

**SUPREME COURT
OF CANADA**



**COUR SUPRÊME
DU CANADA**

**BULLETIN OF
PROCEEDINGS**

**BULLETIN DES
PROCÉDURES**

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

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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

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

Jean-Pierre Jolicoeur

Carole Tremblay
Dufour, Mottet

c. (30678)

Monique Dussault (Qc)

Guylaine Ladouceur

DATE DE PRODUCTION: 17.12.2004

Tracy-Ann Spencer

Julian N. Falconer
Falconer, Charney, Macklin

v. (30473)

Her Majesty the Queen (Ont.)

J.W. Leising
A.G. of Ontario

FILING DATE: 10.01.2005

JANUARY 17, 2005 / LE 17 JANVIER 2005

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

Her Majesty the Queen

v. (30456)

Yagianath Maharaj (Crim.) (Ont.)

NATURE OF THE CASE

Criminal law - Procedure - Judgments and reasons for judgment - Whether the Court of Appeal erred in law in concluding that the trial judge's reasons for judgment violated the duty to give reasons.

PROCEDURAL HISTORY

May 21, 1999 Ontario Court of Justice (Main J.)	Respondent convicted of sexual assault; Charge of sexual interference conditionally stayed; Respondent acquitted of other charges of sexual assault and sexual interference
October 22, 2002 Ontario Superior Court of Justice (Fuerst J.)	Summary conviction appeal dismissed
May 12, 2004 Court of Appeal for Ontario (McMurtry C.J.O., Laskin and Rosenberg JJ.A.)	Appeal allowed
August 11, 2004 Supreme Court of Canada	Application for leave to appeal filed

Her Majesty the Queen

v. (30480)

S.J.D. (Crim.) (Ont.)

NATURE OF THE CASE

Criminal law - Procedure - Judgments and reasons for judgment - Whether the Court of Appeal erred in law in concluding that the trial judge's reasons for judgment violated the duty to give reasons.

PROCEDURAL HISTORY

June 1, 2000 Ontario Court of Justice (Morneau J.)	Respondent convicted of repeated sexual touching and counselling sexual touching contrary to ss. 151(a) & 152 of the <i>Criminal Code</i> ; Respondent sentenced to three and a half years imprisonment
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May 26, 2004
Court of Appeal for Ontario
(Laskin, Goudge and Simmons JJ.A.)

Appeal allowed; convictions set aside; new trial ordered

August 25, 2004
Supreme Court of Canada

Application for leave to appeal filed

Her Majesty the Queen

v. (30641)

Bile Warsame Dore (Crim.) (Ont.)

NATURE OF THE CASE

Criminal law - Procedure - Judgments and reasons for judgment - Whether the Court of Appeal erred in law in concluding that the trial judge's reasons for judgment violated the duty to give reasons.

PROCEDURAL HISTORY

April 22, 2002
Ontario Court of Justice
(Long J.)

Respondent charged and convicted of sexual assault contrary to section 271 of the *Criminal Code*

October 2, 2003
Ontario Superior Court of Justice
(Molloy J.)

Summary conviction appeal dismissed

October 1, 2004
Court of Appeal for Ontario
(Labrosse, Laskin and Lang JJ.A.)

Appeal allowed and new trial ordered

November 30, 2004
Supreme Court of Canada

Application for leave to appeal filed

Michael Abraham, Paragon Commercial Enterprises Inc. and Mega-Lab Manufacturing Company, Ltd.

v. (30526)

United Laboratories, Inc. (Ont.)

NATURE OF THE CASE

Commercial law - Contracts - Statutes - Interpretation - Whether an agreement to arbitrate any dispute that relates to, or arises out of, a contract between a foreign party and a Canadian party ousts the jurisdiction of the courts with respect to all disputes between the parties - Whether the Court of Appeal was too narrow in the scope of claims and disputes which will be covered by choice of law/arbitration clauses.

PROCEDURAL HISTORY

October 8, 2002 Ontario Superior Court of Justice (Pepall J.)	Judgment granted in favour of Respondent; Applicants ordered to pay the Respondent US \$507,618.95, prejudgment interest in the amount of US \$72,896.86 and \$78,978.77 CND in costs
July 20, 2004 Court of Appeal for Ontario (McMurtry C.J.O., Borins and Simmons JJ.A.)	Appeal dismissed
September 28, 2004 Supreme Court of Canada	Application for leave to appeal filed

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

Stanislaw Bigos

v. (30428)

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

NATURE OF THE CASE

Criminal law (Non Charter) - Evidence - Whether the Court of Appeal erred in holding that the fresh evidence was not admissible

PROCEDURAL HISTORY

December 21, 2000 Ontario Court of Justice (Blacklock J.)	Applicant convicted of unlawful confinement contrary to section 279(2) of the <i>Criminal Code</i>
May 19, 2004 Court of Appeal for Ontario (MacPherson, Cronk and Gillese JJ.A.)	Appeal dismissed
December 7, 2004 Supreme Court of Canada	Application for extension of time and leave to appeal filed

Louis Ludwik Furtak

v. (30603)

Timothy J. Valgardson (Man.)

NATURE OF THE CASE

Canadian Charter (Civil) - Procedural Law - Appeal - Judgments and orders - Whether there was a denial of due process and natural justice - Whether there was a breach of s. 7 of the *Charter of Rights and Freedoms* - Whether the decision from

the Law Society of Manitoba can be appealed? - Whether the Law Society of Manitoba erred in its determination that the services provided by the Respondent were appropriate in the circumstances?

PROCEDURAL HISTORY

January 20, 2004 Law Society of Manitoba Flett, Arbitrator	Applicant's request for review of payment for legal services dismissed
March 8, 2004 Court of Queen's Bench of Manitoba (Oliphant A.C.J.)	Application for leave to appeal dismissed
September 21, 2004 Court of Appeal of Manitoba (Scott C.J.M., Twaddle and Kroft JJ.A.)	Appeal dismissed
October 6, 2004 Supreme Court of Canada	Application for leave to appeal filed

410727 B.C. Ltd., Walline Ltd., Minoru Investments Ltd. and Y.H. Canadian Property Investment Trust

v. (30543)

Dayhu Investments Ltd. and City of Richmond (B.C.)

NATURE OF THE CASE

Procedural law - Limitation of actions - Prescription - Cause of action - Cause of action against Respondents accrued to Applicants in 1968 - Respondents' negligence was not discovered until fire arising from another party's discrete negligence in 2002 - Respondents' negligence in 1968 contributed to damage suffered in 2002 fire - Whether a new cause of action arose against Respondents - Whether only one cause of action can arise if a different and subsequent set of facts gives rise to a new and different type of damages - Whether the Applicants' cause of action for physical damage to their building and related loss of income and chattels, caused by an extrinsic act, accrued when the building was completed or when the physical damage occurred, in circumstances where building code deficiencies merely contributed to the extent of the damage.

PROCEDURAL HISTORY

July 17, 2003 Supreme Court of British Columbia (Shabbits J.)	Applications for orders dismissing actions against Respondents dismissed
July 7, 2004 Court of Appeal for British Columbia (Newbury, Levine and Oppal, JJ.A.)	Appeal allowed; action against Respondents dismissed
September 29, 2004 Supreme Court of Canada	Application for leave to appeal filed

**Nanaimo Immigrant Settlement Society and the Juan de Fuca Marine Rescue Society
(formerly known as the Sooke Marine Rescue Society)**

v. (30542)

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

NATURE OF THE CASE

Constitutional law – Division of powers – Taxation – Criminal law – Gaming and betting – Regulation and licensing – Province of British Columbia levying fees against charitable organizations on sale of bingo cards and charging casino licence fees pursuant to *Lottery Act* – Class action commenced by charitable and religious organizations for repayment of fees – Class action alleging unjust enrichment – Class action challenging constitutionality of fees as constituting indirect taxation and therefore *ultra vires* Province – Whether fees constituting regulatory fees or taxation – If fees on sale of bingo cards taxes, whether constituting direct or indirect taxation – Whether bingo and casino fees contrary to gaming provisions of *Criminal Code*, in particular, s. 207(1)(b), because fees not used by Province for charitable purposes – Whether restitution lies for taxes paid under an *ultra vires* tax – *Constitution Act, 1867*, s. 92(9) – *Criminal Code*, R.S.C. c. C-46, s. 207(1)(b), *Lottery Act*, R.S.B.C. 1979, c. 249 (repealed S.B.C. 2002, c. 14, s. 112).

