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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Barrys Limited

Joseph S. Hutchings
Poole, Althouse, Clarke, Thompson & Thompson

v. (23877)

**Fishermen, Food and Allied Workers' Union et
al. (Nfld.)**

Sheila H. Greene
Williams, Roebbothan, McKay & Marshall

FILING DATE 1.12.1993

Daniel Michael Senner

Terrance D. Clackson
Clackson, Mochan & Veldhuis

v. (23878)

Her Majesty The Queen (Alta.)

Agent of the A.G. of Alberta

FILING DATE 1.12.1993

James Alastair Thomas

Wade E. McBride
Rendek McCrank

v. (23879)

Her Majesty The Queen (Sask.)

D. Murray Brown
Agent of the A.G. of Saskatchewan

FILING DATE 3.12.1993

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

**DEMANDES D'AUTORISATION
D'APPEL PRODUITES**

J. Paul Fletcher et al.

Robert J. Fenn
Rohmer & Fenn

v. (23699)

**The Corporation of the Township of Scugog et
al. (Ont.)**

David J. D. Sims
Sims, Mazar & Brady

FILING DATE 1.12.1993

Scottish & York Insurance Co. Ltd. et al.

John S. McNeil, Q.C.
Fellowes, McNeil

v. (23841)

**Co-Operators General Insurance Co. et al.
(Ont.)**

Peter Webb
Gardiner, Roberts

FILING DATE 2.12.1993

Ranjit Singh

v. (23883)

University of Western Ontario et al. (Ont.)

FILING DATE 3.12.1993

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

DECEMBER 8, 1993 / LE 8 DÉCEMBRE 1993

**CORAM: THE CHIEF JUSTICE LAMER AND CORY AND IACOBUCCI JJ. /
LE JUGE EN CHEF LAMER ET LES JUGES CORY ET IACOBUCCI**

John Frankie

v. (23736)

The Commissioner of Corrections (Crim.)(F.C.A.)

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Parole - Prisons - Effect of parole revocation under s. 138 of the *Corrections and Conditional Release Act* - Whether the Court of Appeal erred in distinguishing *Marcotte v. The Deputy General of Canada* [1976], 1 S.C.R. 108, which held that remission cannot be forfeited without specific statutory authorization - Whether the phrase "unexpired portion" in s. 138 of the *Act* means the remainder of the sentence including remission, rather than after giving credit for remission - Whether the Court of Appeal erred in failing to give credit for that part of the Applicant's remission earned while on suspension prior to November 1, 1992, when the *Corrections and Conditional Release Act* was proclaimed into force - Whether the failure to give credit for that part of the Applicant's remission infringed s. 7 of the *Canadian Charter of Rights and Freedoms* in that it was fundamentally unjust - Whether the Court of Appeal erred in holding that "reincarceration" in the French version of the statute could only refer to reincarceration upon revocation of parole rather than upon suspension.

PROCEDURAL HISTORY

February 25, 1993
Federal Court Trial Division (Reed J.)

Applicant's motion for a declaration that the Respondent, in calculating his statutory release date, credit to the unexpired portion of the Applicant's sentence the earned remission standing in his credit on November 1, 1992, dismissed

May 28, 1993
Federal Court of Appeal
(Isaac C.J., Stone and Linden J.J.A.)

Appeal allowed in part; cross-appeal dismissed; order below varied: statutory release date calculated from date on which Applicant's parole was revoked

November 12, 1993
Supreme Court of Canada

Application for leave to appeal filed

Anthony Fiumara

v. (23735)

The Commissioner of Corrections (Crim.)(F.C.A.)

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Parole - Prisons - Effect of parole revocation under s. 138 of the *Corrections and Conditional Release Act* - Whether the Court of Appeal erred in distinguishing *Marcotte v. The Deputy General of Canada* [1976], 1 S.C.R. 108, which held that remission cannot be forfeited without specific statutory authorization - Whether the phrase "unexpired portion" in s. 138 of the *Act* means the remainder of the sentence including remission, rather than after giving credit for remission - Whether the Court of Appeal erred in failing to give credit for that part of the Applicant's remission earned while on suspension prior to November 1, 1992, when the *Corrections and Conditional Release Act* was proclaimed into force - Whether the failure to give credit for that part of the Applicant's remission infringed s. 7 of the *Canadian Charter of Rights and Freedoms* in that it was fundamentally unjust - Whether the Court of Appeal erred in holding that "reincarceration" in the French version of the statute could only refer to reincarceration upon revocation of parole rather than upon suspension.

PROCEDURAL HISTORY

February 25, 1993
Federal Court Trial Division
(Reed J.)

Applicant's motion for a declaration that the Respondent, in calculating his statutory release date, credit to the unexpired portion of the Applicant's sentence the earned remission standing in his credit on November 1, 1992, dismissed

May 28, 1993
Federal Court of Appeal
(Isaac C.J., Stone and Linden JJ.A.)

Appeal allowed in part; cross-appeal dismissed; order below varied: statutory release date calculated from date on which Applicant's parole was revoked

November 12, 1993
Supreme Court of Canada

Application for leave to appeal filed

Her Majesty the Queen

v. (23786)

Timothy Lawrence Houlahan (Crim.)(Man.)

NATURE OF THE CASE

Criminal law - Evidence - Co-accused counsel's submission to the jury - Charge to the jury - Whether the Court of Appeal erred in granting the Respondent a new trial based on the fact that the joint trial had resulted in a miscarriage of justice to the Respondent caused by the cumulative effect of counsel for the co-accused in his address to the jury commenting unfavourably on the Respondent's failure to testify and the trial judge's error in his charge in overstating the Crown's theory.

PROCEDURAL HISTORY

February 29, 1992

Conviction: first degree murder

Court of Queen's Bench for Manitoba
(Hewak J.)

July 7, 1993
Court of Appeal for Manitoba
(Scott C.J.M., Huband and Helper J.J.A.)

Appeal against conviction allowed: new trial
ordered

October 27, 1993
Supreme Court of Canada

Application for leave to appeal filed

**National Automobile, Aerospace and Agricultural Implement
Workers Union of Canada (CAW-Canada), Local 3004**

v. (23781)

**Wolverine Tube (Canada) Inc., G.R. Barnes, Director,
Employment Standards Branch and
The Attorney General of British Columbia (B.C.)**

NATURE OF THE CASE

Labour law - Statutes - Interpretation - Collective agreement - Section 49.1 of the *Employment Standards Act*, concerning notices of termination, coming into force a week after Respondent Wolverine laid off employees with notice - Whether the majority of the Court of Appeal erred in concluding that s. 49.1 of the *Act* when it came into force was not intended to apply to an employer who had already given notice of termination pursuant to a collective agreement, even though termination had not yet been effected at the time the statute came into force - Whether the majority of the Court of Appeal erred in concluding that the Respondent Wolverine had acquired a right by giving notice under its collective agreement prior to s. 49.1 of the *Act* coming into force such as would preclude the application of the new legislation - Whether the majority of the Court of Appeal erred in concluding that s. 49.1 of the *Act* was not intended to have application to the Respondent Wolverine on the date that amendment came into force.

