Wesley Johnson (B.C.)
Kenneth Richard Beatch

FILING DATE: 01.03.2005

Andrea Anani, et al.
Andrea Anani

v. (30734)

Uniglobe Travel (Western Canada) Inc. (B.C.)
Andrew Morrison
Shields Harney

FILING DATE: 02.03.2005

David Lloyd Neil
David Lloyd Neil
v. (30801)

Her Majesty the Queen (Alta.)
James A. Bowron
A.G. of Alberta

FILING DATE: 03.03.2005

DEMANDES D'AUTORISATION D'APPEL DÉPOSÉES

Georges Ghanotakis
Georges Ghanotakis

c. (30708)

Clots & Associés, et autre (Qc)
Elizabeth Clot
Clot et Associés

DATE DE PRODUCTION: 04.03.2005

MARCH 14, 2005 / LE 14 MARS 2005

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

Regroupement des marchands actionnaires Inc.

v. (30677)

Métro Inc. and Métro Richelieu Inc. (Que.)

NATURE OF THE CASE

Statutes - Interpretation - Professional Law - Mandate - Ethics - A law firm that acted as counsel for a company in certain matters and also conducted, on behalf of a third party, a due diligence enquiry directed at that company and involving its shareholders, later representing these shareholders as opponents of the same company - Whether the Quebec Court of Appeal erred in holding that a conflict of interest can result from circumstances other than a strict previous solicitor/client relationship - *Charter of Human Rights and Freedoms*, R.S.Q. c. C-12, s.9 - *Professional Code*, R.S.Q. c. C-26, s. 60.4 - *An Act respecting the Barreau du Québec*, R.S.Q. c. B--1, s. 131 - *Code of Ethics of Advocates*, R.R.Q. 1981, c. B-1, r. 1, s. 3.06.01 to 3.06.08.

PROCEDURAL HISTORY

December 9, 2003 Superior Court of Quebec (Lagacé J.)	Respondents' motion to disqualify the law firm Fasken Martineau DuMoulin LLP and its lawyers, dismissed
October 20, 2004 Court of Appeal of Quebec (Proulx, Nuss and Rochette JJ.A.)	Appeal allowed; motion to disqualify granted
December 17, 2004 Supreme Court of Canada	Application for leave to appeal filed

Genpharm Inc.

v. (30714)

Procter & Gamble Pharmaceuticals Canada, Inc., The Procter & Gamble Company, The Minister of Health (F.C.)

NATURE OF THE CASE

Property - Patents - *Patented Medicines (Notice of Compliance) Regulations* - Procedural law - Standard of proof - Whether Court of Appeal erred in law in its interpretation of the *PM(NOC) Regulations* in holding that the standard of proof that a second person is required to meet on an allegation that a patent is invalid is "balance of probabilities" rather than "justification" - Whether Court of Appeal erred in law in its formulation of the test of "obviousness" in respect of the validity of a patent stating that the test was whether a person skilled in the art would be "led directly and without

difficulty" to the alleged invention claimed, rather than the test that would support that the alleged invention could have been "reasonably predicted"

PROCEDURAL HISTORY

February 12, 2004 Federal Court of Canada, Trial Division (Snider J.)	Minister of Health prohibited from issuing Notice of Compliance to Applicant until expiry of Respondents' Patent
November 22, 2004 Federal Court of Appeal (Rothstein, Noël and Sharlow JJ.A)	Appeal dismissed
January 12, 2005 Supreme Court of Canada	Application for leave to appeal filed

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Genpharm Inc.

v. (30715)

AB Hassle, Astrazeneca AB, Astrazeneca Canada Inc., Takeda Chemical Industries Ltd. and The Minister of Health (F.C.)

NATURE OF THE CASE

Property - Patents - Patented medicines - *Patented Medicines (Notice of Compliance) Regulations* - Whether Court of Appeal erred its interpretation of the *Regulations* in holding that the standard of proof that a second person is required to meet as to an allegation that a patent is invalid is that of the "balance of probabilities" rather than the proper standard of "justification"- Whether Court of Appeal erred in law in its formulation of the test of "obviousness" in respect of the validity of a patent stating that the test was whether a person skilled in the art would be "led directly and without difficulty" to the alleged invention claimed, rather than the test that would support a date of invention that the alleged invention could have been "reasonably predicted"

PROCEDURAL HISTORY

December 11, 2003 Federal Court of Canada, Trial Division (Layden-Stevenson J.)	Minister of Health prohibited from issuing a notice of compliance to Applicant pursuant to subsection 6(1) of the *Patented Medicines (Notice of Compliance) Regulations*
December 2, 2004 Federal Court of Appeal (Rothstein, Noël and Malone JJ.A.)	Appeal dismissed
January 12, 2005 Supreme Court of Canada	Application for leave to appeal filed

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Montreal Trust Company

v. (30596)

The Long Riders Rig Corporation, Capital Developments Corp., Spalding G. Wathen Investments Ltd., The Fresno San Andreas Oil Corporation, Gopher Oil & Gas Company Ltd., Herc Oil Corp., Fast Trucking Service Ltd. and T.D.L. Petroleums Inc.

- and between -

Montreal Trust Company

v. (30596)

Blackfire Oil Inc. (Sask.)

NATURE OF THE CASE

Torts - Commercial Law - Trespass - Leases - The scope of the doctrine of leave and licence as a defence to an action in trespass or conversion - Whether a person is deemed to know his or her legal rights respecting an issue which is before the courts - Whether a person against whom a tort has been committed is entitled to require the tortfeasor to account for profits made through the tortuous activity or is he or she limited to compensatory damages.

PROCEDURAL HISTORY

September 6, 2001 Court of Queen's Bench (Gerein C.J.)	Declaration lease terminated on January 3, 1990 and applicant to recover damages to be determined; Cross-claim allowed
July 17, 2002 Court of Appeal for Saskatchewan (Gerwing, Vancise and Lane JJ.A.)	Appeals and appeal on cross-claim dismissed
March 6, 2003 Supreme Court of Canada (McLachlin C.J., Bastarache and Deschamps JJ.)	Applications for leave to appeal dismissed
August 12, 2003 Court of Queen's Bench of Saskatchewan (Gerein C.J.Q.B.)	Damages of 5.5% of gross-revenue plus $6,400 and $1,175.79 awarded to applicant
September 3, 2004 Court of Appeal for Saskatchewan (Tallis, Vancise and Jackson JJ.A.)	Applicant's appeal dismissed and cross-appeal allowed in part; Damages reduced
October 29, 2004 Supreme Court of Canada	Application for leave to appeal filed

Apotex Inc.

v. (30716)

AB Hassle, Astrazeneca AB, Astrazeneca Canada Inc., The Minister of Health (F.C.)

NATURE OF THE CASE

Property law - Patents - *Patented Medicines (Notice of Compliance) Regulations* - Prohibition order - Whether rebuttable presumption of patent validity has the effect of shifting the legal burden to the Respondent in a prohibition proceeding to prove on a balance of probabilities the invalidity of the patent –Whether statutory presumption should apply in context of litigation under the *Regulations* - Procedural law - Evidence - Burden of proof - Effect of statutory presumptions on legal and evidential burdens

PROCEDURAL HISTORY

June 20, 2003 Federal Court of Canada, Trial Division (Campbell J.)	Applicant's Notice of Allegation alleging that Canadian Patent 1,264,751 was invalid on the ground of anticipation and obviousness, dismissed; Minister of Health prohibited from issuing a Notice of Compliance to the Applicant until after the expiration of the Patent
November 1, 2004 Federal Court of Appeal (Richard C.J., Rothstein and Noël JJ.A.)	Appeal dismissed
January 14, 2005 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

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

2016596 Ontario Inc.

v. (30560)

Her Majesty the Queen in Right of Ontario as represented by The Minister of Natural Resources (Ont.)

NATURE OF THE CASE

Administrative law - Judicial review - Applicant seeking right to use Sand River Road - Whether the Lake Superior Park Management Plan 1995 permits passage over the Sand River Road - Park Superintendent determining vehicle access on the Sand River Road is not permitted for access to and from private property - Judicial review of decision of Park Superintendent - Whether, and if so, when, bureaucratic interpretations of prior exercises of statutory discretion (administrative decisions) are equivalent to administrative decisions - In setting down guidelines in this area, this Honourable Court can: clarify on what basis Canadians may find relief from bureaucratic actions, assist government, the public and private stakeholders in understanding the "rules of the game" set out in park management plans - are these plans articulations of exercises of statutory power or general statements of government intention which need not be followed or a combination of both.

PROCEDURAL HISTORY

April 4, 2003 Ontario Superior Court of Justice (Stortini J.)	Applicant's application for declaratory relief relating to access to Sand River Road granted
May 29, 2003 Ontario Superior Court of Justice (Macdonald J.)	Respondent's application for a stay dismissed
June 17, 2003 Ontario Superior Court of Justice (Caputo J.)	Respondent's motion dismissed by reason of *res judicata*
September 28, 2004 Court of Appeal for Ontario (Simmons J.A. and Lane J. [*ad hoc*] Armstrong J.A. [*dissenting*]	Appeal allowed and judicial review application dismissed; order of Stortini J. set aside
November 29, 2004 Supreme Court of Canada	Application for leave to appeal filed
February 1, 2005 Supreme Court of Canada	Motion for an extension of time granted to Respondent

Sam Stabile

v. (30594)

Lucia Milani, Rizmi Holdings Limited, Muccapine Investments Ltd., L.C.T. Holdings Inc. and Highland Beach Estate Holdings Inc. and Milani & Milani Holdings Limited (Ont.)

NATURE OF THE CASE

Commercial law - Company law - Creditor and debtor - Oppression remedy - Appeals - Standard of review - Appropriate test to apply when determining corporate oppression as against creditors - How court should determine "reasonable expectations" component of test for oppression - Whether court should apply a different standard for "minor creditors" than that applied in respect of "major creditors" - Proper approach for courts of appeal when applying standard of review of palpable and overriding error in respect of findings of fact by a trial judge - *Business Corporations Act*, R.S.O. 1990, c. B.16, s. 248.

PROCEDURAL HISTORY

December 10, 2002 Ontario Superior Court of Justice (Wright J.)	Rectification order in favour of the Applicant made pursuant to the oppression remedy contained in s. 248 of the *Business Corporations Act*
June 30, 2004 Court of Appeal for Ontario (Weiler, Sharpe and Blair JJ.A.)	Appeal allowed; Judgment granted dismissing the action

October 28, 2004 Supreme Court of Canada	Application for leave to appeal filed
October 28, 2004 Supreme Court of Canada	Motion to extend time to file and/or serve application for leave to appeal filed
January 17, 2005 Supreme Court of Canada	Conditional application for leave to cross-appeal filed

Conquest Vacations Company

v. (30704)

T-Comm/a Travel Communication Association Inc. (Ont.)