PROCEDURAL HISTORY

December 10, 2003 Supreme Court of British Columbia (Hutchison J.)	Applicant's class action for recovery of licencing fee dismissed
July 26, 2004 Court of Appeal for British Columbia (Prowse, Low and Oppal JJ.A.)	Appeal and cross-appeal dismissed
September 29, 2004 Supreme Court of Canada	Application for leave to appeal filed

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

Ernest William Westergard

v. (30623)

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

NATURE OF THE CASE

Criminal Law (Non Charter)- Offences - First degree murder - Sexual assault - Whether the Court of Appeal for Ontario erred in dismissing the Applicant's appeal from conviction - Whether a dead body can be "sexually assaulted" for the purposes of s. 231(5)(b) - Whether MacPherson J.A. erroneously reversed the burden of proof by putting an onus on an accused to raise an air of reality to the proposition that the underlying offence was committed after and/or in a separate transaction as the murder for the purposes of constructive first degree murder under s. 231(5) - *Criminal Code*, R.S.C. 1985, c. C-46, s. 231(5)(b)

PROCEDURAL HISTORY

May 5, 1998 Ontario Superior Court of Justice (Thomas J.)	Applicant convicted of first-degree murder; sentenced to life without eligibility of parole for 25 years
April 15, 2004 Court of Appeal for Ontario (Goudge, MacPherson and Cronk JJ.A.)	Appeal against conviction dismissed
November 18, 2004 Supreme Court of Canada	Application for leave to appeal and motion for extension of time filed

Léo Durand

c. (30628)

Société de l'assurance automobile du Québec et Procureur général du Québec (Qc)

NATURE DE LA CAUSE

Procédure - Procédure civile - Exception déclinatoire - Est-ce qu'une requête visant à contester la constitutionnalité des art. 76 et 76.1 du *Code de la sécurité routière*, L.R.Q., ch. C-24.2, relève de la compétence du Tribunal administratif du Québec ou de la Cour supérieure? - Quelle est l'étendue de la discrétion que possède un juge pour façonner une ordonnance de sauvegarde, en l'occurrence la délivrance d'un permis de conduire pendant l'instance, qui corresponde aux besoins des parties et quels critères doivent être considérés?

HISTORIQUE DES PROCÉDURES

Le 2 avril 2004 (rectifié le 16 avril) Cour supérieure du Québec (Le juge Corriveau)	Requête du demandeur pour une ordonnance de sauvegarde accueillie : ordonnance enjoignant la SAAQ de délivrer un permis de conduire au demandeur, pendant l'instance, pour les fins de son emploi
Le 14 avril 2004 Cour supérieure du Québec (Le juge Corriveau)	Requête en irrecevabilité de la SAAQ jugée prématurée et dossier déclaré hors délibéré
Le 30 août 2004 Cour d'appel du Québec (Les juges Dussault, Thibault et Pelletier)	Appels accueillis : jugements de première instance infirmés, demande d'ordonnance de sauvegarde rejetée et dossier retourné à la Cour supérieure pour qu'il soit statué sur la requête en irrecevabilité de la SAAQ
Le 29 octobre 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Corporation Sun Media

c. (30532)

Société de transport de Montréal, Publications Métropolitaines Inc. (Qc)

NATURE DE LA CAUSE

Charte canadienne (civil) – Libertés publiques – Libertés de presse et d’expression – Contrat d’exclusivité conclu par la Société de transport de Montréal quant à la distribution d’un quotidien gratuit dans des stations de métro – La conclusion du contrat est-elle contraire aux art. 2b) de la *Charte canadienne* et 3 de la *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12?

HISTORIQUE DES PROCÉDURES

Le 8 août 2003 Cour supérieure du Québec (La juge Zerbisias)	Action déclaratoire et demande d’injonction permanente rejetées
Le 15 juillet 2004 Cour d’appel du Québec (Les juges Brossard, Rousseau-Houle et Pelletier)	Appel rejeté
Le 29 septembre 2004 Cour suprême du Canada	Demande d’autorisation d’appel déposée

Serge Côté

c. (30515)

**Commission administrative des régimes de retraite et d’assurances
et le Procureur général du Québec**

NATURE DE LA CAUSE

Droit administratif - Compétence - Contrôle judiciaire - Législation - Interprétation - Dommages-intérêts - Compétence implicite d’un arbitre - Erreur commise par une commission administrative (CARRA) - Prise de retraite sur la foi de cette erreur - *Loi sur le régime de retraite des employés du gouvernement et des organismes publics*, L.R.Q. ch.R-10, art. 179 à 186 - *Loi sur le régime de retraite des enseignants*, L.R.Q. ch.R-11 - La Cour d’appel a-t-elle erré en infirmant le jugement de la Cour supérieure et, par le fait même, en refusant d’admettre que le Tribunal d’arbitrage institué par cette loi a juridiction pour adjuger une réclamation en dommages-intérêts?

HISTORIQUE DES PROCÉDURES

Le 30 mai 2003 Arbitre substitut (Ferland, Gilles)	Rejet de la demande de révision d’une rente corrigée à la baisse par la CARRA; refus de compétence quant aux dommages.
Le 24 novembre 2003 Cour supérieure (Le juge Vaillancourt)	Révision judiciaire accordée; arbitre déclaré compétent pour trancher tout le litige, dont les dommages; litige retourné à l’arbitre.

Le 17 juin 2004
Cour d'appel du Québec
(Les juges Morin, Dalphond et Hilton)

Appel accueilli; requête en révision judiciaire rejetée

Le 16 septembre 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

JANUARY 20, 2005 / LE 20 JANVIER 2005

30464 **Sun Life Assurance Company of Canada v. Connie Fidler** (B.C.) (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 British Columbia (Vancouver), Number CA030244, dated May 17, 2004, is granted without costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA030244, daté du 17 mai 2004, est accordée sans dépens.

NATURE OF THE CASE

Commercial law - Insurance - Damages - Accident and sickness policy - Aggravated and punitive damages - Is an independent actionable wrong a prerequisite for an award of aggravated damages for breach of an insurance contract? - What is the legal test for determining whether a plaintiff can recover aggravated damages in contract for "mental distress"? - What is the proper approach for determining whether an insurer's conduct constitutes bad faith as opposed to reasonable investigation of the insured's claim?

PROCEDURAL HISTORY

September 30, 2002 Supreme Court of British Columbia (Ralph J.)	Respondent's claim for aggravated damages, awarded; Respondent's claim for punitive damages, dismissed
May 17, 2004 Court of Appeal for British Columbia (Finch, Prowse, Ryan JJ.A.[dissenting in part])	Appeal dismissed; cross-appeal allowed
August 16, 2004 Supreme Court of Canada	Application for leave to appeal filed

30548 **Gary Leskun v. Sherry Jean Leskun** (B.C.) (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 British Columbia (Vancouver), Number CA031247, 2004 BCCA 422, dated August 3, 2004, is granted with costs to follow the event.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA031247, 2004 BCCA 422, daté du 3 août 2004, est accordée. Les dépens suivront l'issue de l'affaire.

NATURE OF THE CASE

Family Law - Spousal support - Spousal misconduct - Whether s. 15.2(5) or s. 17 of the *Divorce Act* permit a court to consider spousal misconduct in determining whether a spouse has failed to achieve economic self-sufficiency - Whether it is appropriate for the court to consider the parties' capital positions in relation to the ability to pay support in cases involving a determination of support pursuant to ss. 15.1 or 15.2 of the *Divorce Act* - Whether s. 15.2 of the *Divorce Act* permits a review order for spousal support - What is the test for making a review order for support as compared to a time-limited order for spousal support - Whether there is a subjective and/or objective test for determining if a spouse has the ability to pay support or for determining if a spouse has met the duty or obligation to pursue the goal of self-sufficiency

set out in s. 15.2(6) of the *Divorce Act* - Whether the Court of Appeal for British Columbia erred as a matter of law in the application of that test in the present case - *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), s. 15.2(5).