PROCEDURAL HISTORY

April 6, 1992
Supreme Court of British Columbia
(Vickers J.)

Application for judicial review allowed

June 11, 1993
Court of Appeal for British Columbia
(McEachern C.J. [dissenting], Hinds and Goldie
J.J.A.)

Appeal allowed

October 26, 1993
Supreme Court of Canada

Application for leave to appeal filed

Kwong Hung Chan

v. (23813)

The Minister of Employment and Immigration (F.C.A.)(B.C.)

NATURE OF THE CASE

Immigration - Statutes - Interpretation - Convention refugee status - Fear of persecution - "Particular social group" - Whether the Federal Court of Appeal's failure to follow established precedent in *Cheung* (1993), 102 D.L.R. (4th) 214, has created conflicting diverting authorities defining the parameters of "particular social group".

PROCEDURAL HISTORY

October 23, 1991 Immigration and Refugee Board (Refugee Division) (Edith Nee and H. Neufeld, members)	Determination: Convention refugee status denied
July 21, 1993 Federal Court of Appeal (Heald, Mahoney [dissenting] and Desjardins, J.J.A.)	Appeal dismissed
October 27, 1993 Supreme Court of Canada	Application for leave to appeal filed

**CORAM: LA FOREST, SOPINKA AND MAJOR JJ. /
LES JUGES LA FOREST, SOPINKA ET MAJOR**

Allahyer Sohrabian

v. (23835)

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

NATURE OF THE CASE

Criminal law - Offences - Narcotics - Conspiracy - Whether an agreement between two parties for the sale and purchase of narcotics where the seller knows that the buyer will re-sell the drugs constitutes a conspiracy to traffic in narcotics? - Section 4 of the *Narcotic Control Act*, R.S.C. 1985, c. N-1 - *R. v. Sokoloski*, [1977] 2 S.C.R. 523.

PROCEDURAL HISTORY

November 24, 1992 Ontario Court of Justice, General Division (Hamilton J.)	Conviction: Conspiracy to traffic in heroin contrary to s. 4 of the <i>Narcotic Control Act</i>
September 20, 1993 Court of Appeal for Ontario (Robins, Labrosse and Weiler J.J.A.)	Appeal against conviction dismissed
November 9, 1993 Supreme Court of Canada	Application for leave to appeal filed

Roy Kenshin Lee

v. (23831)

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

NATURE OF THE CASE

Criminal law - Procedural law - Trial - Evidence - Applicant charged with first degree murder - Witness giving statement, after his arrest on a robbery charge, to the police and testifying at trial that Applicant described how he committed the murder - Applicant's counsel, in cross-examination, attempting to question the witness as to the circumstances under which he admitted to robbery - Trial judge holding that the evidence concerning the admission of robbery was collateral - Whether the Court of Appeal erred in holding that the trial judge did not err in denying Applicant's counsel the right to call evidence to contradict a portion of the testimony of a key Crown witness on the basis that this evidence was collateral to the main issue.

PROCEDURAL HISTORY

December 12, 1989
Supreme Court of Ontario (McKeown J.)

Conviction: First degree murder

April 30, 1993
Court of Appeal for Ontario
(Dubin C.J.O., Tarnopolsky and Catzman JJ.A.)

Appeal against conviction dismissed

November 12, 1993
Supreme Court of Canada

Application for leave to appeal filed

Raymond Mercer

v. (23838)

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

NATURE OF THE CASE

Criminal law - Procedural law - Sentencing - Applicant having unprotected sexual intercourse with two women knowing of his possible infection with the HIV virus, and after receiving results confirming this - Applicant convicted on two counts of criminal negligence causing bodily harm and one count of breach of bail undertaking and sentenced to a total of 27 months imprisonment - Whether the Court of Appeal erred in finding evidence establishing aggravating factors for sentence to be proved beyond reasonable doubt - Whether the Court of Appeal erred in not directing itself to the burden of proof required to establish aggravating factors on sentence - Whether the Court of Appeal erred in failing to specifically state the acts or omissions which constituted the criminal negligence in this case - Whether the Court of Appeal erred in including a consent analysis in its determination of the aggravating actions of the Applicant - Whether the Court of Appeal erred by placing too much weight on the Applicant's silence as an aggravating factor in sentence.

PROCEDURAL HISTORY

July 10, 1992
Supreme Court of Newfoundland, Trial Division
(Kean J.)

Sentence: 12 and 15 months for two counts of
criminal negligence causing bodily harm; 3 months
for breach of bail undertaking

August 12, 1993
Court of Appeal for Newfoundland
(Goodridge C.J.N., Mahoney and Marshall J.J.A.)

Appeal from sentence allowed

November 1, 1993
Supreme Court of Canada

Application for leave to appeal filed

Bhim Singh Mayer

v. (23782)

**Bhagwan Singh Mayer, Bhora Singh Mayer, and Mhinder Singh Mayer,
and Bhagwan Singh Mayer and Bhora Singh Mayer, executors of the
will of Welbier Singh Mayer, also as Welbier S. Mayer, deceased (B.C.)**

NATURE OF THE CASE

Procedural law - Pre-trial procedure - Court - Jurisdiction - Settlement agreement - Whether the Court of Appeal erred in concluding that a misstatement of law could not give rise to a right of rescission for innocent misrepresentation - Whether the Court of Appeal erred in concluding that a Court has jurisdiction to set aside a settlement agreement that has been unfairly obtained.

PROCEDURAL HISTORY

March 22, 1991
Supreme Court of British Columbia
(Hutchison J.)

Action stayed, except for the enforcement of the
terms of settlement agreement

March 23, 1993
Court of Appeal for British Columbia
(Hinkson, Southin and Taylor J.J.A.)

Appeal dismissed

August 27, 1993
Court of Appeal for British Columbia
(Hinkson, Southin [dissenting] and Taylor J.J.A.)

Application for re-hearing dismissed

October 26, 1993
Supreme Court of Canada

Application for leave to appeal filed

Y. L.

v. (23680)

Children's Aid Society of Halifax (N.S.)

NATURE OF THE CASE

Family law - Custody - Adoption - Infants - Child welfare proceedings - Proceedings begun under the *Children's Services Act* - Numerous delays - New legislation enacted during course of proceedings - Family Court Judge ordering that child be placed in care and custody of the Respondent - Court of Appeal allowing Applicant's appeal as a result of the conclusion that the Family Court Judge was without jurisdiction - Child reapprehended - Disposition order made by subsequent Family Court Judge - Mother of the child having improved her life considerably by the time she testified in the second proceeding - Family Court Judge concluding that the improvements made by the Appellant came too late - Court of Appeal concluding that Family Court Judge made a disposition order in the best interests of the child, which remains the governing consideration under the legislation.