NATURE OF THE CASE

Commercial Law - Contracts - Whether the Court of Appeal for Ontario erred in the test articulated for finding that a contract had been fundamentally breached - Whether the Court of Appeal's conclusion is not justified in its reasons - Whether the Court of Appeal failed to address the true nature of the contract and its breach - Whether within this Court and the Court of Appeal for Ontario there are differing opinions on the test to be applied when considering whether one party has fundamentally breached a contract - Whether there is a need to decide that test and when it is to be applied.

PROCEDURAL HISTORY

April 24, 2003 Ontario Superior Court of Justice (Dyson J.)	Applicant to pay damages in the amount of $74,107
November 5, 2004 Court of Appeal for Ontario (Goudge, Feldman and Lang)	Appeal dismissed
January 4, 2005 Supreme Court of Canada	Application for leave to appeal filed

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

Eduardo Plagaro Perez De Arrilucea, Gorka Perea Salazar

c. (30665)

Le Royaume d'Espagne (représentée par le Procureur général du Canada), Le ministre de la Justice du Canada (Crim.) (Qc)

NATURE DE LA CAUSE

Droit criminel - Extradition - Mauvais traitements - Divulgation de la preuve - Divulgation d'opinions juridiques - Le juge d'extradition a-t-il la compétence et l'obligation d'examiner des allégations selon lesquelles le verdict de culpabilité à l'origine d'une demande d'extradition est fondé sur des aveux obtenus par la torture? - Le privilège avocat-client s'applique-t-il aux avis et aux recommandations fournis au Ministre par les avocats de son ministère? - Le Ministre a-t-il exercé sa discrétion en refusant d'accorder une audience aux demandeurs? - La Cour d'appel a-t-elle privé les demandeurs d'un « forum approprié aux fins de représentation de la preuve »? - Le Ministre était-il tenu d'évaluer le bien-fondé des allégations des demandeurs à l'effet que les aveux ayant fondé les verdicts de culpabilité contre eux leur avaient été arrachés sous la torture? - Le Ministre avait-il l'obligation d'expliquer sa décision de ne pas tenir compte des nombreux éléments de preuve qui lui avaient été soumis par les demandeurs à l'effet que la torture et les mauvais traitements étaient pratiquées couramment en Espagne par les forces policières et les autorités pénitentiaires, particulièrement à l'encontre des Basques associés à l'ETA? - Le Ministre et la Cour d'appel ont-ils erré en concluant que l'extradition des demandeurs ne violerait pas l'article 7 de la *Charte*?

HISTORIQUE DES PROCÉDURES

Le 30 octobre 2001 Cour supérieure du Québec (Le juge Boilard)	Détention des demandeurs jusqu'à ce que le Ministre prenne la décision de les remettre, ou non, au Royaume d'Espagne; ordonnée
Le 17 septembre 2003 Ministre de la Justice et Procureur général du Canada (Martin Cauchon)	Extradition des demandeurs ordonnée
Le 13 décembre 2004 Cour d'appel du Québec (Les juges Dussault, Rayle et Doyon)	Appel du jugement d'extradition et demande de révision judiciaire de la décision du Ministre de la Justice rejetés
Le 9 février 2005 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Mohammad Reza Dadgar

c. (30783)

Sa Majesté la Reine (Crim.) (Qc)

NATURE DE LA CAUSE

Droit criminel - Détermination de la peine - Homicide involontaire coupable - La Cour d'appel a-t-elle erré en droit en concluant que la peine infligée au demandeur, soit 21 ans de détention, ne revêtait pas un caractère déraisonnable justifiant son intervention? - La Cour d'appel a-t-elle erré en droit en refusant de créditer en double la détention présentencielle purgée par le demandeur? - La Cour d'appel a-t-elle erré en droit en refusant d'annuler l'ordonnance prononcée par le juge de première instance à l'effet que le demandeur devrait purger au moins 8 années de détention, soit la moitié de la peine de 16 années de détention infligée à compter du jour du prononcé de la sentence, avant d'être admissible à une libération conditionnelle?

HISTORIQUE DES PROCÉDURES

Le 30 mai 2003 Cour supérieure du Québec (Le juge Martin)	Demandeur condamné à une peine de 20 ans de prison pour homicide involontaire et une peine concurrente de 4 ans pour des voies de fait causant des lésions corporelles; demandeur déclaré délinquant à contrôler en vertu de l'art. 753 *C.cr.*
Le 7 mai 2004 Cour d'appel du Québec (Le juge en chef Robert, les juges Rayle et Biron [*ad hoc*])	Requête du demandeur pour permission d'en appeler de la peine de 20 ans de prison accueillie et appel rejeté
Le 14 février 2005 Cour suprême du Canada	Demande d'autorisation d'appel et requête en prorogation de délai déposées

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Michael Seifert

v. (30685)

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

NATURE OF THE CASE

Procedural law - Statutes - Interpretation - Statutory instruments - *Federal Court Rules, 1998*, SOR/98-106, Rules 271(3) and 400 - Whether the appellate court erred in law in determining that the trial judge had no discretion under Rule 271(3) to allow counsel fees as costs of the examination - Whether the appellate court erred in holding that the trial judge did not have discretion to grant an interim order for counsel fees under Rule 400(6)(a) as an extraordinary remedy in the unique and unusual circumstances of a commission taken in a foreign country.

PROCEDURAL HISTORY

July 20, 2004 Federal Court of Canada (O'Reilly J.)	Evidence to be heard by commission in Italy; Applicant's counterclaim partially severed from statement of defence; Respondent to pay Applicant's counsel fees related to commission evidence pursuant to Rule 271
October 14, 2004 Federal Court of Appeal (Linden, Nadon and Sexton JJ.A.)	Appeal against Rule 271 order allowed; Applicant's cross-appeal dismissed; Applicant's application for interim costs pursuant to Rule 400 dismissed
December 13, 2004 Supreme Court of Canada	Application for leave to appeal filed

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MARCH 17, 2005 / LE 17 MARS 2005

30529 **Pro Swing Inc. v. Elta Golf Inc.** (Ont.) (Civil) (By Leave)

Coram: McLachlin C.J. and Binnie and Charron JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C41279, dated June 30, 2004, is granted.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C41279, daté du 30 juin 2004, est accordée.

NATURE OF THE CASE

International law - Conflict of laws - Enforcement of foreign judgment - Whether the decision engrafts a new condition onto the common law requirement for the recognition and enforcement of a foreign judgment set out in *Morguard Investments Ltd. v. De Savoye,* [1990] 3 S.C.R. 1077, as it was expanded to encompass judgments from other countries in *Beal v. Saldanha,* [2003] 3 S.C.R. 416- Whether a non-monetary judgment may be enforced in Canada and whether additional conditions are required has yet to be considered by This Honourable Court - Whether the court of appeal erred in law in its application of the test in *Uniforêt Pate Port-Cartier Inc. v. Zerotech Technologies Inc.*, [1998] 9 W.W.R. 688 (B.C.S.C.), and, if not reviewed by This Honourable Court, will create confusion and uncertainty in the application of the doctrine of comity to emerging cross-border business relations - Whether the court of appeal erred in law by mis-applying the doctrine of comity.

PROCEDURAL HISTORY

December 22, 2003 Ontario Superior Court of Justice (Pepall J.)	Applicant's motion for summary judgment seeking a declaration that consent decree and the contempt order are valid and enforceable in Ontario granted
June 30, 2004 Court of Appeal for Ontario (Moldaver, Gillese and Blair JJ.A.)	Appeal allowed, order of motions judge set aside and the motion is dismissed with costs; cross-appeal dismissed without costs
September 28, 2004 Supreme Court of Canada	Application for leave to appeal filed

30686 **Arthur Froom v. Minister of Justice** (FC) (Civil) (By Leave)

Coram: McLachlin C.J. and Binnie and Charron JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-570-03, dated October 21, 2004, is dismissed with costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-570-03, daté du 21 octobre 2004, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Criminal Law - Jurisdiction - Judicial review - Extradition - Whether a conflict exists as to which court has jurisdiction to review an impugned decision of the Minister of Justice to grant a request to commence extradition

proceedings - Whether the Federal Court of Appeal erred in law by concluding that in respect of an application to judicially review a decision of the Minister of Justice to issue an Authority to Proceed, the Federal Court of Canada should almost always be declined - Whether the Federal Court of Appeal erred in law by reserving on the jurisdictional issue, then delivering a Judgment conclusive on all issues without first providing the Applicant an opportunity to make oral argument as to whether jurisdiction should or should not be declined in respect of anyone or more of the various substantive issues raised on the appeal.

PROCEDURAL HISTORY

November 7, 2003 Federal Court of Canada, Trial Division (Layden-Stevenson J.)	Applicant's application for judicial review and to quash the authority to proceed issued by the Minister under the *Extradition Act*, dismissed
October 21, 2004 Federal Court of Appeal (Linden, Sexton and Sharlow JJ.A.)	Appeal dismissed
December 21, 2004 Supreme Court of Canada	Application for leave to appeal filed
January 4, 2004 Supreme Court of Canada	Motion for extension of time filed by Applicant

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30557 **Her Majesty the Queen v. Jason Daniel MacKay AND BETWEEN Jason Daniel MacKay v. Her Majesty the Queen** (N.B.) (Criminal) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for an extension of time is granted and the applications for leave to appeal from the judgment of the Court of Appeal of New Brunswick, Number 54/03/CA dated August 12, 2004, are granted.

La demande de prorogation de délai est accordée et les demandes d'autorisation d'appel de l'arrêt de la Cour d'appel du Nouveau-Brunswick, numéro 54/03/CA, daté du 12 août 2004, sont accordées.

NATURE OF THE CASE

Criminal Law - Procedural law - Offences - Judgments and orders - Trial - Statutes - Interpretation - Whether the Court of Appeal erred in law by exceeding its jurisdiction under s. in 686 of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in law by ordering a new trial pursuant to s. 265(1)(b) of the *Code* - Whether the Court of Appeal erred in law by overturning the decision of the jury and in ordering a new trial which focuses on s. 265(1)(b) of the *Code* and in so doing, erred by contravening s. 581(1) of the *Code* by exceeding its inherent jurisdiction - Whether the Court of Appeal erred in law by limits on the definition section of s. 265 of the *Code*.

PROCEDURAL HISTORY

March 24, 2003 Court of Queen's Bench of New Brunswick (Glennie J.)	Applicant acquitted by jury of aggravated assault contrary to s. 268(2)of the *Criminal Code*
August 12, 2004 Court of Appeal of New Brunswick (Ryan, Larlee and Richard JJ.A.)	Appeal allowed; verdict of acquittal set aside; new trial on assault, as defined under s. 265(1)(b) of the *Criminal Code*, ordered

October 12, 2004 Supreme Court of Canada	Application for leave to appeal filed by Respondent
December 23, 2004 Supreme Court of Canada	Applications for leave to appeal, and to extend time to file leave application, filed by Applicant

30599 **Canada Post Corporation v. Minister of Public Works and Government Services Canada** (FC) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-58-04, dated September 7, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-58-04, daté du 7 septembre 2004, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Access to Information - Decision requiring Applicant to disclose documents - Whether "control" in the context of disclosure under the *Access to Information Act*, R.S.C.1985, c. A-1 should be limited to mere possession - Whether the Federal Court of Appeal erred in concluding, based on its interpretation of "control", that the documents at issue in this appeal are subject to access under the *Act*.