PROCEDURAL HISTORY

May 31, 2000; January 31, 2001 Supreme Court of British Columbia (Collver J.)	Applicant ordered to pay spousal support in the amount of \$2,250.00 per month to Respondent
September 2, 2003 Supreme Court of British Columbia (Morrison J.)	Applicant's application to rescind spousal support dismissed; Respondent's application to increase spousal support dismissed; Applicant to continue paying spousal support in the amount of \$2,250 per month
August 3, 2004 Court of Appeal for British Columbia (Southin, Newbury and Hall JJ.A.)	Appeal dismissed
October 4, 2004 Supreme Court of Canada	Application for leave to appeal filed

30436 **Via Rail Canada Inc. v. George Cairns, Brotherhood of Locomotive Engineers, Canadian National Railway Company, United Transportation Union AND BETWEEN Brotherhood of Locomotive Engineers v. George Cairns, Via Rail Canada Inc., United Transportation Union, Canadian National Railway Company** (FC) (Civil) (By Leave)

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

The applications for leave to appeal from the judgment of the Federal Court of Appeal, Number A-273-03, dated May 17, 2004, are dismissed with costs to the respondents George Cairns and United Transportation Union in both leave applications.

Les demandes d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-273-03, daté du 17 mai 2004, sont rejetées avec dépens en faveur des intimés George Cairns et Travailleurs unis des transports dans les deux demandes d'autorisation.

NATURE OF THE CASE

Administrative law - Labour law - Judicial review - Labour relations - Collective agreement - Remedies - What is the authority and jurisdiction of a labour relations board to dictate the terms of a collective agreement over the objections of both the employer and the certified bargaining agent, and to substitute a board-ordered collective agreement for the agreement reached between the bargaining parties and to impose onerous and intrusive remedies against an employer that has not breached any obligation owed under labour relations legislation, and where the remedy is imposed solely in respect of the bargaining agent's breach of the duty of fair representation of its members? - Paramountcy of the right to free, bi-lateral collective bargaining within Canada's Labour relations regime, and the authority and jurisdiction of a labour relations board to order a tri-partite bargaining process - What is the applicable standard of review and whether provincial appellate courts and the Federal Court of Appeal can apply a standard of review different than that held by the Supreme Court of Canada.

PROCEDURAL HISTORY

October 22, 1999 Canadian Industrial Relations Board (Pineau, Vice-Chairperson)	Applicant's application under section 18 of the <i>Canada Labour Code</i> for the collective bargaining certificate to be amended by consolidating the two bargaining units of the running trades, granted
May 15, 2003 Canadian Industrial Relations Board (Pineau, Vice-Chairperson)	Application for judicial review dismissed; Alternate form of compensation imposed by Board
May 17, 2003 Federal Court of Appeal (Rothstein, Evans and Pelletier [<i>dissenting</i>] JJ.A.)	Application for judicial review dismissed
August 16, 2004 Supreme Court of Canada	First and second applications for leave to appeal filed

30415 **Vernon Roy Mazzei v. Director of Adult Forensic Psychiatric Services, Attorney General of British Columbia** (B.C.) (Criminal) (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 British Columbia (Vancouver), Number CA029739, dated April 29, 2004, is granted without costs

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de la Colombie-Britannique (Vancouver), numéro CA029739, daté du 29 avril 2004, est accordée sans dépens.

NATURE OF THE CASE

Criminal Law (Non Charter) - Sentencing - Administrative law - Jurisdiction - Whether British Columbia Review Board has jurisdiction to impose conditions of a disposition order on the Director of Adult Forensic Psychiatric Service - *Criminal Code*, R.S.C. 1985, c. C-46, Part XX.1, s. 672.54.

PROCEDURAL HISTORY

April 3, 2002 British Columbia Review Board	Warrant of committal issued, Order of Review Board includes conditions 8, 9 and 10 imposed upon Director of Adult Forensic Psychiatric Service
April 29, 2004 Court of Appeal for British Columbia (Levine, Ryan and Smith JJ.A.)	Director of Adult Forensic Psychiatric Service's appeal allowed; Conditions 8, 9 and 10 struck from disposition order
June 25, 2004 Supreme Court of Canada	Application for leave to appeal filed

30467 **Association des juristes d'expression française du Nouveau-Brunswick c. Ville de Saint-Jean - ET ENTRE - Mario Charlebois c. Ville de Saint-Jean** (N.-B.) (Civile) (Autorisation)

Coram: La juge en chef McLachlin et les juges Binnie et Charron

La requête de l'Association demanderesse visant à être ajoutée comme partie est accordée. Les demandes d'autorisation d'appel de l'arrêt de la Cour d'appel du Nouveau-Brunswick, numéro 166/02/CA, daté du 17 juin 2004, sont accordées sans dépens.

The applicant Association's motion to be added as a party is granted. The applications for leave to appeal from the judgment of the Court of Appeal of New Brunswick, Number 166/02/CA, dated June 17, 2004, are granted without costs.

NATURE DE LA CAUSE

Législation – Interprétation – Emploi, par un défendeur, de la langue officielle choisie par la partie demanderesse dans une instance civile engagée contre Sa Majesté du chef du Nouveau-Brunswick ou une institution – Loi sur les langues officielles, *Loi sur les langues officielles*, L.N.-B. 2002, ch. O-0.5, art. 22 et 1 – La Cour d'appel a-t-elle erré en jugeant que les municipalités et les cités du Nouveau-Brunswick n'étaient pas des « institutions » au sens de l'art. 1 de la *Loi sur les langues officielles* et n'étaient donc pas tenues d'utiliser la langue officielle choisie par le demandeur dans l'instance civile intentée contre la Ville intimée?

HISTORIQUE DES PROCÉDURES

Le 11 décembre 2002 Cour du Banc de la Reine du Nouveau-Brunswick (Le juge McLellan)	Requête du demandeur Charlebois visant à obtenir une ordonnance de services dans les deux langues officielles, rejetée
Le 17 juin 2004 Cour d'appel du Nouveau-Brunswick (Les juges Daigle, Larlee et Deschênes)	Appel du demandeur Charlebois rejeté
Le 17 août 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée par l'Association des juristes d'expression française du Nouveau-Brunswick
Le 30 août 2004 Cour suprême du Canada	Demande d'autorisation d'appel déposée par le demandeur Charlebois
Le 15 septembre 2004 Cour suprême du Canada	Requête de l'Association pour être ajoutée comme partie déposée

30459 **Her Majesty the Queen v. James Coultime, Scott Tarpey** (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 C37337, dated May 13, 2004, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Ontario, numéro C37337, daté du 13 mai 2004, est rejetée.

NATURE OF THE CASE

Criminal law - Trial - Whether lower courts erred in law by excluding certain proposed Crown evidence- Whether Court of Appeal should have directed a new trial.

PROCEDURAL HISTORY

October 31, 2001
Ontario Superior Court of Justice
(Glass J.)

Acquittals: criminal negligence causing death

May 13, 2004
Court of Appeal for Ontario
(Doherty, Laskin and Rosenberg JJ.A)

Appeal dismissed

August 12, 2004
Supreme Court of Canada

Application for leave to appeal filed

30500 **C.B.M. v. Her Majesty the Queen** (Alta.) (Criminal) (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 of Alberta (Edmonton), Number 0303-0088-A3, dated February 25, 2004, is dismissed.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 0303-0088-A3, daté du 25 février 2004, est rejetée.

NATURE OF THE CASE

Criminal Law (Non Charter) - Procedural law - Evidence - Jury Charge - Bolstering credibility of a witness - Testimony of a complainant under 14 years of age given under oath - Whether the Court of Appeal erred in finding that the trial judge acted judicially in exercising his discretion to swear the child complainant - Whether the Court of Appeal erred in finding that the trial judge's repeated emphasis to the jury of the importance of his decision to swear the complainant did not render the trial unfair - *Canada Evidence Act*, R.S.C.1985, c. C-5, s. 16.

PROCEDURAL HISTORY

February 27, 2003
Court of Queen's Bench of Alberta
(Lefsrud E.)

Applicant convicted of sexual touching; invitation to touch; unlawful exposure to a child; and, sexual assault, contrary to ss. 27,151, 152 and 173(2) of the *Criminal Code of Canada*

February 25, 2004
Court of Appeal of Alberta
(Conrad, Russell and Acton [*ad hoc*] JJ.A.)