PROCEDURAL HISTORY

April 5, 1993 Family Court for the Province of Nova Scotia (Gass J.)	Order for permanent care and custody
June 18, 1993 Nova Scotia Court of Appeal (Jones, Freeman and Pugsley JJ.A.)	Appeal dismissed
September 8, 1993 Supreme Court of Canada	Incomplete application for leave to appeal filed

The Government of Manitoba

v. (23770)

A. J.

and

**Douglas Calmain and Karyn June Powell as the Executors and Trustees of the
Estate of June Iris Cairnie and W. D. (Man.)**

NATURE OF THE CASE

Procedural law - Actions - Appeals - Limitations - Statutes - Interpretation - Application for leave to bring action that would otherwise be barred by reason of limitation periods - Criteria for extension of time - Impact of other legislation - Effect of limitation period applying to representatives of an estate contained in the *Trustee Act* - Whether the limitation period in *Public Officers Act* prevents the commencement or continuation of proceedings against the Government of Manitoba - Did Court of Appeal err in substituting its discretion for that of the chambers judge - Was Court of Appeal correct in its reasons on the issue of prejudice - Reasons of Court of Appeal on motion to settle terms of Certificate of Judgment.

PROCEDURAL HISTORY

October 19, 1992 Court of Queen's Bench (Scollin J.)	Respondent's application for order allowing her to bring action out of time dismissed
June 29, 1993 Court of Appeal for Manitoba (Scott C.J.M. and Philp and Kroft JJ.A.)	Appeal allowed in part: Respondent allowed to commence action against Applicant
September 16, 1993 Court of Appeal for Manitoba (Scott C.J.M. and Philp and Kroft JJ.A.)	Supplementary reasons
October 19, 1993 Supreme Court of Canada	Application for leave to appeal filed
November 8, 1993 Supreme Court of Canada	Application for leave to cross-appeal filed

**CORAM: L'HEUREUX-DUBÉ, GONTHIER AND McLACHLIN JJ. /
LES JUGES L'HEUREUX-DUBÉ, GONTHIER ET McLACHLIN**

Robert Cormier

c. (23847)

Sa Majesté la Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Défense - Preuve - Procès - Jury - Défense d'intoxication volontaire - Contre-preuve - Preuve de faits similaires - Directives au jury - La défense d'intoxication volontaire en droit criminel canadien porte-t-elle sur la capacité de l'accusé de former une intention coupable, ou plutôt sur l'existence réelle de cette intention coupable? À quelles conditions une Cour d'appel, surtout saisie d'une cause de meurtre, doit-elle reconvoquer les parties lorsqu'elle fonde sa décision sur des considérations non discutées à l'audience, notamment sur des jugements rendus depuis?

HISTORIQUE PROCÉDURAL

Le 3 décembre 1991
Cour supérieure du Québec
(Desjardins j.c.s.)

Condamnation: Meurtre au second degré

Le 20 septembre 1993
Cour d'appel du Québec
(Proulx, Rousseau-Houle et Delisle jj.c.a.)

Appel rejeté

Le 12 novembre 1993
Cour suprême du Canada

Avis d'autorisation d'appel déposée

MS.

v. (23848)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Offences - Interpretation - Procedural law - Pre-trial procedure - Did information disclose offence known to law? - Did Court of Appeal err in deciding that the word "child" in s. 155(1) of the *Criminal Code* means the relationship between a father and adult daughter? - Whether Court of Appeal erred in failing to hear the constitutional issue that s. 155(1) of the *Criminal Code* violates the applicant's rights under s. 6 of the *Canadian Charter of Rights and Freedoms*, is vague and imprecise regarding the word "child" - Whether Court of Appeal erred in failing to hear the constitutional issues.

PROCEDURAL HISTORY

April 26, 1993
Supreme Court of British Columbia
(Trainor J.)

Application for order of *certiorari* dismissed

September 22, 1993
Court of Appeal for British Columbia
(Hutcheon, MacFarlane and Southin JJ.A.)

Appeal dismissed

November 15, 1993
Supreme Court of Canada

Application for leave to appeal filed

Les Services M.L. Marengère Inc.

c. (23681)

Les copropriétaires de la copropriété La Caserne & Als,

et

Registraire de la division d'enregistrement de Montréal (Qué.)

NATURE DE LA CAUSE

Code civil - Droit des biens - Biens immeubles - Titres de propriété - Interprétation - Immeubles en copropriété - En édictant l'article 2168 du *Code civil du Bas-Canada*, le législateur a-t-il voulu que le cadastre constitue en soi le titre de propriété du propriétaire foncier ou une simple description sans relation avec la contenance? - Les actes juridiques posés par le constructeur, vendeur, déclarant et premier conseil d'administration d'une copropriété immobilière lient-ils les copropriétaires et les conseils d'administration ultérieurs? - Interprétation des articles 441w, 441x et 2168 du *Code civil du Bas-Canada*.

HISTORIQUE PROCÉDURAL

Le 16 octobre 1991
Cour supérieure du Québec
(Marquis J.C.S.)

Action de la demanderesse en jugement déclaratoire
accueillie en partie
Demande reconventionnelle des intimés rejetée

Le 2 juin 1993
Cour d'appel du Québec (Beauregard, Gendreau et
Deschamps JJ.C.A.)

Appel des intimés accueilli
Jugement de première instance cassé

Le 21 septembre 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

L.M.

c. (23829)

L.L. (Qué.)

NATURE DE LA CAUSE

Droit de la famille - Aliments - Pensions - Partage des biens - Contribution financière au soutien d'un ex-époux à même la part du patrimoine familial - La Cour supérieure et la Cour d'appel du Québec ont-elles erré en obligeant une personne de plus de 65 ans, bénéficiaire du supplément de revenu garanti en raison de son indigence économique, à payer des aliments pour subvenir aux besoins d'une autre personne elle-même dans l'indigence? - La Cour supérieure et la Cour d'appel du Québec ont-elles erré en incluant, dans les ressources financières d'une partie, sa part du patrimoine familial alors que cet actif a déjà été partagé entre les deux époux?

HISTORIQUE PROCÉDURAL

Le 19 mars 1993
Cour supérieure du Québec
(Melançon J.C.S.)

Requête de l'intimée pour rétablir et augmenter la pension alimentaire accueillie en partie

Le 16 septembre 1993
Cour d'appel du Québec
(McCarthy, Proulx et Otis, J.J.C.A.)