PROCEDURAL HISTORY

December 1, 2000 Federal Court of Canada (Morneau, Prothonotary)	Applicant's motion with respect to the confidentiality of certain records, the disclosure of which was the subject of the judicial review, allowed; requested records and any related Affidavits or Exhibits to be filed confidentially and kept from public court files; confidential information to be filed in a sealed envelope; copies of the confidential material to be served on opposing party, pursuant to Rule 152(2)
January 6, 2004 Federal Court of Canada (Trial Division) (Lemieux J.)	Applicant's application for judicial review under s. 44 of the *Access to Information Act* dismissed
April 6, 2004 Federal Court of Appeal (Décary J.A.)	Order of Lemieux J. dated January 6, 2004, dismissing the Applicant's application for judicial review, stayed; order for confidentiality of documents filed in court record in a specified court file, continued
September 7, 2004 Federal Court of Appeal (Décary, Sexton and Pelletier JJ.A.)	Appeal dismissed with costs

November 5, 2004 Supreme Court of Canada	Application for leave to appeal filed
December 7, 2004 Supreme Court of Canada (Charron J.)	Order sealing certain documents contained in court file

30615 **Robert Tranchemontagne v. Director of the Ontario Disability Support Program of the Ministry of Community, Family and Children's Services AND BETWEEN Norman Werbeski v. Director of the Ontario Disability Support Program of the Ministry of Community, Family and Children's Services** (Ont.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal for Ontario, Numbers C40873 and C40874, dated September 16, 2004, is granted.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéros C40873 et C40874, daté du 16 septembre 2004, est accordée.

NATURE OF THE CASE

Administrative law - Forum - Jurisdiction of tribunal - Jurisdiction of appellate court - Choice of forum - Applications for disability benefits within tribunals exclusive jurisdiction - Human rights issues within jurisdiction of tribunal and Human Rights Commission - Argument that disability support program contravened *Human Rights Code* - Court of Appeal dismissed appeal on the basis that a complaint to the Ontario Human Rights Commission was a more appropriate procedure - Whether an administrative appeal tribunal with jurisdiction over a properly constituted appeal within its mandate has an inherent or implied discretion to decline to exercise that jurisdiction if it forms the view that one or more issues raised in the appeal are better addressed in another forum - If so, what test should apply to determine when such a discretion exists and how it should be exercised - If not, whether an appellate court nonetheless has a discretion to stay the appeal to the tribunal on the ground that another procedure or forum is more appropriate, or on any other ground - What test should apply to determine when such a discretion exists and how it should be exercised - Whether an appellate court sitting in review of the decision of an administrative appeal tribunal has the discretion to make an order that the tribunal could not have made - What test should apply to determine when such a discretion exists and how it should be exercised - In circumstances of concurrent jurisdiction, what is the test for determining when the applicant's choice of forum will prevail - Whether the essential nature of the dispute, practical considerations, or the existence of a comprehensive statutory scheme of review have a role in determining whether the applicant's choice of forum will prevail - How a comprehensive scheme of review is to be identified.

PROCEDURAL HISTORY

January 24, 2001 Social Benefits Tribunal (Collins, Presiding Member)	Applicant Werbeski's appeal from denial of income support under the *Ontario Disability Support Program Act* denied
September 12, 2001 Social Benefits Tribunal (Dodds, Presiding Vice Chair)	Applicant Tranchemontagne's appeal from the denial of income support under the *Ontario Disability Support Program Act* denied
March 25, 2003 Ontario Superior Court of Justice (Then J., Cameron J. and Desotti J.)	Appeals dismissed

September 16, 2004
Court of Appeal for Ontario
(Labrosse, Weiler and Charron JJ.A.)

Appeals dismissed

November 19, 2004
Supreme Court of Canada

Application for leave to appeal filed

30656 **Town of Grand Rapids, on its own behalf and on behalf of the taxpayers of the Town of Grand Rapids v. Ken Graham, Provincial Municipal Assessor and Government of Manitoba AND BETWEEN Rural Municipality of Lac du Bonnet, on its own behalf and on behalf of the taxpayers of the Rural Municipality of Lac du Bonnet v. Ken Graham, Provincial Municipal Assessor and Government of Manitoba** (Man.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Manitoba, Numbers AI03-30-05627 and AI03-30-05628, 2004 MBCA 138, dated September 23, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Manitoba, numéros AI03-30-05627 et AI03-30-05628, 2004 MBCA 138, daté du 23 septembre 2004, est rejetée avec dépens.

NATURE OF THE CASE

Statutes - Interpretation - Application of retroactive amendment to legislation - What are the collateral effects of retroactive legislation and to what extent are matters unnecessary to the purpose of the amendment affected? - What is required to achieve collateral effects? - Does a retroactive amendment to legislation have the automatic collateral effect of immunizing public officials from liability in tort for already-committed abuses of public office and negligence?

PROCEDURAL HISTORY

March 10, 2003
Court of Queen's Bench of Manitoba
(Wright J.)

Respondents' motion for summary judgment granted

September 23, 2004
Court of Appeal of Manitoba
(Philp, Twaddle and Hamilton JJ.A.)

Appeal dismissed

November 22, 2004
Supreme Court of Canada

Application for leave to appeal filed

30669 **St. Anthony Seafoods Limited Partnership v. Her Majesty the Queen in Right of Newfoundland and Labrador, and at all times represented by the Minister of Fisheries and Aquaculture** (N.L.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Newfoundland and Labrador, Number 03/77, 2004 NLCA 59, dated October 8, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de Terre-Neuve-et- Labrador, numéro 03/77, 2004 NLCA 59, daté du 8 octobre 2004, est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Judicial review - Ministerial discretion - Promissory estoppel - Applicant's action against Respondent for refusal to issue snow crab licence dismissed - Court of Appeal remitting matter to Minister for reconsideration - Whether Minister's decision binding on a subsequent Minister in accordance with principles laid down in *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281 - Whether law of promissory estoppel applies to public law.

PROCEDURAL HISTORY

July 31, 2003 Supreme Court of Newfoundland and Labrador Trial Division (Russell J.)	Applicant's action against Respondent for refusal to issue licence dismissed
October 8, 2004 Supreme Court of Newfoundland and Labrador Court of Appeal (Roberts, Welsh and Mercer JJ.A.)	Appeal allowed; Minister's decision set aside and matter remitted to Minister for reconsideration; Applicant's claim for damages remitted to trial judge for disposition in accordance with decision
December 6, 2004 Supreme Court of Canada	Application for leave to appeal filed

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30670 **Wanda Young v. Leslie Bella, William S. Rowe and Memorial University of Newfoundland** (N.L.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Newfoundland and Labrador, Numbers 03/101 and 03/119, 2004 NLCA 60, dated October 12, 2004, is granted with costs to the applicant in any event of the cause.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de Terre-Neuve-et- Labrador, numéros 03/101 et 03/119, 2004 NLCA 60, daté du 12 octobre 2004, est accordée avec dépens en faveur de la demanderesse quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Procedural law - Actions - Appeal - Torts - Negligence- Damages -Appeal from award of damages by civil jury - Each of three judges on Court of Appeal writing separate, partially concurring reasons - Respondents found liable to Applicant for damages for negligence in reporting her to Child Protection Services for suspected child sexual abuse - Court of Appeal overturning jury decision - Whether action lies against the Respondent - Whether paragraph 80 of the Court of Appeal judgment correctly summarize the ultimate result of the appeal - What is the proper test for appellate interference with findings of negligence by a civil jury? - Interpretation of the duty to report in ss. 38(1)(2) and (6) of the *Child Welfare Act*, S.N. 1992, c-57. s.1 - Whether a claim for loss of reputation may proceed by way of negligence - Was the Applicant's claim for general damages a "case of the nature of" *Andrews v. Grand & Toy Alberta Ltd.* (1995) 2 S.C.R. 229 or one of the exceptional circumstances to the judicially mandated cap?

PROCEDURAL HISTORY

September 9, 2003 Supreme Court of Newfoundland & Labrador (Barry J.)	Limited publication ban regarding any personal sexual information provided by the Applicant, otherwise proceedings to be conducted in open courtroom
November 13, 2003 Supreme Court of Newfoundland & Labrador, Trial Division (Barry J.)	Applicant awarded $841,938.75 by jury for claim in negligence resulting from report made to Child Protection Services
October 11, 2004 Court of Appeal of Newfoundland and Labrador (Roberts J.A.[dissenting, concurring in part], Welsh and Rowe JJ.A.[dissenting in part])	Appeal allowed; cross appeal dismissed
December 7, 2004 Supreme Court of Canada	Application for leave to appeal filed

30706 **Serendip Physiotherapy Clinic and Sutha Kunaratnam v. Her Majesty the Queen** (Ont.) (Criminal) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal for Ontario, Number C40275, dated November 16, 2004, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C40275, daté du 16 novembre 2004, est rejetée.

NATURE OF THE CASE

Criminal law (non *Charter*) - Search and seizure - Health records - Patient files being seized at a physiotherapy clinic pursuant to a warrant - Whether a justice of the peace issuing a warrant pursuant to s. 487 of the *Criminal Code* is obliged to consider and apply the same safeguards concerning the compulsory disclosure of confidential medical information as prescribed in *R. v. O'Connor* and *R. v. Dyment* - Whether there are common law requirements that make it incumbent upon a judicial officer to consider and take steps to protect the privacy interests of patients when the police wish to search for and seize health records - Whether, absent conditions to protect the privacy interests of patients, a search warrant is *ultra vires*.

PROCEDURAL HISTORY

June 16, 2003 Ontario Superior Court of Justice (Ferguson J.)	Applicants' application to quash search warrant granted
November 16, 2004 Court of Appeal for Ontario (Rosenberg, Armstrong and Blair JJ.A.)	Appeal allowed; order quashing search warrant set aside and application dismissed
December 23, 2004 Supreme Court of Canada	Application for leave to appeal filed

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30581 **Worthington Corporation v. Atlas Turner Inc. and Attorney General of Quebec** (Que.) (Civil) (By Leave)

Coram: Bastarache, LeBel and Deschamps JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Quebec), Number 200-09-004379-035, dated September 1, 2004, is dismissed with costs to the Respondent Atlas Turner Inc.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Québec), numéro 200-09-004379-035, daté du 1 septembre 2004, est rejetée avec dépens en faveur de l'intimée Atlas Turner Inc.