Appeal dismissed

September 1, 2004
Supreme Court of Canada

Application for leave to appeal and motion for time extension filed

30493 **S.G.H. v. Board of Trustees of Calgary School District 19, also known as The Calgary School Board** (Alta.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 01-00147, 2004 ABCA 186, dated June 2, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéro 01-00147, 2004 ABCA 186, daté du 2 juin 2004, est rejetée avec dépens.

NATURE OF THE CASE

Torts - Intentional torts - Sexual abuse - Vicarious liability - Non-residential schools - Whether a non-residential school board can be held vicariously liable for the intentional tort (specifically, child sexual abuse) of its employee, the child's teacher - Whether the above issue is of national and public importance in that the problem of child sexual abuse, and, specifically, child sexual abuse by teachers, is unfortunately prevalent throughout Canada, and jurisprudence with respect to vicarious liability in this particular context will affect the millions of children, thousands of teachers, and hundreds of school boards involved in non-residential school systems across the country

PROCEDURAL HISTORY

March 6, 2001
Court of Queen's Bench of Alberta
(McMahon J.)

Respondent school board not vicariously liable for assault committed by teacher

June 2, 2004
Court of Appeal of Alberta
(Conrad, McFadyen and MacLeod JJ.A.)

Appeal dismissed

September 1, 2004
Supreme Court of Canada

Application for leave to appeal filed

30535 **Bayer AG, Bayer Inc. v. Apotex Inc., Minister of Health** (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-546-03, dated June 23, 2004, is dismissed with costs to the respondent Apotex Inc.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-546-03, daté du 23 juin 2004, est rejetée avec dépens en faveur de l'intimée Apotex Inc.

NATURE OF THE CASE

Procedural law - Patents - Whether order is in direct conflict with previous decisions of the Federal Court of Appeal - Whether Court of Appeal's contradictory decisions provide a right to appeal to a distinct class of person (i.e. generic drug manufacturers) while denying this right to a different class of person (i.e. owners of patents for medicines) based on identical fact situations.

PROCEDURAL HISTORY

October 17, 2003 Federal Court of Canada (Gibson J.)	Applicants' application for relief allowed in part: Minister of Health prohibited from issuing notices of compliance under s. C.08.004 of the <i>Food and Drug Regulations</i> to Respondent Apotex prior to expiration of patent
June 23, 2004 Federal Court of Appeal (Linden, Rothstein and Sexton J.J.A.)	Applicants' motion to dismiss Respondents' appeal on the basis of mootness dismissed
September 22, 2004 Supreme Court of Canada	Application for leave to appeal filed

30486 **Brookfield Lepage Johnson Controls Facility Management Services v. Minister of Public Works and Government Services** (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-164-03, dated May 31, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-164-03, daté du 31 mai 2004, est rejetée avec dépens.

NATURE OF THE CASE

Statutes - Administrative law - Interpretation - Judicial review - How should s. 20(1) of the *Access to Information Act*, R.S.C. 1985, c. A-1, operate where a third party is invited to submit confidential information to a government institution with assurances from said institution that confidentiality will be maintained over the documents and where the third party, relying on such assurances, submits confidential information? - What is the deference that should be accorded to the findings of fact by the judge of first instance and the inherent danger and potential harm to the judicial system and the administration of justice where an appeal court, in effect, "rewrites" the judge's findings of fact;

PROCEDURAL HISTORY

February 28, 2003 Federal Court of Canada, Trial Division (Layden-Stevenson, J.)	Applicant's application for an order prohibiting the Minister of Public Works from disclosing certain documents dismissed
May 31, 2004 Federal Court of Appeal (Stone, Sexton and Evans, J.J.A.)	Appeal dismissed
August 30, 2004 Supreme Court of Canada	Application for leave to appeal filed

30534 **Maribel Anaya Castillo v. Antonio Munoz Castillo** (Alta.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Number 02-0207-AC, dated July 9, 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 l'Alberta (Calgary), numéro 02-0207-AC, daté du 9 juillet 2004, est accordée avec dépens en faveur de la demanderesse quelle que soit l'issue de l'appel.

NATURE OF THE CASE

Statutes – Interpretation – Procedural law – Limitation of actions – Torts – Motor vehicles – Motor vehicle accident occurring in California where limitation period is one year – Parties both Alberta residents – Action commenced in Alberta after two years less one day – Alberta limitation period is two years – Alberta *Limitations Act* s. 12 providing Alberta limitation period applies “notwithstanding” claim will be adjudicated under “substantive law of another jurisdiction” – Courts below finding defence of expired California limitation period available to defendant because tort no longer actionable under law of place where tort occurred, per *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022 – Courts below further finding common law in *Tolofson* not changed by s. 12 and that both *Tolofson* and s. 12 apply – Whether Alberta Court of Appeal erred in its interpretation of s. 12 *Limitations Act* by failing to give effect to plain language of section, and failing to properly consider admissible extrinsic aids reflecting intention of Alberta Legislature to change the common law – *Limitations Act*, R.S.A. 2000, c. L-12, s. 12.

PROCEDURAL HISTORY

April 18, 2002
Court of Queen’s Bench of Alberta
(Rawlins J.)

Limitations law of both California and Province of Alberta, declared to apply to Applicant’s action; Applicant’s action declared statute barred if not filed in time under California’s one year limitations law

July 9, 2004
Court of Appeal of Alberta
(Russell, Berger and Wittmann JJ.A.)

Applicant’s appeal dismissed

September 29, 2004
Supreme Court of Canada

Application for leave to appeal filed

30449 **Crown in Right of Alberta as represented by the Minister responsible for Alberta Human Resources and Employment v. Director of the Human Rights and Citizenship Commission** (Alta.) (Civil) (By Leave)

Coram: Major, Fish and Abella JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Edmonton), Number 0203-0344-AC, dated May 10, 2004, is dismissed.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Edmonton), numéro 0203-0344-AC, daté du 10 mai 2004, est rejetée.

NATURE OF THE CASE

Constitutional law - Human rights - Equality - Discrimination of the basis of marital status - *Widows' Pension Act*, R.S.A. 1980, c. W-7.5 - Legislation providing pension to low income widows and widowers aged 55 to 66 - Whether a complaint brought pursuant to the *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 1980, c. H-11.7 must identify an individual victim of an alleged contravention of that *Act* - Whether the Legislature has constitutional authority to empower a human rights panel to direct future administration and application of legislation that it has found to contravene the *HRCMA* - Whether the *HRCMA* empowers a human rights panel to direct the future administration and application of the legislation that contravenes that *Act*, or whether a panel is charged to repair discrimination suffered by individuals whose circumstances are before it - Whether the *Widows' Pension Act*, which grants benefits similar to benefits available to seniors to low-income widows near retirement age, discriminations against divorced women with deceased ex-husbands, who were not entitled to spousal support after divorce?

PROCEDURAL HISTORY

June 1, 2001 Human Rights Panel (Andrechuck, Chair)	<i>Widows' Pension Act</i> declared <i>prima facie</i> discriminatory on the basis of marital status; Discrimination found to be reasonable and justifiable in the circumstances
August 27, 2002 Court of Queen's Bench of Alberta (Greckol J.)	Appeal allowed; Applicant ordered to extend benefits under the <i>Widows' Pension Act</i> to qualified applicants who are divorced or separated
May 10, 2004 Court of Appeal of Alberta (McClung, Costigan and Sirrs JJ.A.)	Appeal dismissed
August 17, 2004 Supreme Court of Canada	Application for leave to appeal filed
October 8, 2004 Supreme Court of Canada (LeBel J.)	Motion to extend time to file and serve the leave application granted

30608 **Natalie Luffer, Henry Sztern, Henry Sztern & Associés Inc. v. H.H. Davis & Associés Inc., Alain Lafontaine, ès qualités de Surintendant associé, Officier de la publicité des droits** (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 (Montreal), Number 500-09-014530-042, dated September 24, 2004, is dismissed with costs to the respondents H.H. Davis & Associés Inc. and Alain Lafontaine, ès qualités de Surintendant associé.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-014530-042, daté du 24 septembre 2004, est rejetée avec dépens en faveur des intimés H.H. Davis & Associés Inc. et Alain Lafontaine, ès qualités de Surintendant associé.