Appel du demandeur rejeté

Le 12 novembre 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Joseph Friedman

c. (23844)

Le Sous-Ministre du Revenu du Québec (Qué.)

NATURE DE LA CAUSE

Droit fiscal - Procédure - Appel - Compétence - Preuve - Traitement fiscal d'une commission touchée par un agent d'assurance sur une police d'assurance-vie achetée pour son compte - La Cour d'appel a-t-elle erré en rendant un jugement dont le dispositif n'en supporte pas la conclusion? - L'opinion de la Cour d'appel à l'effet que le juge de première instance a erré en droit quant aux conséquences juridiques qu'il a tirées des faits permet-elle à celle-ci de modifier cette même détermination des faits? - En matière fiscale, le fardeau de preuve repose-t-il sur les épaules d'un contribuable à toutes les étapes et face à toute nouvelle prétention invoquée par le cotisant?

HISTORIQUE PROCÉDURAL

Le 5 août 1987
Cour provinciale du Québec
(Lamoureux j.c.p.)

Appel interjeté à l'encontre d'un avis de cotisation rejeté

Le 15 septembre 1993
Cour d'appel du Québec
(Beauregard, Gendreau et
Deschamps jj.c.a.)

Pourvoi rejeté

Le 10 novembre 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Norman Arthur Gold

v. (23817)

Gwendolyn Joan Gold (B.C.)

NATURE OF THE CASE

Family law - *Canadian Charter of Rights and Freedoms* - Division of property - Divorce - Marriage agreement - Marriage agreement held to be unfair within the meaning of s. 51 of the *Family Relations Act*, R.S.B.C. 1979, c. 121 - Whether a marriage agreement may be set aside by the Court where it finds that the agreement is not unconscionable and that no undue influence was used to secure its execution - Whether an appellate Court may interfere with the exercise of discretion by a trial Court where that discretion was not exercised according to law - Whether a party not properly able to understand the Court's proceedings due to deafness or hearing impairment has been denied its rights in breach of s. 14 of the *Charter of Rights and Freedoms*.

PROCEDURAL HISTORY

July 10, 1991
Supreme Court of British Columbia
(Prowse J.)

Respondent's action to have marriage agreement varied and to have family assets divided pursuant to the *Family Relations Act* allowed

September 1, 1993
Court of Appeal for British Columbia
(McEachern C.J., Legg and Wood JJ.A.)

Appeal dismissed

October 29, 1993
Supreme Court of Canada

Application for leave to appeal filed

**ORAL HEARING ON APPLICATIONS
FOR LEAVE**

**AUDIENCE SUR LES DEMANDES
D'AUTORISATION**

DECEMBER 6, 1993 / LE 6 DÉCEMBRE 1993

**CORAM: LA FOREST, L'HEUREUX-DUBÉ, SOPINKA, McLACHLIN AND MAJOR JJ. /
LES JUGES LA FOREST, L'HEUREUX-DUBÉ, SOPINKA, McLACHLIN ET MAJOR**

**APPLICATIONS FOR LEAVE TO APPEAL AND CROSS-APPEAL /
DEMANDES D'AUTORISATION D'APPEL ET APPEL INCIDENT**

Her Majesty The Queen

Donna Miller, Q.C., for the applicant.

v. (23479)

Brent Blair Brown (Crim.)(Man.)

Bruce Bonney, for the respondent.

GRANTED / ACCORDÉE

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Statutes - Interpretation - Offenses - Sentencing - Respondent convicted of robbery, wearing a disguise and using a firearm while committing robbery - Court of Appeal allowing appeal on the basis that s. 85(2) of the *Criminal Code* contravenes s. 12 of the *Charter* - Whether the Court of Appeal erred in declaring that the words following "or series of events" in s. 85(2) of the *Criminal Code* are contrary to s. 12 of the *Charter* and are not saved by s. 1 - Whether Court of Appeal misconstrued the scope of s. 85 of the *Criminal Code* as interpreted in *R. v. Covin*, [1983] 1 S.C.R. 725, and *R. v. Krug*, [1985] 2 S.C.R. 255 - Whether the Court of Appeal misapplied the hypothesis of the "small offender" in determining that s. 85(2) of the *Criminal Code* limited the proscription against cruel and unusual punishment in s. 12 of the *Charter*.

PROCEDURAL HISTORY

April 17, 1991
Court of Queen's Bench of Manitoba
(Barkman J.)

Convictions: Robbery, wearing a disguise while committing robbery and use of a firearm during robbery

January 28, 1993
Court of Appeal for Manitoba
(Scott C.J.M., Philp and Helper J.J.A.)

Appeal against conviction dismissed; Appeal against sentence allowed in part; Declaration that words following "or series of events" in s. 85(2) of the *Criminal Code* are of no force and effect

April 21, 1993
Supreme Court of Canada

Application for leave to appeal filed

November 24, 1993
Supreme Court of Canada

Application for leave to cross -appeal filed

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

DECEMBER 9, 1993 / LE 9 DÉCEMBRE 1993

23657 LESLIE A. MULHOLLAND v. HER MAJESTY THE QUEEN (Ont.) (F.C.A.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier JJ.

The application for extension of time is granted and the application for leave to appeal is dismissed without costs.

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée sans dépens.

NATURE OF THE CASE

Taxation - Statutes - Interpretation - Assessment - Procedural law - Appeal - Judicial Review - Deduction - Third party payments made in compliance with a separation agreement - Whether the Federal Court of Appeal erred in law in judging that the Applicant had no arguable case for appeal.

23393 MB.B. c. SUZANNE LAROSE, J.H.V., M.G.B. ET M.E.B. et COMMISSION DE LA PROTECTION DES DROITS DE LA JEUNESSE (Qué.)

CORAM: Les juges L'Heureux-Dubé, Sopinka et Gonthier

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée avec dépens.

The application for extension of time is granted and the application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit de la famille - Garde - Mineurs - Appels - Preuve - Protection de la jeunesse - Déclaration en vertu de l'art. 38 de la *Loi sur la protection de la jeunesse* que la sécurité des enfants est compromise - Le juge de première instance a-t-elle erré en soumettant le demandeur à un double péril, contrevenant ainsi à l'article 7 de la *Charte canadienne des droits et libertés*? - Le juge de première instance a-t-elle erré en recevant la preuve par oui-dire des déclarations antérieures des enfants et, subsidiairement, en donnant foi à cette preuve alors qu'elle n'avait pas la force probante requise?