NATURE OF THE CASE

International Law – Constitutional Law – Recognition of foreign judgments – Exclusive jurisdiction of Quebec authorities with respect to matters of civil liability for damage suffered in or outside Quebec as a result of exposure to or the use of raw materials, whether processed or not, originating in Quebec (art. 3129 and 3151 C.C.Q.) – Principle of international comity – Whether provinces have constitutional limits on their powers to enact rules relating to the recognition of foreign judgments – Whether art. 3129 and 3151 C.C.Q. are constitutionally valid.

PROCEDURAL HISTORY

February 4, 2003 Superior Court of Quebec (Lemelin J.)	Applicant's application for recognition of the final judgment rendered by the Supreme Court of the state of New York dismissed
September 1, 2004 Court of Appeal of Quebec (Rousseau-Houle, Nuss and Pelletier JJ.A.)	Appeal dismissed
October 29, 2004 Supreme Court of Canada	Application for leave to appeal filed

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07.03.2005

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the applicant's reply

Requête en prorogation du délai de signification et de dépôt de la réplique du demandeur

Sam Stabile

v. (30594)

Lucia Milani, et al. (Ont.)

GRANTED / ACCORDÉE Time extended to February 14, 2005.

08.03.2005

Before / Devant: DESCHAMPS J.

Further order on motion for leave to intervene

Autre ordonnance relative à une requête en autorisation d'intervenir

BY / PAR: Criminal Lawyers' Association (Ont.)

IN / DANS: Francisco Batista Pires

v. (30151)

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

and between

Ronaldo Lising

v. (30240)

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

FURTHER TO THE ORDER of Deschamps J. dated February 7, 2005, granting leave to intervene to the Criminal Lawyers' Association (Ontario);

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 these appeals.

09.03.2005

Before / Devant: MAJOR J.

Motion to file a lengthy factum **Requête en vue de déposer un mémoire volumineux**

Imperial Tobacco Canada Limited, et al.

v. (30411)

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

GRANTED / ACCORDÉE

The motion on behalf of four (4) of the six (6) appellants, Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp. and Canadian Tobacco Manufacturers' Council, for an order granting these four (4) appellants leave to serve and file a consolidated factum of no more than 80 pages, without prejudice to each of the said appellants to have their own counsel speak to the consolidated factum at the hearing of the appeal as if each had filed a separate factum, is granted.

09.03.2005

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the respondents' response **Requête en prorogation du délai de signification et de dépôt de la réponse des intimés**

Apotex Inc.

v. (30727)

The Minister of Health, et al. (Ont.)

GRANTED / ACCORDÉE Time extended to March 2, 2005.

10.03.2005

Before / Devant: BINNIE J.

Motion to extend the time in which to serve and file the leave application **Requête en prorogation du délai de signification et de dépôt de la demande d'autorisation d'appel**

Reverend Brother Walter A. Tucker

v. (30481)

Steetley Industries Limited (Ont.)

DISMISSED / REJETÉE

1. This is an application by Reverend Brother Walter A. Tucker (the applicant) for an order setting aside the notice of intention to dismiss his application for leave for delay pursuant to Rule 64 of the Deputy Registrar's dated January 18, 2005 and extending the time to complete the application for leave to appeal by filing the formal order of the Court of Appeal; waiving the filing fee for this motion; adding the Hamilton Region Conservation Authority as an intervener; commanding the proposed intervener to enter the formal order of the Court of Appeal and directing the Court of Appeal to enter the order pronounced June 1, 2004.

2. On August 26, 2004, an application for leave to appeal was filed from the judgment of the Court of Appeal of Ontario rendered on June 1, 2004, together with a motion to be exempt from the filing fee and for permission to file only 1 copy of the application for leave to appeal.

3. On August 31, 2004, the Registrar granted the motion to be exempt from the filing fee but dismissed the motion to file only 1 copy of the application for leave to appeal.

4. On August 31, 2004, a letter was sent to the applicant advising that the application for leave to appeal was incomplete, as it was missing the order of the Court of Appeal.

5. On September 24, 2004, a memorandum of argument on the application for leave to appeal together with a Compendium filed in the Court of Appeal was filed by Hamilton Region Conservation Authority. On October 27, 2004, a motion for leave to intervene was filed on behalf of Hamilton Region Conservation Authority.

6. On January 18, 2005, a notice from the Registrar of intention to dismiss the application for leave for delay pursuant to Rule 64 was sent to the applicant noting that he had failed to serve and file all the documents required under Rule 25 of the Rules of the Supreme Court of Canada for his application for leave to appeal.

7. The applicant was advised that the Registrar may dismiss the application for leave to appeal as abandoned if the time for serving and filing the materials is not extended by a judge on motion.

8. The applicant has offered no persuasive reason to excuse the continued delay.

9. **IT IS HEREBY ORDERED THAT:**

The motion of the applicant is dismissed and the application for leave to appeal is dismissed as abandoned.

10.03.2005

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai de dépôt de la réponse de l'intimé

Cinda Kennedy, et al.

v. (30756)

Allan Jackiewicz (Ont.)

GRANTED / ACCORDÉE Time extended to February 24, 2005.

11.03.2005

Before / Devant: BINNIE J.

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

Requête en prorogation du délai de signification et de dépôt de la demande d'autorisation d'appel

John C. Turmel

v. (30570)

Her Majesty the Queen (Ont.)

DISMISSED / REJETÉE

1. This is an application by John C. Turmel (the applicant) for an order extending the time to complete the application for leave to appeal by filing the formal order of the Trial Court.

2. On October 7, 2004, an application for leave to appeal was filed from the judgment of the Court of Appeal of Ontario rendered on October 7, 2003. The application for leave to appeal was also missing a proper motion for an extension of time.

3. On October 22, 2004, a letter was sent to the applicant advising that the application for leave to appeal was incomplete, as it was missing the order of the Trial Court.

4. On January 12, 2005, a notice from the Registrar of intention to dismiss the application for leave for delay pursuant to Rule 64 was sent to the applicant noting that he had failed to serve and file all the documents required under Rule 25 of the Rules of the Supreme Court of Canada for his application for leave to appeal.

5. The applicant was advised that the Registrar may dismiss the application for leave to appeal as abandoned if the time for serving and filing the materials is not extended by a judge on motion.

6. The applicant has offered no persuasive reason for the delay.

7. **IT IS HEREBY ORDERED THAT:**

The motion of the applicant is dismissed and the application for leave to appeal is dismissed as abandoned.

11.03.2005

Before / Devant: BINNIE J.

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

Requête en prorogation du délai de signification et de dépôt de la demande d'autorisation d'appel

John C. Turmel

v. (30571)

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

DISMISSED / REJETÉE

1. This is an application by John C. Turmel (the applicant) for an order extending the time to complete the application for leave to appeal by filing the formal order of the Court of Appeal.

2. On October 7, 2004, an application for leave to appeal from the judgment of the Court of Appeal of Ontario rendered on October 7, 2003. The application for leave to appeal was also missing a proper motion for an extension of time.

3. On October 22, 2004, a letter was sent to the applicant advising that the application for leave to appeal was incomplete, as it was missing the order of the Court of Appeal.

4. On January 12, 2005, a notice from the Registrar of intention to dismiss the application for leave for delay pursuant to Rule 64 was sent to the applicant noting that he had failed to serve and file all the documents required under Rule 25 of the Rules of the Supreme Court of Canada for his application for leave to appeal.

5 .The applicant was advised that the Registrar may dismiss the application for leave to appeal as abandoned if the time for serving and filing the materials is not extended by a judge on motion.

6. The applicant has offered no persuasive reason for the delay.

7. **IT IS HEREBY ORDERED THAT:**

The motion of the applicant is dismissed and the application for leave to appeal is dismissed as abandoned.

07.03.2005

Zoe Childs, et al.

v. (30472)

Desmond Desormeaux, et al. (Ont.)

08.03.2005

BY/PAR: Attorney General of British Columbia

IN/DANS: **Her Majesty the Queen**

v. (30319)

Dennis Rodgers (Ont.)

14.3.2005

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

Mikisew Cree First Nation

v. (30246)

Sheila Copps, Minister of Canadian Heritage, et al. (FC) (Civil) (By Leave)

Jeffrey R. W. Rath and Allisun Rana for the appellant.

Cheryl J. Tobias and Mark Kindrachuk, Q.C. for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Native law – Treaty rights – Hunting and trapping rights – Constitutional requirement for justification of infringement of treaty right – Treaty rights subject to geographical limitation of "taking up" – Whether the Crown can ignore or supercede existing constitutionally protected treaty rights of First Nations by simply asserting a "taking up" of land for "settlement, mining, lumbering, trading or other purposes"– Whether an appellate court can overturn a decision on the basis of a ground that was only put forward by an attorney general intervener and not by the parties to the litigation.

Nature de la cause:

Droit des Autochtones – Droits issus de traités – Droits de chasse et de piégeage – Obligation constitutionnelle de justifier la violation de droits issus d'un traité – Droits issus de traités assujettis à la limitation territoriale de la «prise» – La Couronne peut-elle passer outre à des droits d'une Première nation – issus d'un traité et constitutionnellement protégés – simplement en décrétant la «prise» de terres «pour des fins d'établissements, de mine, de commerce de bois, ou autres objets»? – Une cour d'appel peut-elle infirmer une décision en se fondant sur un moyen invoqué seulement par un procureur général intervenant, et non par les parties au litige?

16.3.2005

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

Kirkbi AG, et al.

v. (29956)

Ritvik Holdings Inc. / Gestions Ritvik Inc. (now operating as Mega Bloks Inc.), et al. (F.C.) (Civil) (By Leave)

Robert H.C. MacFarlane, Michael E. Charles, Peter W. Hogg, Q.C., Christine Pallotta and Catherine Beagan Flood for the appellant.

Ronald E. Dimock, Bruce Ryder, Bruce W. Stratton and Henry Lue for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Property law - Trade marks - Functional trade marks - Passing off - Whether the owner of a trade-mark which meets the statutory definition of "trade-mark" and which has been found to have acquired secondary meaning should be disentitled to relief from passing off on the grounds that the claimed mark is primarily functional - Whether the subject matter of an expired patent is barred from being the subject matter of an action for passing off - Whether s. 7(b) of the *Trade-marks Act* protects a right of property in goodwill from misrepresentation - Whether s. 7(b) of the *Trade-marks Act*, R.S.C. 1985, c. T-13, as amended, is either in whole or in part within the legislative competence of the Parliament of Canada under s. 91(2) of the *Constitution Act, 1867?*

Nature de la cause:

Droit des biens - Marques de commerce - Marques de commerce fonctionnelles - Commercialisation trompeuse - Le propriétaire d'une marque de commerce qui répond à la définition légale de la «marque de commerce» et qui a été jugée avoir acquis une signification secondaire devrait-il perdre son droit d'obtenir réparation en cas de commercialisation trompeuse, au motif que la marque revendiquée est principalement fonctionnelle? - L'objet d'un brevet expiré peut-il être visé par une action en commercialisation trompeuse? - L'alinéa 7*b*) de la *Loi sur les marques de commerce* protège-t-il contre les assertions inexactes un droit de propriété relatif à l'achalandage? - L'alinéa 7*b*) de la *Loi sur les marques de commerce*, L.R.C. 1985, c. T-13, et ses modifications, relève-t-il en tout ou en partie de la compétence législative reconnue au Parlement du Canada par le par. 91(2) de la *Loi constitutionnelle de 1867*?