NATURE OF THE CASE

Procedural Law - Commercial Law - Bankruptcy - Civil procedure - Judgments and orders - Pre-trial procedure - Seizure before judgment - Whether section 5(3)(e) and 14.03(1)(b) of the *Bankruptcy and Insolvency Act* give the right to the

Office of the Superintendent of Bankruptcy, on its own or through its agents, to conduct a search without a court ordered search warrant - Whether a Federal court order of the specific nature of an Anton Piller Order gives the right to the Office of the Superintendent of Bankruptcy, on its own or through its agents, to conduct a search - Whether a search executed under the circumstances raised in this Application supersede those rights guaranteed by sections 8 and 24 (1) and 24 (2) of the *Canadian Charter of Human Rights and Freedom* and section 24.1 of the *Quebec Charter of Rights and Freedom* - Whether the Quebec Court of Appeal erred by concluding that « *D'autre part, l'appelante et la mise en cause exerçaient les pouvoirs, devoirs et fonctions prévus aux articles 5 (3) e) et 14.03 de la Loi sur la faillite et l'insolvabilité* », completely ignoring the fact that the seizure was based on allegations that were adjudicated to be completely unproven and the document « Offer to Purchase », upon which the seizure itself was grounded was illegally obtained in violation of the *Canadian and Quebec Charter of Rights and Freedoms* - Whether the Québec Court of Appeal erred in substituting its own judgment in place of the Lower Court's judgment, where no manifest error in law or fact was established and with the Lower Court having had the benefit of a lengthy hearing of testimony and evidence of numerous witnesses.

PROCEDURAL HISTORY

May 7, 2004
Superior Court of Quebec
(Guibault J.)

Applicant Natalie Luffer's motions for dismissal rejected;
Applicant Nathalie Luffer's motion to quash the seizure before judgment allowed; seizure before judgment of real property quashed

September 24, 2004
Court of Appeal of Quebec
(Mailhot, Otis and Morin JJ.A.)

Appeal allowed

October 20, 2004
Supreme Court of Canada

Application for leave to appeal filed

30549 **Assunta Mellichio Baldino, Fernando Baldino c. Hammadi Sabar, Dominique Verhas** (Qc) (Civile)
(Autorisation)

Coram: **Les juges Bastarache, LeBel et Deschamps**

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-014361-042, daté du 12 juillet 2004, est rejetée sans dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-014361-042, dated July 12, 2004, is dismissed without costs.

NATURE DE LA CAUSE

Droit commercial – Vente – Vices cachés – La Cour du Québec a-t-elle erré dans l'appréciation de la preuve? – La Cour d'appel a-t-elle erré en rejetant la requête pour permission d'appel?

HISTORIQUE DES PROCÉDURES

Le 27 février 2004
Cour du Québec
(La juge Charron)

Action en dommages pour vices-cachés rejetée

Le 7 avril 2004
Cour d'appel du Québec
(Le juge Hilton)

Requête pour permission d'appel rejetée

Le 12 juillet 2004
Cour d'appel du Québec
(Les juges Rayle, Morissette et Lemelin [*ad hoc*])

Requête pour permission d'appel hors délai rejetée

Le 1 octobre 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

30511 **Société canadienne de métaux Reynolds, Limitée v. Deputy Minister of Revenue of Quebec, 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 (Montreal), Number 500-09-011449-014, dated June 17, 2004, is dismissed with costs.

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel du Québec (Montréal), numéro 500-09-011449-014, daté du 17 juin 2004, est rejetée avec dépens.

NATURE OF THE CASE

Constitutional Law – Taxation – Statutes – Retroactive statute enacted during court proceedings relating to subject-matter of legislation – Statute has the effect of removing cause of action – Whether the lower courts erred by holding that the retroactive statute did not violate the principles of the Rule of Law, of the separation of powers and of judicial independence in the circumstances and was not unconstitutional as a result.

PROCEDURAL HISTORY

August 28, 2001
Court of Quebec
(Desmarais, J.)

Applicant's application for judicial review of the Respondent Minister of Revenue's decision to refuse to allow income tax reimbursements, dismissed

June 17, 2004
Court of Appeal of Quebec
(Gendreau, Baudouin and Pelletier, J.J.A.)

Appeal dismissed

September 16, 2004
Supreme Court of Canada

Application for leave to appeal filed

30495 **Leslie Greenberg, Nelson Greenberg v. Michael Gruber** (Que.) (Civil) (By Leave)

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

The application for an extension of time is granted and the application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-014103-048, dated May 27, 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 du Québec (Montréal), numéro 500-09-014103-048, daté du 27 mai 2004, est rejetée avec dépens.

NATURE OF THE CASE

Commercial law – Company law – Remedies – “Oppression” – Prescription – Whether the lower courts erred in holding that the *Civil Code of Québec* was applicable to determine the prescription applicable to a recourse under s. 241 of the *Canada Business Corporations Act*, R.S. 1985, c. C-44 – Whether the Court of Appeal erred in holding that the respondent’s claim to ownership of the shares was not prescribed? – What is the applicable prescription period for claims of oppression?

PROCEDURAL HISTORY

December 10, 2003 Superior Court of Quebec (Gomery J.)	Applicants’ preliminary exception to dismiss the respondent’s petition dismissed
May 27, 2004 Court of Appeal of Quebec (Gendreau, Forget, Pelletier JJ.A)	Appeal dismissed
September 3, 2004 Supreme Court of Canada	Application for leave to appeal and motion to extend time filed

30497 **Alliance professionnelle des infirmières et infirmiers auxiliaires du Québec c. Hôpital Jean-Talon**
(Qc) (Civile) (Autorisation)

Coram: Les juges Bastarache, LeBel et Deschamps

La demande d’autorisation d’appel de l’arrêt de la Cour d’appel du Québec (Montréal), numéro 500-09-013095-039, daté du 4 juin 2004, est rejetée avec dépens.

The application for leave to appeal from the judgment of the Court of Appeal of Quebec (Montreal), Number 500-09-013095-039, dated June 4, 2004, is dismissed with costs.

NATURE DE LA CAUSE

Droit administratif - Contrôle judiciaire - Droit du travail - Arbitrage - Convention collective - Régime d’assurance-salaire - Définition d’invalidité - Un arbitre excède-t-il sa juridiction lorsque, dans l’interprétation des droits découlant d’un régime d’assurance-salaire intégré à la convention collective, il ajoute des éléments étrangers à la convention collective convenue entre les parties? - En restreignant les bénéficiaires du régime d’assurance-salaire aux seuls salariés pour qui la médecine peut offrir un espoir de guérison, la décision de la Cour d’appel conduit-elle à un résultat discriminatoire?

HISTORIQUE DES PROCÉDURES

Le 15 février, 2002 Tribunal d’arbitrage (Me Gravel et MM. Bouchard et Séguin)	Grief de la demanderesse contestant la cessation du paiement des indemnités d’assurance-salaire par l’employeur rejeté
Le 10 janvier 2003 Cour supérieure du Québec (Le juge Rolland)	Requête en révision judiciaire accueillie, sentence arbitrale annulée et dossier retourné à l’arbitre

Le 4 juin 2004
Cour d'appel du Québec
(Les juges Proulx, Chamberland et Lemelin [*ad hoc*])

Pourvoi de l'intimé accueilli, jugement du juge Rolland
infirmé et requête en révision judiciaire rejetée

Le 2 septembre 2004
Cour suprême du Canada

Demande d'autorisation d'appel déposée

7.1.2005

Before / Devant: THE DEPUTY 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

Sam Stabile

v. (30594)

Lucia Milani, et al. (Ont.)

GRANTED / ACCORDÉE Time extended to January 20, 2005.

10.1.2005

Before / Devant: ABELLA J.

Motion to extend the time in which to serve and file the factum and book of authorities of the intervener the Attorney General of Ontario and to present oral argument at the hearing of the appeal

Requête en prorogation du délai de signification et de dépôt du mémoire et du recueil de sources de l'intervenant le procureur général de l'Ontario, et en vue de présenter une plaidoirie orale lors de l'audition de l'appel

Her Majesty the Queen

v. (30021)

René Luther Hamilton (Alta.) (Crim.)