23648 JOSEPH MERCIER RÉMY c. SA MAJESTÉ LA REINE (Crim.) (Qué.)

CORAM: Les juges L'Heureux-Dubé, Sopinka et Gonthier

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit criminel - *Charte canadienne des droits et libertés* - Infractions - Interprétation - Proférer des menaces de mort - La Cour d'appel du Québec a-t-elle erré en droit dans l'interprétation du mot "quelqu'un" de l'art. 264.1(1)a) du *Code criminel*? - La Cour d'appel a-t-elle erré en droit en omettant d'interpréter restrictivement l'art. 264.1(1)a) du *C. cr.* qui limite la liberté d'expression garantie à l'al. 2b) de la *Charte canadienne*? - La Cour d'appel a-t-elle erré en droit en excluant de la protection de l'al. 2b) de la *Charte canadienne* la déclaration faite par le demandeur concernant les relations entre les Noirs et les policiers au Canada? - Interprétation de l'arrêt *R. c. McCraw*, [1991] 3 R.C.S. 72.

23704 La Corporation Eagle Lumber Limitée c. Bock & Tétreau Inc. (Qué.)

CORAM: Les juges L'Heureux-Dubé, Sopinka et Gonthier

La demande d'autorisation d'appel est rejetée avec dépens.

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit commercial - Code civil - Contrats - Interprétation - Véritable intention des parties - Voile corporatif - Conclusion d'une convention de consultation pour éteindre une dette résultant de la réorganisation et du partage d'entreprises - Exception d'inexécution - La Cour d'appel du Québec a-t-elle erré en droit en ne tenant pas compte des obligations assumées par l'intimée alors que rien ne le lui permettait et que la convention de consultation constituait la pierre angulaire de la réclamation? - La Cour d'appel a-t-elle erré en droit en déplaçant le cadre de la convention pour examiner la totalité des opérations entre les frères Bock, personnes physiques qui n'étaient pas parties au litige? - La Cour d'appel a-t-elle erré en droit en levant le voile corporatif de sa propre initiative et en condamnant la demanderesse à payer des sommes qui seraient dues par son actionnaire?

23595 ERNEST ROY FRENCH v. HER MAJESTY THE QUEEN (Crim.)(Ont.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Procedural law - Evidence - Whether the Court of Appeal erred in holding that the evidence of prior acts of misconduct of the Applicant were properly admitted by the trial judge as similar fact evidence where there was no *voir dire* into whether the evidence was admissible as similar act evidence.

23691 MOUNIF EL-ZEIN c. SA MAJESTÉ LA REINE (Crim.) (Qué.)

CORAM: Les juges L'Heureux-Dubé, Sopinka et Gonthier

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

NATURE DE LA CAUSE

Droit criminel - Stupéfiants - Preuve - Police - Écoute électronique - Provocation policière - La Cour d'appel a-t-elle erré en rejetant l'appel interjeté par le demandeur? - *R. c. Mack*, [1988] 2 R.C.S. 903 - *R. c. Duarte*, [1990] 1 R.C.S. 30.

23603 WAYNE CLARENCE BADGER v. HER MAJESTY THE QUEEN - and between - ERNEST FRANCIS OMINAYAK v. HER MAJESTY THE QUEEN - and between - LEROY STEVEN KIYAWASEW v. HER MAJESTY THE QUEEN (Alta.)

CORAM: The Chief Justice and Sopinka and McLachlin JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Indians - Statutes - Interpretation - Hunting rights - Right of access to private lands for hunting purposes - Treaty Indians hunting for food charged with offences under the *Wildlife Act*, S.A. 1984, c. W-9.1 - Whether treaty Indians in Alberta have a constitutionally protected right to hunt on privately owned land which are not in actual use or occupied at the time of the offence - Whether all Treaty No. 8 hunting rights were extinguished by the *Natural Resources Transfer Agreement, 1930* - *R. v. Horseman*, [1990] 1 S.C.R. 901, *R. v. Sioui*, [1990] 1 S.C.R. 1025, and *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

23641 COLLEGE OF PHYSICIANS and SURGEONS OF ONTARIO v. Dr. LAL BOODOOSINGH (Ont.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed with costs.

La demande d'autorisation d'appel est rejetée avec dépens.

NATURE OF THE CASE

Administrative law - Physicians and surgeons - Law of professions - Professional misconduct - Psychiatrist accused of having engaged in sexual activity with patient - Applicant finding Respondent guilty of professional misconduct and revoking his license to practice - Courts reducing penalty - Can a patient consent to sexual relationship with a therapist? - Circumstances under which an appellate court can interfere with a penalty imposed by professional disciplinary tribunal.

23621THE HONOURABLE JUSTICE K. PETER RICHARD, in his capacity as Commissioner under the *Public Inquiries Act*, and as a Special Examiner under the *Coal Mines Regulation Act* appointed pursuant to Order-in-Council No. 952-504, dated the 15th day of May, 1992 - v. - UNITED STEELWORKERS OF AMERICA, Local 9332, and GERALD J. PHILLIPS, ROGER PARRY, GLYNN JONES, ARNOLD SMITH, ROBERT PARRY, BRIAN PALMER and KEVIN ATHERTON and THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the Queen in the Right of Nova Scotia, and WESTRAY FAMILIES' GROUP, and TOWN OF STELLARTON - and between - GERALD J. PHILLIPS, ROGER PARTY, GLYNN JONES, ARNOLD SMITH, ROBERT PARRY, BRIAN PALMER and KEVIN ATHERTON - v. - THE HONOURABLE JUSTICE K. PETER RICHARD, in his capacity as Commissioner under the *Public Inquiries Act*, and as a Special Examiner under the *Coal Mines Regulation Act* appointed pursuant to Order-in-Council No. 952-504, dated the 15th Day of May, 1992, and UNITED STEELWORKERS OF AMERICA, Local 9332, and THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the Queen in the Right of Nova Scotia, and WESTRAY FAMILIES' GROUP, and TOWN OF STELLARTON (N.S.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted. The application for leave to cross-appeal is dismissed.

La demande d'autorisation d'appel est accordée. La demande d'autorisation d'appel-incident est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Administrative law - Public inquiries - Evidence - Right to silence - Individual respondents, managerial and supervisory employees at the Westray Mine, facing quasi-criminal charges and criminal investigation following underground mining accident - Would their *Charter* rights in relation to the Westray Mine Public Inquiry be adequately protected by the right of a criminal accused to refuse to testify before a provincial inquiry - Would the Inquiry infringe their right to silence under s. 7 of the *Charter* or their right to a fair trial guaranteed by s. 11(d) of the *Charter*? - That the Appeal Division erred in law in granting a stay of the Westray Mine Public Inquiry.

23675HER MAJESTY THE QUEEN v. JERRY ANDREW GODIN (Crim.) (N.B.)

CORAM: La Forest, Cory and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Procedural law - Appeals - Offenses - Provincial Court of New Brunswick convicting Respondent of aggravated assault pursuant to s. 268(2) of the *Criminal Code* - Whether the majority of the Court of Appeal erred in requiring the Applicant to prove a subjective foresight to wound, maim, disfigure or endanger life in order to substantiate a conviction for aggravated assault - Whether the majority of the Court of Appeal erred in holding that the trial judge applied the wrong standard of proof at the trial.