17.3.2005

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

UL Canada Inc.

v. (30065)

Attorney General of Quebec, et al. (Que.) (Civil) (By Leave)

Gérald R. Tremblay, Q.C. and Donald Bisson for the appellant.

Jean-François Jobin, Éric Théroux et Raymond Tremblay for the respondent.

DISMISSED / REJETÉ

JUDGMENT

The appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-008256-992, dated October 1, 2003, was heard this day and the following judgment was rendered orally:

[TRANSLATION]

LEBEL J. – The appellant has not shown that this Court should intervene to reverse the judgments of the courts below. Based on the constitutional principles governing the division of legislative powers, the impugned regulatory provision is within the limits of the provinces'

JUGEMENT

L'appel interjeté contre l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-008256-992, en date du 1er octobre 2003, a été entendu aujourd'hui et le jugement suivant a été rendu oralement :

LE JUGE LEBEL – L'appelante n'a pas démontré que notre Cour devrait intervenir pour réformer les jugements des cours inférieures. En effet, suivant les principes constitutionnels régissant le partage des pouvoirs législatifs, la réglementation attaquée respecte legislative authority over local trade. Also, the provision respecting the colour of margarine was

authorized by the enabling legislation, the words of which are clear. Furthermore, the statutory interpretation arguments drawn by the appellant from provincial and international trade agreements have no effect on the validity of this provision. Finally, the appellant's freedom of expression is not compromised in light of the scope this Court has previously attributed to that fundamental freedom. For these reasons, the appeal is dismissed without costs.

les limites de l'autorité législative attribuée aux provinces en matière de commerce local. Ensuite, la réglementation sur la coloration de la margarine était autorisée par la législation habilitante. Les termes de celle-ci sont d'ailleurs clairs. De plus, les arguments d'interprétation législative dégagés par l'appelante à partir des accords provinciaux et internationaux sur le commerce n'ont pas d'effet sur la validité de cette réglementation. Enfin, la liberté d'expression de l'appelante n'est pas en jeu suivant la portée que la jurisprudence de notre Cour attribue à cette liberté fondamentale. Pour ces motifs, le pourvoi est rejeté sans dépens.

Nature of the case:

Freedom of expression - Division of powers - Provincial power to make regulations to protect the dairy industry against competitors - Obligation to exercise delegated powers in accordance with international and interprovincial agreements - Whether s. 40(1)(c) of the *Regulation respecting dairy products and substitutes*, R.R.Q. 1981, c. P-30, r. 15, by imposing restrictions on the colour of margarine sold and distributed in the Province of Quebec, is *ultra vires* the powers of the Government of Quebec in light of the *North American Free Trade Agreement*, the *Agreement establishing the World Trade Organization* and the *Agreement on Internal Trade* - Whether the impugned Regulation violates the guarantee of freedom of expression - Whether the Superior Courts have jurisdiction to declare legislation invalid due to unreasonableness - Whether the *Regulation* is contrary to the principles of Canadian federalism.

Nature de la cause:

Liberté d'expression – Partage des compétences – Pouvoir d'une province de prendre des règlements visant à protéger l'industrie laitière de la concurrence – Obligation d'exercer les pouvoirs délégués en conformité avec les accords internationaux et interprovinciaux – L'alinéa 40(1)*c*) du *Règlement sur les succédanés de produits laitiers*, R.R.Q. 1981, ch. P-30, r. 15, qui impose des restrictions quant à la couleur de la margarine vendue et distribuée dans la province de Québec, outrepasse-t-il de ce fait les pouvoirs du gouvernement du Québec au regard de l'*Accord de libre-échange nord-américain*, de l'*Accord instituant l'organisation mondiale du commerce* et de l'*Accord sur le commerce intérieur*? – La disposition réglementaire attaquée viole-t-elle la garantie de la liberté d'expression? – Les cours supérieures ont-elles compétence pour déclarer des dispositions réglementaires invalides en raison de leur caractère déraisonnable? – Le Règlement est-il contraire aux principes du fédéralisme canadien?

MARCH 18, 2005 / LE 18 MARS 2005

29712 **William Thomas Vaughan v. Her Majesty the Queen - and - Attorney General of Alberta and Public Service Alliance of Canada** (FC) **2005 SCC 11 / 2005 CSC 11**

Coram: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

The appeal from the judgment of the Federal Court of Appeal, Number A-695-01, dated February 14, 2003, heard on January 7, 2005, is dismissed with costs, McLachlin C.J. and Bastarache J. dissenting.

L'appel interjeté contre l'arrêt de la Cour d'appel fédérale, numéro A-695-01, en date du 14 février 2003, entendu le 7 janvier 2005, est rejeté avec dépens. La juge en chef McLachlin et le juge Bastarache sont dissidents.

29717 **J.J. v. Nova Scotia (Minister of Health) - and - Advocacy Centre for the Elderly, Canadian Association for Community Living and People First of Canada (N.S.)**
2005 SCC 12 / 2005 CSC 12

Coram: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

The appeal from the judgment of the Nova Scotia Court of Appeal, Number CA 180517, 2003 NSCA 25, dated February 19, 2003, heard on November 4, 2004, is allowed.

L'appel interjeté contre l'arrêt de la Cour d'appel de la Nouvelle-Écosse, numéro CA 180517, 2003 NSCA 25, en date du 19 février 2003, entendu le 4 novembre 2004, est accueilli.

29973 **Government of Saskatchewan v. Rothmans, Benson & Hedges Inc. - and - Attorney General of Canada, Attorney General of Ontario, Attorney General of Quebec, Attorney General of Nova Scotia, Attorney General of Manitoba, Attorney General of British Columbia, Attorney General of Prince Edward Island, Canadian Cancer Society, Canadian Lung Association, Canadian Medical Association, Heart and Stroke Foundation of Canada, and Western Convenience Stores Association** (Sask.)
2005 SCC 13 / 2005 CSC 13

Coram: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

The appeal from the judgment of the Court of Appeal for Saskatchewan, C.A. No. 624, dated October 3, 2003, was heard on January 19, 2005 and the Court on that day delivered the following judgment orally:

THE CHIEF JUSTICE — We are all of the view to allow the appeal. Reasons to follow.

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

The appeal is allowed with costs to the appellant throughout. The constitutional question is answered as follows:

Is s. 6 of *The Tobacco Control Act*, S.S. 2001, c. T-14.1, constitutionally inoperative under the doctrine of federal legislative paramountcy, having regard to s. 30 of the *Tobacco Act*, S.C. 1997, c. 13?

Answer: No.

L'appel interjeté contre l'arrêt de la Cour d'appel de la Saskatchewan, C.A. n° 624, en date du 3 octobre 2003, a été entendu le 19 janvier 2005 et la Cour a prononcé oralement le même jour le jugement suivant :

LA JUGE EN CHEF — Nous sommes tous d'avis que l'appel doit être accueilli. Motifs à suivre.

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

L'appel est accueilli et l'appelant a droit aux dépens dans toutes les cours. La question constitutionnelle reçoit la réponse suivante :

> L'article 6 de la loi intitulée *The Tobacco Control Act*, S.S. 2001, ch. T-14.1, est-il constitutionnellement inopérant par application de la doctrine de la prépondérance législative fédérale, vu l'existence de l'art. 30 de la *Loi sur le tabac*, L.C. 1997, ch. 13 ?
>
> Réponse : Non.

William Thomas Vaughan v. Her Majesty the Queen (FC) (29712)
Indexed as: Vaughan *v.* Canada / Répertorié : Vaughan *c.* Canada
Neutral citation: 2005 SCC 11. / Référence neutre : 2005 CSC 11.
Hearing: May 18, 2004; rehearing: January 7, 2005; judgment: March 18, 2005.
Audition : 18 mai 2004; nouvelle audition : 7 janvier 2005; jugement : 18 mars 2005.

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

Labour relations – Public service – Grievances – Early retirement incentive benefits – Courts – Jurisdiction – Public servant declared surplus wishing to take advantage of early retirement incentive benefits provided by regulation, not by collective agreement – Whether workplace dispute over entitlement to these benefits must be decided under grievance procedure established by Public Service Staff Relations Act – Whether absence of "recourse to independent adjudication" in grievance procedure sufficient for courts to get involved – Whether public servant has option of going to court when dispute grievable but not arbitrable – Public Service Staff Relations Act, R.S.C. 1985, c. P-35, ss. 91, 92.

V, a federal public servant had been on leave without pay working in the private sector for about four years when he was notified that he was surplus to the public service and would be laid off. He then sought to obtain early retirement incentive (ERI) benefits that were available in some circumstances to federal public servants pursuant to regulation, but the government rejected his application. He was subsequently laid off.

Under the *Public Service Staff Relations Act* (PSSRA), a grievance may be made in respect of a wide range of workplace disputes, but such a grievance can be taken to independent arbitration only if it arises out of an arbitral award or the interpretation or application of a collective agreement or results in suspension or financial penalty, termination of employment or demotion. Thus, V's lay-off was arbitrable (his grievance was eventually dismissed by an adjudicator independent from the department) but his claim for ERI benefits, though grievable, was not arbitrable.

V declined to grieve the denial of ERI benefits under the PSSRA procedure but initiated this claim against the Crown in the Federal Court. He sought to distinguish the *Weber* line of cases that call for deference in labour relations to statutory schemes for dispute resolution on the basis that courts should not defer to a statutory scheme in respect of matters that cannot be taken to independent adjudication. His action was struck out by the prothonotary, and her decision was upheld on appeal.

Held (McLachlin C.J. and Bastarache J. dissenting): The appeal should be dismissed.

Per Major, **Binnie**, LeBel, Deschamps, Fish, Abella and Charron JJ.: Where, as here, Parliament has created a comprehensive scheme for dealing with labour disputes, the process set out in the legislative scheme should not be jeopardized by permitting parallel access to the courts. Accordingly, while the wording of the PSSRA is not strong enough to oust the courts' residual jurisdiction in matters grievable under s. 91 but not arbitrable under s. 92, V ought to have proceeded by way of a grievance under the PSSRA. The dispute related to employment benefits in the labour relations context. Parliament's intent manifested in the PSSRA is that in respect of benefits conferred by regulation *outside* the collective agreement, the decision of the Deputy Minister should be final. V ought not to be permitted to litigate his claim to ERI benefits in the courts by dressing it up as a negligence action.