GRANTED / ACCORDÉE

UPON APPLICATION by the intervener, the Attorney General of Ontario, for an order extending the time to serve and file its factum to January 6, 2005 and its book of authorities to January 7, 2005 and for an order permitting the said intervener to present oral argument at the hearing of this appeal.

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion of the intervener, the Attorney General of Ontario, for an order extending the time to serve and file its factum to January 6, 2005 and its book of authorities to January 7, 2005, is granted.

The said intervener is granted permission to present oral argument not exceeding fifteen (15) minutes at the hearing of this appeal.

10.1.2005

Before / Devant: ABELLA J.

Further order on motion for leave to intervene

Autre ordonnance relative à une requête en autorisation d'intervention

BY / PAR: Canadian Civil Liberties Association

IN / DANS: Her Majesty the Queen

v. (30021)

René Luther Hamilton (Alta.) (Crim.)

UPON APPLICATION by the Canadian Civil Liberties Association for leave to intervene in the above appeal and pursuant to the order of October 14, 2004;

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

11.1.2005

Before / Devant: MAJOR J.

Motion for additional time to present oral argument

Requête en prolongation du temps alloué pour la plaidoirie orale

Her Majesty the Queen

v. (30063)

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

DISMISSED / REJETÉE

UPON APPLICATION by the appellant for an order extending the time for oral argument on this appeal and cross-appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion is dismissed without prejudice to the parties to renew the application before the Court hearing the appeal subject to the condition that the time used for the application will count against the one hour allotted for the appeal.

12.1.2005

Before / Devant: MAJOR J.

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

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

BY / PAR: College of Physicians and Surgeons of Ontario

IN / DANS: The College of Physicians and Surgeons of British Columbia

v. (30595)

Victoria McClelland, et al. (B.C.)

DISMISSED / REJETÉE

UPON APPLICATION by College of Physicians of Ontario for leave to intervene in the above mentioned application for leave to appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

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

12.1.2005

Before / Devant: BASTARACHE J.

Motion for directions

Demande d'instructions

Terrence Doyle

v. (30519)

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

GRANTED / ACCORDÉE

UPON APPLICATION by the applicant for directions regarding the filing of supplemental material in the above mentioned application for leave to appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The applicant is directed to serve and file the supplemental material in the application for leave to appeal by January 17, 2005.

13.1.2005

Before / Devant: THE DEPUTY REGISTRAR

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

Requête en prorogation du délai de signification et de dépôt de la réponse de l'intimée

Zbigniew Belz, et al.

v. (30593)

Elizabeth Rogacki (Ont.)

GRANTED / ACCORDÉE Time extended to January 10, 2005.

13.1.2005

Before / Devant: MAJOR J.

Motion for leave to intervene

Requête en autorisation d'intervenir

BY / PAR: International Trademark Association

IN / DANS: Kirkbi AG, et al.

v. (29956)

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

DISMISSED WITH COSTS / REJETÉE AVEC DÉPENS

UPON APPLICATION by the International Trademark Association for leave to intervene in the above appeal;

AND HAVING READ the material filed;

IT IS HEREBY ORDERED THAT:

The motion for leave to intervene of the applicant, the International Trademark Association, is dismissed with costs to the appellants.

13.1.2005

Before / Devant: BASTARACHE J.

Motion to strike

Requête en radiation

Regroupement des marchands actionnaires Inc.

v. (30677)

Métro Inc., et al. (Que.)

DISMISSED / REJETÉE

À LA SUITE D'UNE DEMANDE des intimées visant à obtenir la radiation de parties de la demande d'autorisation d'appel et une prorogation du délai de signification et de dépôt de leur réponse;

ET APRÈS EXAMEN de la documentation déposée;

IL EST PAR LA PRÉSENTE ORDONNÉ CE QUI SUIT:

La requête visant à obtenir la radiation de parties de la demande d'autorisation d'appel est rejetée avec dépens. Les intimées pourront signifier et déposer leur réponse dans les 30 jours suivant la présente ordonnance.

14.1.2005

Before / Devant: THE DEPUTY REGISTRAR

Motion to extend the time in which to serve and file the book of authorities of the intervener the Attorney General of New Brunswick

Requête en prorogation du délai imparti à l'intervenant le procureur général de la Nouvelle-Écosse pour signifier et déposer son recueil de sources

Her Majesty the Queen

v. (30063)

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

GRANTED / ACCORDÉE Time extended to January 10, 2005.

**NOTICE OF APPEAL FILED SINCE
LAST ISSUE**

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

11.1.2004

Her Majesty the Queen

v. (30514)

B.W.P. (Man.)

13.1.2005

Sa Majesté la Reine

c. (30384)

Jean-Paul Larche (Qc)

- et entre -

Sa Majesté la Reine

c. (30384)

**L'Honorable juge Robert Sansfaçon, ès qualités de
juge de la Cour du Québec, et autre (Qc)**

13.1.2005

B.V.N.

v. (30512)

Her Majesty the Queen (B.C.)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

14.1.2005

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

Her Majesty the Queen

v. (30021)

René Luther Hamilton (Alta.) (Criminal) (By Leave)

James C. Robb, Q.C., and Steven M. Bilodeau for the appellant.

F. Kirk MacDonald for the respondent.

Christopher Webb for the intervener Attorney General of Ontario.

Andrew K. Lokan for the intervener Canadian Civil Liberties Association.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal Law (Non Charter) - Offences - Counselling other persons to commit offences - Accused sells electronic documents over Internet including instructions to generate credit card numbers, to make and detonate bombs and to break and enter - Counselling offences not committed - Whether a mass distribution over the internet of material that included documents objectively counselling the commission of serious offences constitutes an offence under s. 464 of the *Criminal Code* if the accused lacked specific intent that the purchasers of the information actually carry out the counselled offences - Whether wilful blindness or recklessness were sufficient to sustain a conviction under 464 where all of the other elements of the offence were established and where the material in question was sold for profit in a mass distribution over the Internet - Whether the anonymity and ability for mass distribution over the Internet effectively immunizes an accused from prosecution under s. 464 if his stated purpose is commercial gain rather than furtherance of other criminal activity.

Nature de la cause:

Droit criminel (excluant la Charte) - Infractions - Conseiller à d'autres personnes de commettre des infractions - L'accusé vend sur l'Internet des documents électroniques renfermant des instructions pour créer des numéros de cartes de crédit, fabriquer et faire exploser des bombes et s'introduire par effraction - Les infractions conseillées n'ont pas été commises - La diffusion massive sur l'Internet de documents dont certains, d'un point de vue objectif, conseillaient la perpétration de graves infractions constitue-t-elle un acte criminel suivant l'art. 464 du *Code criminel* lorsque l'accusé n'avait pas l'intention spécifique que l'acquéreur commette effectivement les infractions conseillées? - L'aveuglement volontaire ou l'insouciance justifiaient-ils une déclaration de culpabilité en application de l'art. 464 du *Code criminel* dans la mesure où tous les autres éléments constitutifs de l'infraction étaient établis et où, dans le but de réaliser un gain, l'accusé vendait les documents en cause par voie de diffusion massive sur l'Internet? - L'anonymat et l'ampleur de la diffusion mettent-ils l'accusé à l'abri d'une poursuite fondée sur l'art. 464 si son objectif avoué est la réalisation d'un gain commercial, et non l'accomplissement d'un autre acte criminel?

14.1.2005

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

Joanne Leonelli-Contino

v. (30100)

Joseph Contino (Ont.) (Civil) (By Leave)

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Family law - Maintenance - *Child Support Guidelines* - Shared custody - Support payor increasing to 50 per cent his time with child - Impact on child support payments - Whether increased time in and of itself mandates a reduction in child support, or whether the economic resources of the primary caregiver's home should be protected for the benefit of the child by limiting deviation to those circumstances in which clear and compelling evidence of the parties' and the child's actual circumstances, and in particular, an actual reallocation of costs, warrant deviation to meet the child's best interest - *Federal Child Support Guidelines*, SOR/97-175, s. 9.

Deidre D. Smith, Susan E. Milne and Gary Joseph for the appellant.

Thomas G. Bastedo, Q.C., and Samantha Chousky for the respondent.