23546 LES ENTREPRISES FORESTIÈRES J.R. INC. c. LA RÉUNION EUROPÉENNE, LE LANGUEDOC, CIAM, CAMAT, LE CONTINENT ET LA PROTECTRICE (Qué.)

CORAM: Les juges L'Heureux-Dubé, Sopinka et Gonthier

La demande d'autorisation d'appel est rejetée avec dépens.

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Code civil - Assurance - Contrats - Interprétation - La demanderesse réclame 314 500\$ de ses assureurs à la suite d'un incendie qui a détruit l'une de ses abatteuses - Interprétation de la clause de la proposition d'assurance "... tous les items sont munis de gicleurs automatiques et de deux extincteurs manuels" et de la clause 4 (k) du contrat d'assurance: "L'assuré garantit que toute machinerie lourde est munie d'un système automatique et pressurisé d'extinction d'incendie avec système auxiliaire de déclenchement manuel..." - La demanderesse affirme que décider que la condition 4(k) de la police constitue un engagement formel dont le non-respect entraîne la suspension de la garantie aux termes de l'article 2489 C.c., c'est contrecarrer les objectifs de la réforme du droit civil des assurances sans avoir considéré le caractère, le contenu et l'interaction des articles 2485, 2486, 2488, 2489 et 2490 C.c.

23594 Dr. SAMUEL B. NESBITT v. THE MANITOBA HUMAN RIGHTS COMMISSION and DONALD KNIGHT (Man.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Procedural law - Labour law - Appeals - Two complaints made against the Applicant alleging that he contravened ss. 14(1) and 19 of the *Human Rights Code*, S.M. 1987-88, c. 45 - Applicant's application for an Order prohibiting the Respondents from adjudicating on the ground that his rights under ss. 7 and 11(b) of the *Charter* had been violated by the Respondent Commission's delay in proceeding with the complaints granted - Whether the *Charter* applies to the *Human Rights Act* - Whether the fact that the Court of Appeal in choosing not to follow the decisions in *Kodellas v. Saskatchewan Human Rights Commission* (1989), 5 W.W.R. 1 (Sask. C.A.), and *Harvey v. Law Society (Newfoundland)* (1992), 2 Admin. L.R. (2d) 306 (S.C.T.D.), creates a split of jurisprudence which can only be resolved by the Supreme Court of Canada - Whether the effect of the decision of the Court of Appeal is to permit the Human Rights Commission of Manitoba and any other jurisdiction to take extraordinary amounts of time and delay without a remedy under the *Charter*.

23615 GEORGE WELDON ADAMS v. HER MAJESTY THE QUEEN (Crim.)(Qué.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Constitutional law - Criminal law - Indians - Fisheries - Waters and watercourses - Indian treaties - Whether the Mohawks have an aboriginal right to fish in the St. Lawrence River - Whether the *Royal Proclamation* of 1763 confirmed either or both the aboriginal title or the aboriginal right to hunt and fish in the lands and waters in the Old Colony of Québec, particularly in lands and waters adjacent to the Akwasasne Reserves in Québec and Ontario - What are the appropriate tests to establish existing aboriginal title or an aboriginal right to fish and whether such tests are different for territory once claimed by the French Crown - Whether extinguishment of aboriginal title is analogous to expropriation of private property rights and particularly whether aboriginal title or right can be extinguished by the raising of water levels in the St. Lawrence River pursuant to authorizations to construct the Beauharnois canal - Whether in the case of treaties or surrenders respecting lands, only rights of Aboriginal peoples specifically reserved therein are not extinguished - Whether any surrender of aboriginal title to lands in a reserve extinguishes the aboriginal right to fish in waters adjacent to a reserve.

23629 LOUISE GOYET c. GILLES BEAULIEU (Qué.)

CORAM: Les juges L'Heureux-Dubé, Sopinka et Gonthier

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Droit de la famille - Divorce - Jugements et ordonnances - Pensions alimentaire - Garde - Convention valide et exécutoire entre les parties concernant mesures accessoires - Intimé présentant requête pour changement de garde et annulation de pension alimentaire - Cour supérieure du Québec confiant garde physique à l'intimé - Cour d'appel annulant la pension alimentaire pour l'enfant mineur et diminuant la pension alimentaire de la demanderesse - Conditions dans lesquelles une union de fait subséquente à un divorce permet l'ouverture à une ordonnance modificative en vertu de l'art. 17(1) de la *Loi sur le divorce* lorsque les ex-époux ont convenu par convention valide et exécutoire des modalités pouvant donner ouverture à la modification de leurs obligations alimentaires - La Cour d'appel a-t-elle compétence pour réduire les obligations alimentaires contenues à une convention valide et exécutoire sans que le juge de première instance ait commis une erreur grave en appréciant les dispositions de la convention et en ayant statué qu'aucun changement ne soit intervenu dans la situation des ex-époux - Une convention valide et exécutoire sur mesures accessoires assurant une stabilité économique entre les ex-époux a-t-elle autorité de la chose jugée si aucun changement n'est intervenu?

23613DORNE JAMES PRIMEAU v. HER MAJESTY THE QUEEN (Crim.)(Sask.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Pre-trial procedure - Preliminary hearing - Right to silence - Order under s. 24(1) of the *Charter* that the Applicant not be compelled to testify at the preliminary hearing of another accused - Appeal of an interlocutory order - Violation of the Applicant's rights under s. 7 of the *Charter* - Whether an appellate court has jurisdiction to consider an appeal of an interlocutory order to quash a subpoena for a witness at a preliminary hearing - Extent to which a person accused of a criminal offence is able to rely upon the right to silence, and his right not to be compelled to testify in relation to the criminal matter for which he stands charged - Whether an accused can be compelled by the Crown, against his will to provide sworn evidence subject to examination in chief and cross-examination regarding his knowledge or involvement in criminal activity for which he stands charged, thereby force him to incriminate himself and be compelled to breach his right to silence prior to his own trial being concluded on the identical allegation of criminal activity.

23753VILLE DE BEAUPORT c. CAISSE POPULAIRE DE CHARLESBOURG (Qué.)