While the absence of independent third-party adjudication may, in certain circumstances, impact on a court's exercise of its residual discretion (as in the whistle-blower cases) the courts should generally, as a matter of discretion, decline to get involved, except on the limited basis of judicial review. The Federal Court properly deferred to the PSSRA procedure in this case. V's claim to ERI benefits clearly fell within the scope of the PSSRA and their denial could have been remedied (if warranted) under s. 91 of the PSSRA. The absence of recourse to independent adjudication is not in itself a sufficient reason for the courts to get involved. It is a consideration, but there is nothing on the facts of this case to take it outside the general rule of deference to the procedure mandated by Parliament.

Per McLachlin C.J. and **Bastarache** J. (dissenting): Although V's claim could have been dealt with under s. 91 of the PSSRA, that section did not preclude him from commencing an action in the Federal Court. Section 91 creates a comprehensive and efficient dispute resolution regime, but the unavailability of an independent decision maker, combined with the absence of mandatory language in the wording of the PSSRA and the employer-appointed decision maker's lack of expertise, points away from a finding of exclusive jurisdiction. Courts should refrain from preventing access to

independent adjudication in the absence of a clear manifestation of Parliament's intent in this regard. The availability of judicial review for decisions taken at the final level of the grievance process under the PSSRA cannot compensate for the dearth of independent adjudication of claims on their merits. While avoiding duplication is an important policy consideration, resort to the courts in the case at bar is not truly duplicative because no independent adjudication is possible at the grievance level. Courts retain residual jurisdiction in cases where an aggrieved employee has no recourse to independent adjudication.

APPEAL from a judgment of the Federal Court of Appeal (Richard C.J. and Sexton and Evans JJ.A.), [2003] 3 F.C. 645, 224 D.L.R. (4th) 640, 306 N.R. 366, [2003] F.C.J. No. 241 (QL), 2003 FCA 76, affirming a decision of Heneghan J. (2001), 213 F.T.R. 144, [2001] F.C.J. No. 1734 (QL), 2001 FCT 1233, affirming a decision of the prothonotary (2000), 182 F.T.R. 199, [2000] F.C.J. No. 144. Appeal dismissed, McLachlin C.J. and Bastarache J. dissenting.

Dougald E. Brown and *Chris Rootham*, for the appellant.

Brian J. Saunders and *Kirk Lambrecht, Q.C.*, for the respondent.

Hugh J. D. McPhail, Q.C., for the intervener the Attorney General of Alberta.

Andrew Raven, for the intervener the Public Service Alliance of Canada.

Solicitors for the appellant: Nelligan O'Brien Payne, Ottawa.

Solicitors for the respondent: Attorney General of Canada, Ottawa.

Solicitors for the intervener the Attorney General of Alberta: McLennan Ross, Edmonton.

Solicitors for the intervener the Public Service Alliance of Canada: Raven, Allen, Cameron Ballantyne & Yazbeck, Ottawa.

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

Relations de travail – Fonction publique – Griefs – Prestations de retraite anticipée – Tribunaux – Compétence – Fonctionnaire déclaré excédentaire souhaitant toucher les prestations de retraite anticipée prévues par règlement, mais non par la convention collective – Le différend en matière de relations de travail au sujet du droit à ces prestations doit-il être tranché selon la procédure de grief prévue à la Loi sur les relations de travail dans la fonction publique? – L'absence de « recours à un décideur indépendant » dans la procédure de grief suffit-elle pour justifier l'intervention des tribunaux? – Le fonctionnaire a-t-il la possibilité de recourir au tribunal lorsque le différend peut faire l'objet d'un grief mais non d'un arbitrage? – Loi sur les relations de travail dans la fonction publique, L.R.C. 1985, ch. P-35, art. 91, 92.

V, un fonctionnaire fédéral, était en congé non payé et travaillait dans le secteur privé depuis environ quatre ans lorsqu'il a été avisé qu'il était excédentaire dans la fonction publique et qu'il serait mis à pied. Il a alors cherché à toucher des prestations de retraite anticipée (PRI) offertes dans certains cas aux fonctionnaires fédéraux conformément à un règlement, mais le gouvernement a rejeté sa demande. Par la suite, il a été mis à pied.

Aux termes de la *Loi sur les relations de travail dans la fonction publique* (LRTFP), toute une gamme de différends en matière de relations de travail peuvent faire l'objet d'un grief, mais ces griefs ne peuvent être soumis à l'arbitrage que s'ils découlent d'une décision arbitrale ou de l'interprétation ou de l'application d'une convention collective, ou s'ils entraînent une suspension ou une sanction pécuniaire, un licenciement ou une rétrogradation.
Ainsi, la mise à pied de V pouvait faire l'objet d'un arbitrage (un arbitre indépendant du ministère a rejeté son grief en fin de compte) alors que sa demande de PRA pouvait faire l'objet d'un grief, mais non d'un arbitrage.

V n'a pas contesté le refus des PRA par voie de grief selon la procédure prévue à la LRTFP mais a intenté cette action contre l'État devant la Cour fédérale. Il a tenté de faire une distinction avec le courant jurisprudentiel de l'arrêt *Weber*, selon lequel, en matière de relations de travail, il faut s'en remette au régime de règlement des différends prévu par la loi, en affirmant que les tribunaux ne devraient pas s'en remettre au régime prévu par la loi lorsque la question ne peut être soumise à un décideur indépendant. La protonotaire a radié son action, et cette décision a été maintenue en appel.

Arrêt : (la juge en chef McLachlin et le juge Bastarache sont dissidents) : Le pourvoi est rejeté.

Les juges Major, **Binnie**, LeBel, Deschamps, Fish, Abella et Charron : Lorsque le législateur a, comme en l'espèce, établi un régime complet pour le règlement des différends en matière de relations de travail, il ne faudrait pas mettre en péril le mécanisme prévu par la loi en permettant également le recours aux tribunaux. Par conséquent, comme les termes de la LRTFP ne sont pas catégoriques au point d'écarter la compétence résiduelle des tribunaux dans les cas de différends qui peuvent faire l'objet d'un grief en vertu de l'art. 91 mais non d'un arbitrage en vertu de l'art. 92, V aurait dû présenter un grief en vertu de la LRTFP. Le différend portait sur les prestations d'emploi dans le contexte des relations de travail. Selon l'intention exprimée par le législateur dans la LRTFP, dans le cas des avantages accordés par un règlement *en marge* de la convention collective, la décision du sous-ministre devrait être finale. On ne saurait permettre à V de présenter devant les tribunaux sa demande de PRA déguisée en une action pour négligence.

Même si l'absence d'un arbitre indépendant peut, dans certaines circonstances, se répercuter sur l'exercice du pouvoir discrétionnaire résiduel du tribunal (comme dans les cas de dénonciateurs), les tribunaux devraient généralement exercer leur pouvoir discrétionnaire pour refuser d'intervenir, sauf dans le cadre limité du contrôle judiciaire. La Cour fédérale a eu raison de s'en remettre à la procédure prévue par la LRTFP en l'espèce. Il est clair que la demande de PRA présentée par V relevait de la LRTFP, et V aurait pu obtenir une réparation (si elle était justifiée) en vertu de l'art. 91 de la LRTFP. L'absence de recours devant un décideur indépendant est insuffisante en soi pour justifier l'intervention des tribunaux. Il s'agit d'un facteur à prendre en compte, mais les faits de l'espèce n'exigent pas que l'on écarte la règle générale de la retenue à l'égard de la procédure imposée par le législateur.

La juge en chef McLachlin et le juge **Bastarache** (dissidents) : Même si la demande de V pouvait faire l'objet de la procédure prévue au par. 91 de la LRTFP, cet article ne l'empêchait pas d'intenter une action devant la Cour fédérale. L'art. 91 crée un régime complet et efficace de règlement des différends, mais l'absence de recours à un décideur indépendant, jumelée à l'absence d'un libellé impératif dans la LRTFP et d'une expertise du décideur désigné par l'employeur, ne permet pas de conclure à l'exclusivité de la compétence. Les tribunaux doivent s'abstenir de faire obstacle à l'arbitrage indépendant sauf si le législateur s'est clairement exprimé en ce sens. La possibilité d'un contrôle judiciaire de la décision rendue au dernier palier de la procédure de grief établie par la LRTFP ne peut compenser l'absence d'une décision indépendante sur le fond. Si le fait d'éviter le double emploi est une considération de principe importante, le recours aux tribunaux en l'espèce ne fait pas véritablement double emploi puisqu'aucune décision indépendante n'est possible dans le cadre de la procédure de grief. Les tribunaux conservent la compétence résiduelle lorsqu'un employé s'estimant lésé n'a aucun recours devant un décideur indépendant.

POURVOI contre un arrêt de la Cour d'appel fédérale (le juge en chef Richard et les juges Sexton et Evans), [2003] 3 C.F. 645, 224 D.L.R. (4th) 640, 306 N.R. 366, [2003] A.C.F. nº 241 (QL), 2003 CAF 76, qui a confirmé un jugement de la juge Heneghan (2001), 213 F.T.R. 144, [2001] A.C.F. nº 1734 (QL), 2001 FCPI 1233, qui a confirmé un jugement de la protonotaire (2000), 182 F.T.R. 199, [2000] A.C.F. nº 144. Pourvoi rejeté, la juge en chef McLachlin et le juge Bastarache dissidents.

Dougald E. Brown et *Chris Rootham*, pour l'appelant.

Brian J. Saunders et *Kirk Lambrecht, c.r.*, pour l'intimée.

Hugh J. D. McPhail, c.r., pour l'intervenant le procureur général de l'Alberta.

Andrew Raven, pour l'intervenante l'Alliance de la Fonction publique du Canada.

Procureurs de l'appelant : Nelligan O'Brien Payne, Ottawa.

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

Procureurs de l'intervenant le procureur général de l'Alberta : McLennan Ross, Edmonton.

Procureurs de l'intervenante l'Alliance de la Fonction publique du Canada : Raven, Allen, Cameron Ballantyne & Yazbeck, Ottawa.

J.J. v. Nova Scotia (Minister of Health) (N.S.) (29717)
Indexed as: Nova Scotia (Minister of Health) *v.* J.J. / Répertorié : Nouvelle-Écosse (Ministre de la Santé) *c.* J.J.
Neutral citation: 2005 SCC 12. / Référence neutre : 2005 CSC 12.
Judgment rendered March 18, 2005 / Jugement rendu le 18 mars 2005

Present: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

Adult protection – Plan of care for adult in need of protection – Family Court jurisdiction – Whether Family Court has jurisdiction to impose terms and conditions on plan proposed by Minister of Health for vulnerable adult's care – Adult Protection Act, R.S.N.S. 1989, c. 2, s. 9(3)(c).