Nature de la cause:

Droit de la famille - Aliments - *Lignes directrices sur les pensions alimentaires pour enfants* - Garde partagée - Le temps pendant lequel le débiteur alimentaire s'occupe de l'enfant passe à 50 pour 100 - Impact sur les versements de la pension alimentaire pour l'enfant - L'augmentation du temps en elle-même commande-t-elle une réduction de la pension alimentaire pour l'enfant, ou bien faut-il protéger, pour le bénéfice de l'enfant, les ressources financières de son foyer principal, en limitant les dérogations aux seuls cas où la preuve claire et incontestable présentée par les parties, les conditions de vie réelles de l'enfant et surtout le nouveau partage des frais justifient la dérogation dans l'intérêt de l'enfant ? - *Lignes directrices fédérales sur les pensions alimentaires pour enfants*, DORS/97-175, art. 9.

17-18.1.2005

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

Her Majesty the Queen

v. (30005)

Joshua Bernard, et al. (N.B.) (Civil) (By Leave)

- AND -

Her Majesty the Queen

v. (30063)

Stephen Frederick Marshall, et al. (N.S.) (Civil) (By Leave)

William B. Richards, Sylvain Lussier, Pierre Castonguay and Iain R.W. Hollett for the appellants/respondents on cross-appeal (30005).

William Daniel Delaney, Alexander MacBain Cameron and James Clarke for the appellant/respondents on cross-appeal (30063).

Bruce H. Wildsmith, Q.C., and Eric A. Zscheile for the respondents/appellants on cross-appeal (30005 & 30063).

Mitchell R. Taylor and Charlotte Bell, Q.C., for the intervener Attorney General of Canada (30005 & 30063).

Robert Ratcliffe and Mark Crow for the intervener
Attorney General of Ontario (30005 & 30063).

René Morin pour l'intervenant Procureur général du
Québec (30005 & 30063).

Alexander MacBain Cameron and William Daniel
Delaney for the intervener Attorney General of Nova
Scotia (30005).

Pierre Castonguay, Sylvain Lussier, William B.
Richards and Iain R.W. Hollett for the intervener
Attorney General of New Brunswick (30063).

John J.L. Hunter, Q.C., for the intervener Attorney
General of British Columbia (30005 & 30063).

Robert Normey and Donald Kruk for the intervener
Attorney General of Alberta (30005 & 30063).

Donald H. Burrage, Q.C., and Justin S.C. Mellor for the
intervener Attorney General of Newfoundland &
Labrador (30005 & 30063).

Mahmud Jamal and Neil Paris for the intervener New
Brunswick Forest Products Assoc. (30005).

Thomas E. Hart and Harvey L. Morrison, Q.C., for the
intervener Forest Products Ass. of Nova Scotia (30063).

Joseph E. Magnet and Andrew K. Lokan for the
intervener Congress of Aboriginal Peoples (30005 &
30063).

D. Bruce Clarke for the interveners Keptin John Joe
Sark, et al. (30005 & 30063).

Bryan P. Schwartz and Candice Metallic for the
intervener Assembly of First Nation (30005 & 30063).

Robert J.M. Janes and Dominique Nouvet for the
interveners Songhees Indian Band, et al. (30005 &
30063).

Daniel R. Thériault for the intervener Union of New
Brunswick Indians (30005).

RESERVED / EN DÉLIBÉRÉ

(30005)

Nature de la cause:

Constitutional law - Native law - Indians - Treaty rights - Aboriginal land title - Whether the Respondent has a treaty right to harvest and sell logs from Crown lands - Whether the treaty right can be exercised by individuals without community authority - Whether the Respondent exceeded the inherent limitation of the treaty in respect of an individual's right to harvest resources in order to earn a moderate livelihood - Whether the treaty right was extinguished by pre-Confederation legislation in the Province of New Brunswick - Whether infringement of the treaty right by s. 67(1)(c) of the *Crown Lands and Forest Act*, S.N.B. 1980, c. C-38.1, was justified - Whether Court of Appeal exceeded its jurisdiction pursuant to s. 839(1) of the *Criminal Code*, R.S.C. 1985, c. C-46.

(30063)

Nature of the case:

Constitutional Law - Native Law - Treaty Rights - Aboriginal Title - Whether the Nova Scotia Court of Appeal exceeded the limits of appellate review in setting aside the convictions without identifying an error of law by the Summary Conviction Appeal Court with respect to the applicability of the Halifax Treaties of 1760-61 - Whether the Court of Appeal erred in law with respect to the test for the applicability of the Halifax Treaties of 1760-61 by eliminating any meaningful consideration of the common intention of the parties - Whether there is no right to hunt, fish and gather and trade for necessities under the Halifax Treaties - Whether the Court of Appeal exceeded the limits of appellate review in setting aside the convictions without identifying an error of law by the Summary Conviction Appeal Court with respect to the Respondents' assertion of aboriginal title - Whether the Court of Appeal incorrectly restated the test for aboriginal title - Whether the Court of Appeal erred in applying the aboriginal perspective to the Respondent's assertion of aboriginal title - Whether the Court of Appeal erred respecting the test for exclusivity of aboriginal title - Whether the Court of Appeal erred in eliminating the requirement of continuity from the test for aboriginal title - Whether the Court of Appeal erred in finding that any treaty rights to log, or aboriginal title to the cutting sites were not extinguished - Whether the Court of Appeal erred in law in not

Nature of the case:

Droit constitutionnel - Droit autochtone - Indiens - Droits issus de traités - Titre aborigène sur des terres - L'intimé possède-t-il un droit issu de traité l'autorisant à récolter du bois sur des terres de la Couronne et à vendre ce bois? - Un droit issu de traité peut-il être exercé par une personne sans que cela se fasse sous l'autorité d'une collectivité autochtone? - L'intimé a-t-il outrepassé la limite intrinsèque du traité voulant que chacun ne puisse récolter que les ressources nécessaires pour s'assurer une subsistance convenable? - Le droit issu de traité a-t-il été éteint dans la Province du Nouveau-Brunswick par des lois édictées antérieurement à la Confédération? - L'atteinte portée au droit issu de traité par l'al. 67(1)c) de la *Loi sur les terres et forêts de la Couronne*, L.N.-B. 1980, ch. C-38.1 (la « Loi », est-elle justifiée? - La Cour d'appel a-t-elle outrepassé la compétence que lui confère le par. 839(1) du *Code criminel*, L.R.C. 1985, ch. C-46 ?

Nature of the case:

Droit constitutionnel - Droit des Autochtones - Droits issus de traités - Titre aborigène - La Cour d'appel de la Nouvelle-Écosse a-t-elle excédé les limites d'une révision en appel en annulant les déclarations de culpabilité sans indiquer une erreur de droit qu'aurait commise la cour d'appel en matière de poursuites sommaires relativement à l'applicabilité des traités de Halifax de 1760 et 1761? - La Cour d'appel a-t-elle fait une erreur de droit relativement au critère d'applicabilité des traités de Halifax de 1760 et 1761 en écartant tout examen utile de l'intention commune des parties? - Est-il exact que les traités de Halifax ne prévoient pas le droit de chasser, de pêcher, de cueillir et de commercer à des fins de subsistance? - La Cour d'appel a-t-elle excédé les limites d'une révision en appel en annulant les déclarations de culpabilité sans indiquer une erreur de droit qu'aurait commise la cour d'appel en matière de poursuites sommaires relativement à la revendication d'un titre aborigène par les intimés? - La Cour d'appel a-t-elle reformulé incorrectement le critère applicable pour déterminer l'existence d'un titre aborigène? - La Cour d'appel a-t-elle fait une erreur en appliquant le point de vue autochtone à la revendication d'un titre aborigène par les intimés? - La Cour d'appel a-t-elle fait une erreur relativement au critère d'exclusivité applicable au titre aborigène? - La Cour d'appel a-t-elle fait une erreur en supprimant l'obligation de continuité

applying proper tests for treaty rights and Aboriginal title, and in not applying the proper tests, or the tests it adopted, to the facts of the case and acquitting the Respondents, or one or more of them, on all counts, or on one or more counts - Whether the *Royal Proclamation of 1763* reserved to the Mi'kmaq the unceded, unpurchased land in Nova Scotia in 1763 - Whether the King had the authority to reserve land to the Mi'kmaq since Nova Scotia established a Legislative Assembly in 1758?

dans son examen du critère applicable pour déterminer l'existence d'un titre aborigène? - La Cour d'appel a-t-elle fait une erreur en concluant que les droits issus de traités de couper du bois, ou le titre aborigène sur les lieux de coupe, n'étaient pas éteints? - La Cour d'appel a-t-elle fait des erreurs en droit en n'appliquant pas les critères appropriés pour déterminer l'existence des droits issus de traités et du titre aborigène, en n'appliquant pas aux faits de l'espèce les critères appropriés ou les critères qu'elle a adoptés, et en acquittant tous les intimés, ou l'un ou plusieurs d'entre eux, à l'égard de tous les chefs d'accusation, ou d'un ou plusieurs de ces chefs? - La *Proclamation royale de 1763* a-t-elle réservé pour les Mi'kmaq les terres de la Nouvelle-Écosse qui n'avaient pas été cédées ou vendues en 1763? - Le Roi avait-il le pouvoir de réserver des terres pour les Mi'kmaq étant donné que la Nouvelle-Écosse avait établi une assemblée législative en 1758?