CORAM: Les juges L'Heureux-Dubé, Gonthier et McLachlin

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

NATURE DE LA CAUSE

Droit municipal - Municipalités - Droit fiscal - Législation - Interprétation - Procédure - Recours - Prescription - Une loi générale peut-elle abroger une loi spéciale antérieure? - La Cour d'appel a-t-elle erré en décidant que toute taxe foncière, générale ou spéciale, devait faire l'objet d'un règlement à chaque année, et donc en ne reconnaissant pas la pérennité des règlements prévue dans les lois? - La Cour d'appel a-t-elle erré en déclarant que l'annulation du rôle de perception n'était pas un prérequis à l'action en répétition de l'indu? - La Cour d'appel a-t-elle erré en concluant que la prescription décrétée par l'art. 172 de la *Loi sur la fiscalité municipale*, L.R.Q. 1977, ch. F-2.1, devait se limiter à la cassation du rôle de perception par opposition à une déclaration d'inexistence ou d'inopposabilité d'un règlement? - Art. 13 de la *Loi regroupant certaines municipalités de la région de Québec*, L.Q. 1975, ch. 91 - Art. 486 de la *Loi sur les cités et villes*, L.R.Q. 1977, ch. C-19.

JUDGMENTS ON APPLICATIONS
FOR LEAVE

JUGEMENTS RENDUS SUR LES DEMANDES
D'AUTORISATION

MOTIONS

REQUÊTES

3.12.1993

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the appellant's factum

Requête en prorogation du délai de signification et de production du mémoire de l'appelant

Herbert Raymond Webster

v. (23085)

British Columbia Hydro and Power Authority (B.C.)

GRANTED / ACCORDÉE Time extended to December 22, 1993.

3.12.1993

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the case on appeal and the appellant's factum

Requête en prorogation du délai de signification et de production du dossier d'appel et du mémoire de l'appelante

Her Majesty The Queen

v. (23384)

Robert Lorne Heywood (B.C.)

GRANTED / ACCORDÉE Time extended to December 10, 1993.

29.11.1993

Before / Devant: L'HEUREUX-DUBÉ J.

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

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

Tom Strickland

v. (23864)

Ralph Ermel (Sask.)

GRANTED / ACCORDÉE Time extended to December 8, 1993.

6.12.1993

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the appellant's factum

Requête en prorogation du délai de signification et de production du mémoire de l'appelante

Mary Tataryn

v. (23398)

Edward James Tataryn (B.C.)

GRANTED / ACCORDÉE Time extended to December 6, 1993.

6.12.1993

Before / Devant: THE 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 production de la réponse de l'intimé

Bhim Singh Mayer

v. (23782)

Bhagwan Singh Mayer et al. (B.C.)

GRANTED / ACCORDÉE Time extended to December 6, 1993.

3.12.1993

CORAM:La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Major JJ.

Motion to file respondent's factum

Requête pour produire le mémoire de l'intimé

Karl Thomas Galaske, an infant suing by his Guardian ad Litem Elizabeth Moser

Peter D. Messner, Q.C., for the motion.

v. (23109)

Romano F. Giusti, for the appellant.

Erich Stauffer, et al. (B.C.)

Avon M. Mersey and Michael J. Sobkin, for the respondent.

DENIED WITH COSTS / REFUSÉE AVEC DÉPENS

6.12.1993

CORAM: La Forest, L'Heureux-Dubé, Sopinka, McLachlin and Major JJ.

SHOW CAUSE

AUDIENCE DE JUSTIFICATION

Ameer Shakur

Nils Jensen, for the appellant.

v. (23639)

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

Ian Smith, for the respondent.

and between

Mohammed Shameer

Connie D'Angelo, for the appellant.

v. (23640)

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

Ian Smith, for the respondent.

QUASHED / ANNULÉE

7.12.1993

CORAM: La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Gory, McLachlin and Iacobucci JJ.

Motion to adduce further evidence

Requête pour produire d'autres éléments de preuve

C.M.

Marvin M. Bernstein, for the motion.

v. (23644)

Catholic Children's Aid Society of Metropolitan
Toronto et al. (Ont.)

Ian R. Mang and T. Michelle O'Connor, for the
appellant.

Marvin M. Bernstein and Allan S. Maclure, for the
respondent Catholic Children's Aid Society.

Elaine Freedman, Q.C. and Catherine Bellinger, for
the respondent Official Guardian.

RESERVED / EN DÉLIBÉRÉ

8.12.1993

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai de signification et de production de la réplique du requérant

Michael Schemmann

v. (23848)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE Time extended to December 10, 1993.

8.12.1993

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file the appellant's factum

Requête en prorogation du délai de signification et de production du mémoire de l'appelante

The Tseshah, an Indian Band et al.

v. (23234)

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

GRANTED / ACCORDÉE Time extended to February 1, 1994.

8.12.1993

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai de production du mémoire de l'intimée

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

Henri Daviault

c. (23435)

Sa Majesté La Reine (Qué.)

GRANTED / ACCORDÉE Délai prorogé au 17 décembre 1993.

8.12.1993

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to serve and
file an application for leave to cross-appeal**

**Requête en prorogation du délai de signification
et de production de la demande d'autorisation
d'appel incident**

Delgamuukw et al.

v. (23799)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE Time extended to December 31, 1993.

**NOTICES OF APPEAL FILED SINCE
LAST ISSUE**

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

3.12.1993

Amanda Louise Thomson

v. (23794)

Paul Thomson (Man.)

6.12.1993

Leonard Charles Watson

v. (23875)

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

AS OF RIGHT

3.12.1993

Her Majesty The Queen

v. (23876)

Darryl Gordon Park (Crim.)(Alta.)

AS OF RIGHT

8.12.1993

Daniel Boersma

v. (23889)

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

AS OF RIGHT

**NOTICES OF INTERVENTION
FILED SINCE LAST ISSUE**

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

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

Attorney General of Ontario

IN/DANS: **RJR-MacDonald Inc.**

v. (23460)

The Attorney General of Canada

and between

Imperial Tobacco Ltd.

v.

Attorney General of Canada (Que.)

**NOTICES OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

**AVIS DE DÉSISTEMENT PRODUITS
DEPUIS LA DERNIÈRE PARUTION**

2.12.1993

KSH Construction Inc. et al.

v. (23816)

Le Cabinet Ogilvy Renault et al. (Qué.)

(requête)

9.12.1993

Edward Shymanski

v. (23480)

**Her Majesty The Queen, on the information of
Constable J. Brian Hercina (Sask.)**

(motion)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

03.12.1993

CORAM:La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Major JJ.

**Karl Thomas Galaske, an infant suing by his
Guardian ad Litem Elizabeth Moser**

Romano F. Giusti, for the appellant.

v. (23109)

Erich Stauffer, et al. (B.C.)

Avon M. Mersey and Michael J. Sobkin, for the
respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Torts - Negligence - Motor vehicles - Contributory
negligence - Liability - Principle of duty -Duty of care
- Duty of care between driver and child passenger
with respect to the use of a seat belt.

Nature de la cause:

Responsabilité délictuelle - Négligence - Véhicules
automobiles - Négligence contributive
-Responsabilité - Principe de l'obligation -
Obligation de diligence - Obligation de diligence du
conducteur envers le passager en bas âge
relativement à l'utilisation de la ceinture de sécurité.