A Family Court judge declared J. to be an adult in need of protection under s. 9 of the Nova Scotia *Adult Protection Act* and accepted the Minister of Health's proposed plan of care, which was to place J. in her apartment under strict conditions of daily supervision and support. Because funding was not approved for the supervising personnel, the Minister sought a variation order and the approval of a new plan which called for J. to be placed in a facility located outside the Halifax region. The judge renewed the order authorizing the Minister to provide J. with services, including placement in a facility, but ordered that J. not be placed in an institution outside the Halifax region. She concluded that the Minister's proposed placement was contrary to J.'s welfare and would not enhance her ability to care and fend for herself. The Court of Appeal found that the Family Court judge had exceeded her jurisdiction by prohibiting J.'s placement outside the Halifax region, holding that when the Family Court is provided with only one plan of care, its jurisdiction under s. 9(3)(c) of the *Adult Protection Act* is limited to simply accepting or vetoing it.

Held: The appeal should be allowed.

The Family Court judge did not exceed her jurisdiction. Section 9(3)(c) must be interpreted in a manner consistent with the purpose of the *Adult Protection Act*: to provide adults who cannot protect or care for themselves with access to services which are in their best interests and will enhance their ability either to look after or protect themselves (s. 2). The governing consideration is the welfare of the adult (s. 12). Since the responsibility for ensuring the welfare and best interests of the vulnerable adult is legislatively assigned to the Family Court, when the court declares an adult to be in need of protection under s. 9(3), it has jurisdiction under para. (c) to assess whether the services to be provided by the state are consistent with the adult's welfare and best interests and to amend the Minister's proposal where necessary to ensure legislative compliance.

APPEAL from a judgment of the Nova Scotia Court of Appeal (Roscoe, Freeman and Hamilton JJ.A.) (2003), 212 N.S.R. (2d) 193, 665 A.P.R. 193, [2003] N.S.J. No. 57 (QL), 2003 NSCA 25, allowing an appeal from a decision of Legere J. (2002), 202 N.S.R. (2d) 362, 632 A.P.R. 362, [2002] N.S.J. No. 153 (QL), 2002 NSSF 19. Appeal allowed.

Claire McNeil and *Susan Young*, for the appellant.

Edward A. Gores, for the respondent.

Graham Webb and *Judith A. Wahl*, for the intervener the Advocacy Centre for the Elderly.

Phyllis Gordon, *Dianne Wintermute* and *Roberto Lattanzio*, for the interveners People First of Canada and theCanadian Association for Community Living.

Solicitor for the appellant: Dalhousie Legal Aid, Halifax.

Solicitor for the respondent: Nova Scotia Department of Justice, Halifax.

Solicitor for the intervener the Advocacy Centre for the Elderly: Advocacy Centre for the Elderly, Toronto.

Solicitor for the interveners People First of Canada and the Canadian Association for Community Living: Legal Resource Centre for Persons with Disabilities (ARCH), Toronto.

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

Protection des adultes – Plan de soins pour adultes ayant besoin de protection – Compétence du Tribunal de la famille – Le Tribunal de la famille a-t-il compétence pour imposer des conditions aux plans de soins proposés par le ministre de la Santé à l'égard d'adultes vulnérables? – Adult Protection Act, R.S.N.S. 1989, ch. 2, al. 9(3)c).

Une juge du Tribunal de la famille a déclaré J. adulte ayant besoin de protection, en vertu de l'art. 9 de l'*Adult Protection Act* de la Nouvelle-Écosse, et a accepté le plan de soins proposé par le ministre de la Santé, qui était de placer J. à domicile, avec des mesures strictes de surveillance et d'aide quotidiennes. Comme des fonds pour la surveillance à domicile n'ont pas été approuvés, le ministre a demandé une ordonnance modificative et l'approbation d'un nouveau plan prévoyant le placement de J. dans un établissement situé hors de la région de Halifax. La juge a renouvelé l'ordonnance autorisant le ministre à fournir des services à J., notamment le placement en établissement, mais a ordonné que le placement ne soit pas à l'extérieur de la région de Halifax. Elle a conclu que le placement proposé par le ministre était contraire au bien-être de l'intéressée et ne la rendrait pas plus apte à prendre soin d'elle-même et à se débrouiller seule. Selon la Cour d'appel, la juge du Tribunal de la famille a outrepassé sa compétence en interdisant le placement à l'extérieur de la région de Halifax, statuant que, si un seul plan est soumis au Tribunal de la famille, celui-ci n'a compétence, selon l'al. 9(3)c) de l'*Adult Protection Act* de la Nouvelle-Écosse, que pour l'accepter ou le refuser.

Arrêt : Le pourvoi est accueilli.

La juge du Tribunal de la famille n'a pas outrepassé sa compétence. Il faut donner à l'al. 9(3)c) une interprétation compatible avec l'objet de l'*Adult Protection Act* : assurer pour les adultes qui ne peuvent se protéger ou prendre soin d'eux-mêmes l'accessibilité des services qui sont dans leur intérêt véritable et qui les rendront plus aptes à prendre soin d'eux-mêmes ou à se protéger (art. 2). Le facteur déterminant est le bien-être de l'adulte (art. 12). Étant donné que la loi assigne au Tribunal de la famille la responsabilité de veiller au bien-être et aux intérêts véritables des adultes vulnérables, lorsque le tribunal déclare qu'un adulte a besoin de protection selon le par. 9(3), il a compétence selon l'al. c) pour déterminer si les services à fournir par l'État cadrent avec le bien-être de cet adulte et sont dans son intérêt véritable et pour modifier, au besoin, le plan proposé par le ministre afin qu'il soit conforme à la loi.

POURVOI contre un arrêt de la Cour d'appel de la Nouvelle-Écosse (les juges Roscoe, Freeman et Hamilton) (2003), 212 N.S.R. (2d) 193, 665 A.P.R. 193, [2003] N.S.J. No. 57 (QL), 2003 NSCA 25, qui a accueilli l'appel interjeté contre une décision de la juge Légère (2002), 202 N.S.R. (2d) 362, 632 A.P.R. 362, [2002] N.S.J. No. 153 (QL), 2002 NSSF 19. Pourvoi accueilli.

Claire McNeil et *Susan Young*, pour l'appelante.

Edward A. Gores, pour l'intimée.

Graham Webb et *Judith A. Wahl*, pour l'intervenant Advocacy Centre for the Elderly.

Phyllis Gordon, *Dianne Wintermute* et *Roberto Lattanzio*, pour les intervenants Des Personnes d'Abord du Canada et l'Association canadienne pour l'intégration communautaire.

Procureur de l'appelante : Dalhousie Legal Aid, Halifax.

Procureur de l'intimée : Ministère de la Justice de la Nouvelle-Écosse, Halifax.

Procureur de l'intervenant Advocacy Centre for the Elderly : Advocacy Centre for the Elderly, Toronto.

Procureur des intervenants Des Personnes d'Abord du Canada et l'Association canadienne pour l'intégration communautaire : Legal Resource Centre for Persons with Disabilities (ARCH), Toronto.

Government of Saskatchewan v. Rothmans, Benson & Hedges Inc. (Sask.) (29973)
Indexed as: Rothmans, Benson & Hedges Inc. *v.* Saskatchewan / Répertorié : Rothmans, Benson & Hedges Inc. *c.* Saskatchewan
Neutral citation: 2005 SCC 13. / Référence neutre : 2005 CSC 13.
Judgment rendered March 18, 2005. / Jugement rendu le 18 mars 2005

Present: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ.

Constitutional law — Federal paramountcy — Retail display of tobacco products — Federal tobacco legislation allowing retailers to display tobacco and tobacco-related products, and signs indicating availability and price of tobacco products — Provincial tobacco control legislation banning all advertising, display and promotion of tobacco or tobacco-related products in any premises in which persons under 18 years of age are permitted — Whether provincial legislation inoperative pursuant to doctrine of federal legislative paramountcy — Tobacco Act, S.C. 1997, c. 13, s. 30 — Tobacco Control Act, S.S. 2001, c. T-14.1, s. 6.

The respondent company sought a declaration that s. 6 of the Saskatchewan *Tobacco Control Act* is, by virtue of the paramountcy doctrine, inoperative in light of s. 30 of the federal *Tobacco Act*. Section 30 allows retailers to display tobacco and tobacco product-related brand elements and post signs indicating the availability and price of tobacco products, while s. 6 bans all advertising, display and promotion of tobacco or tobacco-related products in any premises in which persons under 18 years of age are permitted. The Court of Queen's Bench dismissed the company's application. The Court of Appeal set aside that decision and declared s. 6 inoperative on the basis of a practical inconsistency between the two provisions.

Held: The appeal should be allowed. The provincial legislation is not inoperative by virtue of the paramountcy doctrine.

There is no inconsistency between s. 6 of *The Tobacco Control Act* and s. 30 of the *Tobacco Act*. First, a retailer can easily comply with both provisions in one of two ways: by admitting no one under 18 years of age on to the premises, or by not displaying tobacco or tobacco-related products. The provincial legislation simply prohibits what Parliament has opted not to prohibit in its own legislation and regulations. Second, s. 6 does not frustrate the legislative purpose underlying s. 30. Both the general purpose of the *Tobacco Act* (to address a national public health problem) and the specific purpose of s. 30 (to circumscribe the *Tobacco Act*'s general prohibition on promotion of tobacco products set out in s. 19) remain fulfilled. In demarcating through s. 30 the scope of the federal legislation's general prohibition on the promotion of tobacco products, Parliament did not grant retailers a positive entitlement to display such products.

APPEAL from a judgment of the Saskatchewan Court of Appeal (Tallis, Cameron and Sherstobitoff JJ.A.) (2003), 232 D.L.R. (4th) 495, 238 Sask. R. 250, 305 W.A.C. 250, [2004] 3 W.W.R. 589, [2003] S.J. No. 606 (QL), 2003 SKCA 93, reversing a decision of Barclay J. (2002), 224 Sask. R. 208, [2002] 10 W.W.R. 733, [2002] S.J. No. 541 (QL), 2002 SKQB 382. Appeal allowed.

Thomson Irvine and *Richard Hischebett*, for the appellant.

Steven Sofer, Neil G. Gabrielson, Q.C., Michelle Ouellette and *Marshall Reinhart*, for the respondent.

S. David Frankel, Q.C., and *David Schermbrucker*, for the intervener the Attorney General of Canada.

Robin K. Basu, Mark Crow and *Edward Burrow*, for the intervener the Attorney General of Ontario.

Brigitte Bussières and *Hugo Jean*, for the intervener the Attorney General of Quebec.

Edward A. Gores, for the intervener the Attorney General of Nova Scotia.

Cynthia Devine, for the intervener the Attorney General of Manitoba.

R. Richard M. Butler, for the intervener the Attorney General of British Columbia.

Written submissions only by *Ruth M. DeMone*, for the intervener the Attorney General of Prince Edward Island.

Written submissions only by *Julie Desrosiers* and *Robert Cunningham*, for the interveners the Canadian Cancer Society, the Canadian Lung Association, the Canadian Medical Association and the Heart and Stroke Foundation of Canada.