19.1.2005

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

Government of Saskatchewan

v. (29973)

Rothmans, Benson & Hedges Inc. (Sask.) (Civil) (By Leave)

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 Attorney General of Canada.

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

Brigitte Bussièrès et Hugo Jean pour l'intervenant Procureur général du Québec.

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

Cynthia Devine for the intervener Attorney General of Manitoba.

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

Written submissions only by Ruth M. DeMone for the intervener Attorney General of P.E.I.

Written submissions only by Julie Desrosiers and Robert Cunningham for the interveners Canadian Cancer Society, et al.

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

ALLOWED, REASONS TO FOLLOW / ACCUEILLI, MOTIFS À SUIVRE

The appeal from the judgment of the Court of Appeal for Saskatchewan, Number 624, 2003 SKCA 93, dated October 3, 2003, was heard this day and the following judgment was rendered:

THE CHIEF JUSTICE (orally) – We are all of the view to allow the appeal. Reasons to follow.

Nature of the case:

Constitutional law - Statutes - Statutory instruments - Whether s. 6 of *The Tobacco Control Act*, S.S. 2001, c. T-14.1, is constitutionally inoperative under the doctrine of federal legislative paramountcy, having regard to s. 30 of the *Tobacco Act*, S.C. 1997, c. 13 - Alternatively, whether it is appropriate to hold a provincial statute inoperative by virtue of federal paramountcy based on legal argument alone, without any evidence as to the actual operation of the federal and provincial laws.

L'appel interjeté contre l'arrêt de la Cour d'appel de la Saskatchewan, numéro 624, 2003 SKCA 93, en date du 3 octobre 2003, a été entendu aujourd'hui et le jugement suivant a été rendu:

[TRANSDUCTION]

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

Nature de la cause:

Droit constitutionnel - Lois - Textes réglementaires - L'article 6 de la loi intitulée *Tobacco Control Act*, S.S. 2001, ch. T-14.1, est-il constitutionnellement inopérant par l'effet de la doctrine de la prépondérance des lois fédérales, vu l'existence de l'art. 30 de la *Loi sur le tabac*, L.C. 1997, ch. 13? - Subsidièrement, convient-il de déclarer une loi provinciale inopérante en vertu de cette doctrine à partir uniquement d'arguments juridiques, sans aucune preuve quant à l'application concrète des lois fédérale et provinciale?

20.1.2005

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

North Fraser Harbour Commission, et al.

v. (29971)

Environmental Appeal Board, et al. (B.C.) (Civil) (By Leave)

Michael P. Carroll, Q.C., and Monika B. Gehlen for the appellants.

Elizabeth J. Rowbotham and Nancy E. Brown for the respondent Attorney General of British Columbia.

John R. Singleton, Q.C., and David G. Perry for the respondent BC Hydro and Power Authority.

Margot A. Venton and Robert V. Wright for the intervener Friends of the Earth et al.

ALLOWED WITH COSTS /ACCUEILLI AVEC DÉPENS

The appeal from the judgment of the Court of Appeal for British Columbia (Vancouver), Number CA027158, 2003 BCCA 436, dated July 29, 2003, was heard this day and the following judgment was rendered:

THE CHIEF JUSTICE (orally) – The appeal is allowed for the reasons of Justice Rowles, dissenting in the Court of Appeal, with costs.

Nature of the case:

Commercial law - Company law - Amalgamation - Liability of amalgamated company for polluting activities of constituent entity - Statutes - Interpretation - Retrospective and retroactive enactments- Pollution control - Whether environmental legislation with legislative purpose to make polluters pay applies retroactively - Whether Court of Appeal erred in holding that terms of amalgamation agreement precluded BC Hydro from being named as a “responsible person” under the *Waste Management Act*, R.S.B.C. c. 482 for environmental contamination caused by one of the pre-amalgamation entities.

L’appel interjeté contre l’arrêt de la Cour d’appel de la Colombie-Britannique (Vancouver), numéro CA027158, 2003 BCCA 436, en date du 29 juillet 2003, a été entendu aujourd’hui et le jugement suivant a été rendu:

[TRADUCTION]

LA JUGE EN CHEF (oralement) – L’appel est accueilli avec dépens, pour les raisons exposées par la juge Rowles, dissidente en Cour d’appel.

Nature de la cause:

Droit commercial - Droit des sociétés - Fusion - Responsabilité de la société issue d’une fusion à l’égard des activités polluantes d’une des sociétés ayant fusionné - Lois - Interprétation - Dispositions rétroactives ou rétrospectives - Lutte antipollution - Une loi environnementale visant à mettre en oeuvre le principe du pollueur-payeur s’applique-t-elle rétroactivement? - La Cour d’appel a-t-elle fait erreur en décidant que les conditions de la convention de fusion faisaient obstacle à la désignation de B.C. Hydro, en vertu de la loi intitulée *Waste Management Act*, R.S.B.C. ch. 482 (la « *WMA* »), comme [TRADUCTION] « personne responsable » d’une contamination environnementale causée par l’une des sociétés ayant fusionné.

DEADLINES: APPEALS

The Winter Session of the Supreme Court of Canada started January 10, 2005.

Pursuant to the *Supreme Court Act and Rules*, the following requirements for filing must be complied with before an appeal can be heard:

Appellant's record; appellant's factum; and appellant's book(s) of authorities must be filed within 12 weeks of the filing of the notice of appeal or 12 weeks from decision on the motion to state a constitutional question.

Respondent's record (if any); respondent's factum; and respondent's book(s) of authorities must be filed within eight weeks after the service of the appellant's documents.

Intervener's factum and intervener's book(s) of authorities, (if any), must be filed within eight weeks of the order granting leave to intervene or within 20 weeks of the filing of a notice of intervention under subrule 61(4).

Parties' condensed book, if required, must be filed on the day of hearing of the appeal.

The Registrar shall enter the appeal on a list of cases to be heard after the respondent's factum is filed or at the end of the eight-week period referred to in Rule 36.

DÉLAIS : APPELS

La session d'hiver de la Cour suprême du Canada a commencé le 10 janvier 2005.

Conformément à la *Loi sur la Cour suprême* et aux *Règles*, il faut se conformer aux exigences suivantes avant qu'un appel puisse être entendu:

Le dossier de l'appellant, son mémoire et son recueil de jurisprudence et de doctrine doivent être déposés dans les douze semaines du dépôt de l'avis d'appel ou douze semaines de la décision de la requête pour formulation d'une question constitutionnelle.

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

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

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

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

SUPREME COURT OF CANADA SCHEDULE
CALENDRIER DE LA COUR SUPREME

- 2004 -

10/06/04

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

NOVEMBER - NOVEMBRE						
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DECEMBER - DECEMBRE						
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- 2005 -

JANUARY - JANVIER						
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FEBRUARY - FÉVRIER						
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MARCH - MARS						
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APRIL - AVRIL						
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MAY - MAI						
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JUNE - JUIN						
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5	M 6	7	8	9	10	11
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25	26	27	28	29	30	

Sittings of the court:
Séances de la cour:

Motions:
Requêtes:

Holidays:
Jours fériés:

M
H

18 sitting weeks/semaines séances de la cour
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