Written submissions only by *Ron A. Skolrood* and *Clifford G. Proudfoot*, for the intervener the Western Convenience Stores Association.

Solicitor for the appellant: Attorney General for Saskatchewan, Regina.

Solicitors for the respondent: McKercher McKercher & Whitmore, Saskatoon.

Solicitor for the intervener the Attorney General of Canada: Attorney General of Canada, Vancouver.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitor for the intervener the Attorney General of Quebec: Attorney General of Quebec, Sainte-Foy.

Solicitor for the intervener the Attorney General of Nova Scotia: Attorney General of Nova Scotia, Halifax.

Solicitor for the intervener the Attorney General of Manitoba: Attorney General of Manitoba, Winnipeg.

Solicitor for the intervener the Attorney General of British Columbia: Attorney General of British Columbia, Victoria.

Solicitor for the intervener the Attorney General of Prince Edward Island: Attorney General of Prince Edward Island, Charlottetown.

Solicitors for the interveners the Canadian Cancer Society, the Canadian Lung Association, the Canadian Medical Association and the Heart and Stroke Foundation of Canada: Martineau Walker, Montreal.

Solicitors for the intervener the Western Convenience Stores Association: Lawson Lundell, Vancouver.

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

Droit constitutionnel – Prépondérance des lois fédérales – Exposition de produits du tabac dans les établissements de vente au détail – Loi fédérale sur le tabac autorisant les détaillants à exposer du tabac et des produits connexes et à afficher la vente de produits du tabac et le prix de ces produits – Loi provinciale sur le tabac interdisant la publicité, l'exposition et la promotion de tabac ou de produits connexes dans les lieux auxquels ont accès les moins de 18 ans – La loi provinciale est-elle inopérante par l'effet de la doctrine de la prépondérance des lois fédérales? – Loi sur le tabac, L.C. 1997, ch. 13, art. 30 – Tobacco Control Act, S.S. 2001, ch. T-14.1, art. 6.

La société intimée a sollicité un jugement déclarant que, par l'effet de la doctrine de la prépondérance, l'art. 6 de la *Tobacco Control Act* de la Saskatchewan est inopérant compte tenu de l'art. 30 de la *Loi sur le tabac* du législateur fédéral. L'article 30 autorise les détaillants à exposer des produits du tabac et des accessoires portant un élément de marque d'un produit du tabac et à afficher qu'ils vendent des produits du tabac et le prix de ces produits, alors que l'art. 6 interdit la publicité, l'exposition et la promotion de tabac ou de produits connexes dans les lieux auxquels ont accès les moins de 18 ans. La Cour du Banc de la Reine a rejeté la demande de la société. La Cour d'appel a annulé cette décision et déclaré inopérant l'art. 6 pour cause d'incompatibilité pratique entre les deux dispositions.

Arrêt : Le pourvoi est accueilli. La loi provinciale n'est pas inopérante par l'effet de la doctrine de la prépondérance des lois fédérales.

Il n'existe pas d'incompatibilité entre l'art. 6 de la loi provinciale et l'art. 30 de la loi fédérale. Premièrement, les détaillants peuvent facilement respecter ces deux dispositions en prenant l'une ou l'autre des mesures suivantes : en n'admettant pas les moins de 18 ans dans leurs établissements ou en n'exposant pas de tabac ou de produits connexes. La loi provinciale interdit simplement ce que le Parlement a décidé de ne pas interdire dans ses propres loi et règlements. Deuxièmement, l'art. 6 n'entrave pas la réalisation de l'objet de l'art. 30. Tant l'objet général de la loi fédérale (s'attaquer à un problème de santé publique d'envergure nationale) que l'objet précis de l'art. 30 (circonscrire l'interdiction générale concernant la promotion des produits du tabac établie à l'art. 19) sont réalisés. En délimitant, au moyen de l'art. 30, la portée de l'interdiction générale établie par la loi fédérale à l'égard de la promotion des produits du tabac, le Parlement n'a pas accordé aux détaillants un droit positif d'exposer de tels produits.

POURVOI contre un arrêt de la Cour d'appel de la Saskatchewan (les juges Tallis, Cameron et Sherstobitoff) (2003), 232 D.L.R. (4th) 495, 238 Sask. R. 250, 305 W.A.C. 250, [2004] 3 W.W.R. 589, [2003] S.J. No. 606 (QL), 2003 SKCA 93, qui a infirmé un jugement du juge Barclay (2002), 224 Sask. R. 208, [2002] 10 W.W.R. 733, [2002] S.J. No. 541 (QL), 2002 SKQB 382. Pourvoi accueilli.

Thomson Irvine et *Richard Hischebett*, pour l'appelant.

Steven Sofer, *Neil G. Gabrielson*, *c.r.*, *Michelle Ouellette* et *Marshall Reinhart*, pour l'intimée.

S. David Frankel, *c.r.*, et *David Schermbrucker*, pour l'intervenant le procureur général du Canada.

Robin K. Basu, *Mark Crow* et *Edward Burrow*, pour l'intervenant le procureur général de l'Ontario.

Brigitte Bussières et *Hugo Jean*, pour l'intervenant le procureur général du Québec.

Edward A. Gores, pour l'intervenant le procureur général de la Nouvelle-Écosse.

Cynthia Devine, pour l'intervenant le procureur général du Manitoba.

R. Richard M. Butler, pour l'intervenant le procureur général de la Colombie-Britannique.

Argumentation écrite seulement par *Ruth M. DeMone*, pour l'intervenant le procureur général de l'Île-du-Prince-Édouard.

Argumentation écrite seulement par *Julie Desrosiers* et *Robert Cunningham*, pour les intervenantes la Société canadienne du cancer, l'Association pulmonaire du Canada, l'Association médicale canadienne et la Fondation des maladies du cœur du Canada.

Argumentation écrite seulement par *Ron A. Skolrood* et *Clifford G. Proudfoot*, pour l'intervenante Western Convenience Stores Association.

Procureur de l'appelant : Procureur général de la Saskatchewan, Regina.

Procureurs de l'intimée : McKercher McKercher & Whitmore, Saskatoon.

Procureur de l'intervenant le procureur général du Canada : Procureur général du Canada, Vancouver.

Procureur de l'intervenant le procureur général de l'Ontario : Procureur général de l'Ontario, Toronto.

Procureur de l'intervenant le procureur général du Québec : Procureur général du Québec, Sainte-Foy.

Procureur de l'intervenant le procureur général de la Nouvelle-Écosse : Procureur général de la Nouvelle-Écosse, Halifax.

Procureur de l'intervenant le procureur général du Manitoba : Procureur général du Manitoba, Winnipeg.

Procureur de l'intervenant le procureur général de la Colombie-Britannique : Procureur général de la Colombie-Britannique, Victoria.

Procureur de l'intervenant le procureur général de l'Île-du-Prince-Édouard : Procureur général de l'Île-du-Prince-Édouard, Charlottetown.

Procureurs des intervenantes la Société canadienne du cancer, l'Association pulmonaire du Canada, l'Association médicale canadienne et la Fondation des maladies du cœur du Canada : Martineau Walker, Montréal.

Procureurs de l'intervenante Western Convenience Stores Association : Lawson Lundell, Vancouver.

THE STYLES OF CAUSE IN THE PRESENT TABLE ARE THE STANDARDIZED STYLES OF CAUSE (AS EXPRESSED UNDER THE "INDEXED AS" ENTRY IN EACH CASE).

LES INTITULÉS UTILISÉS DANS CETTE TABLE SONT LES INTITULÉS NORMALISÉS DE LA RUBRIQUE "RÉPERTORIÉ" DANS CHAQUE ARRÊT.

Judgments reported in [2004] 3 S.C.R. Part 3

Haida Nation v. British Columbia (Minister of Forests),
[2004] 3 S.C.R. 511, 2004 SCC 73

Newfoundland (Treasury Board) v. N.A.P.E.,
[2004] 3 S.C.R. 381, 2004 SCC 66

Peoples Department Stores Inc. (Trustee of) v. Wise,
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[2004] 3 S.C.R. 503, 2004 SCC 69

R. v. Saunders,
[2004] 3 S.C.R. 505, 2004 SCC 70

R. v. Smith,
[2004] 3 S.C.R. 507, 2004 SCC 71

R. v. Tessling,
[2004] 3 S.C.R. 432, 2004 SCC 67

R. v. Zurowski,
[2004] 3 S.C.R. 509, 2004 SCC 72

Taku River Tlingit First Nation v. British Columbia (Project Assessment Director),
[2004] 3 S.C.R. 550, 2004 SCC 74

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[2004] 3 R.C.S. 461, 2004 CSC 68

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[2004] 3 R.C.S. 511, 2004 CSC 73

Première nation Tlingit de Taku River c. Colombie-Britannique (Directeur d'évaluation de projet),
[2004] 3 R.C.S. 550, 2004 CSC 74

R. c. Blake,
[2004] 3 R.C.S. 503, 2004 CSC 69

R. c. Saunders,
[2004] 3 R.C.S. 505, 2004 CSC 70

R. c. Smith,
[2004] 3 R.C.S. 507, 2004 CSC 71

R. c. Tessling,
[2004] 3 R.C.S. 432, 204 CSC 67

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[2004] 3 R.C.S. 509, 2004 CSC 72

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[2004] 3 S.C.R. 575, 2004 SCC 75

R. v. Deschamplain,
[2004] 3 S.C.R. 601, 2004 SCC 76

R. v. Lohrer,
[2004] 3 S.C.R. 732, 2004 SCC 80

Jugements publiés dans [2004] 3 R.C.S. Partie 4

Auton (Tutrice à l'instance de) c. Colombie-Britannique (Procureur général)
[2004] 3 R.C.S. 657, 2004 CSC 78

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[2004] 3 R.C.S. 575, 2004 CSC 75

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[2004] 3 R.C.S. 601, 2004 CSC 76

R. c. Lohrer,
[2004] 3 R.C.S. 732, 2004 CSC 80

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[2004] 3 S.C.R. 635, 2004 SCC 77

Reference re Same-Sex Marriage,
[2004] 3 S.C.R. 698, 2004 SCC 79

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[2004] 3 S.C.R. 760, 2004 SCC 82

R. c. Sazant,
[2004] 3 R.C.S. 635, 2004 CSC 77

Renvoi relatif au mariage entre personnes du même sexe,
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UL Canada Inc. c. Québec (Procureur général),
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SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2004 -

10/06/04

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

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

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

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JANUARY - JANVIER						
S D	M L	T M	W M	T J	F V	S S
						1
2	**H** 3	4	5	6	7	8
9	**M** 10	11	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
		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					

MARCH - MARS						
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	**H** 25	26
27	**H** 28	29	30	31		

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

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

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

Sittings of the court:
Séances de la cour:

Motions:
Requêtes: **M**

Holidays:
Jours fériés: **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