03.12.1993

CORAM:La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Major JJ.

Her Majesty The Queen

Wayne Gorman, for the appellant.

v. (23566)

Eugene Paul Power (Crim.)(Nfld.)

David Orr, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Procedural law - Statutes -
Interpretation - Evidence - Appeals - Respondent
charged with one count of impaired driving causing
death and two counts of impaired driving causing
bodily harm - Supreme Court of Newfoundland, Trial
Division, concluding that Respondent's rights under s.
10 of the *Charter* were violated and excluding
breathalyser evidence - Whether the majority of the
Court of Appeal, having concluded that the trial judge

Nature de la cause:

Droit criminel - Droit de la procédure - Lois -
Interprétation - Preuve - Appels - L'intimé a été
poursuivi relativement à une accusation de conduite
avec facultés affaiblies ayant causé la mort et à deux
accusations de conduite avec facultés affaiblies
ayant causé des lésions corporelles - La Section de
première instance de la Cour suprême de
Terre-Neuve a jugé qu'il y avait eu violation des
droits garantis à l'intimé par l'art. 10 de la *Charte* et a

erred in ruling inadmissible evidence which was highly probative, erred in holding that s. 686(4) of the *Criminal Code* provides a Court of Appeal with a discretion as to whether or not to order a new trial in such circumstances. April 6, 1993.

écarté la preuve fondée sur l'alcootest - En concluant, à la majorité, que le juge de première instance avait commis une erreur en considérant comme inadmissibles des éléments de preuve qui étaient fort probants, la Cour d'appel a-t-elle commis une erreur en statuant que le par. 686(4) du *Code criminel* confère à une cour d'appel un pouvoir discrétionnaire quant à savoir s'il faut ordonner ou non la tenue d'un nouveau procès dans ces circonstances.

6.12.1993

CORAM:La Forest, L'Heureux-Dubé, Sopinka, Gonthier, McLachlin, Iacobucci and Major JJ.

Robert L. Hodgkinson

Earl A. Cherniak, Q.C., Gregory T. Walsh and Kirk Stevens, for the appellant.

v. (23033)

David L. Simms & Jerry S. Waldman, carrying on business as Simms & Waldman, et al. (B.C.)

Glenn A. Urquhart and Arthur M. Grant, for the respondents.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Commercial law - Law of professions - Contracts - Stockbrokers - Fiduciary duty - Applicant stockbroker investing funds on the advice of a chartered accountant - Whether the Court of Appeal erred in extending the majority decision in *International Corona Resources Ltd. v. Lac Minerals Ltd.*, [1989] 2 S.C.R. 574 to curtail the circumstances in which a fiduciary duty will be owed by professional advisors to clients - Whether the Court of Appeal erred in failing to hold that financial advisors who induce clients to invest in self interested transactions are liable for losses resulting from a failing market.

Nature de la cause:

Droit commercial - Droit des professions - Contrats - Courtiers en valeurs mobilières - Obligation fiduciaire - Le courtier demandeur a investi des fonds suivant les conseils d'un comptable agréé - La Cour d'appel a-t-elle commis une erreur lorsqu'elle a poussé plus loin la décision de la majorité dans *International Corona Resources Ltd. c. Lac Minerals Ltd.*, [1989] 2 R.C.S. 574 pour restreindre les circonstances dans lesquelles des conseillers professionnels auront une obligation fiduciaire envers leurs clients - La Cour d'appel a-t-elle commis une erreur lorsqu'elle n'a pas conclu que des conseillers financiers qui incitent des clients à investir dans des opérations dans lesquelles ils sont eux-mêmes intéressés sont responsables des pertes découlant d'un marché en sérieuse difficulté.

7.12.1993

CORAM:La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Gory, McLachlin and Iacobucci JJ.

C.M.

v. (23644)

**Catholic Children's Aid Society of Metropolitan
Toronto et al. (Ont.)**

Ian R. Mang and T. Michelle O'Connor, for the
appellant.

Marvin M. Bernstein and Allan S. Maclure, for the
respondent Catholic Children's Aid Society.

Elaine Freedman, Q.C. and Catherine Bellinger, for
the respondent Official Guardian.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Family law - *Canadian Charter of Rights and
Freedoms* - Custody - Adoption - Status review
hearing - Crown wardship order made with respect to
the Appellant's child - Whether the Court of Appeal
erred in reversing findings of fact made by the trial
judge - Whether the Court of Appeal erred in
admitting new evidence - Whether the Court of
Appeal erred in substituting a judgment rather than
order a new trial, depriving the Appellant of the right
to have new evidence tested by a trier of fact and
violating the Appellant's right to due process and to
security as guaranteed by s. 7 of the *Charter* -
Whether the Court of Appeal erred in substituting its
finding of fact that a court order was necessary to
protect the child - Whether the Court of Appeal erred
in finding that the best interests of the child pursuant
to the *Child and Family Services Act*, R.S.O. 1990, c.
11 are subject to the Respondent society satisfying the
Court that intervention continues to be necessary to
protect the child - Whether the Court of Appeal erred
in failing to consider less intrusive alternatives
mandated by the *Act* - What is the proper role for
child's counsel appointed to protect the child's
interests pursuant to the *Act*?

Nature de la cause:

Droit de la famille - *Charte canadienne des droits et
libertés* - Adoption - Audience sur la révision du
statut - Ordonnance de tutelle par la Couronne visant
l'enfant de l'appelante - La Cour d'appel a-t-elle
commis une erreur en renversant les conclusions de
fait tirées par le juge de première instance? - La Cour
d'appel a-t-elle commis une erreur en admettant une
nouvelle preuve? - La Cour d'appel a-t-elle commis
une erreur en rendant un jugement différent plutôt
que d'ordonner la tenue d'un nouveau procès, privant
ainsi l'appelante du droit à ce qu'un juge des faits
apprécie la nouvelle preuve, et violant son droit à la
procédure équitable et à la sécurité, garanti par
l'art. 7 de la *Charte*? - La Cour d'appel a-t-elle
commis une erreur en concluant qu'en fait une
ordonnance de la cour était nécessaire pour protéger
l'enfant? - La Cour d'appel a-t-elle commis une
erreur en concluant qu'au regard de l'intérêt véritable
de l'enfant sous le régime de la *Loi sur les services à
l'enfance et à la famille*, L.R.O. 1990, ch. 11, la
société intimée doit convaincre la cour que
l'intervention est toujours nécessaire pour protéger
l'enfant? - La Cour d'appel a-t-elle commis une
erreur en ne considérant pas les solutions moins
restrictives prévues à la *Loi*? - Quel est le rôle de
l'avocat nommé pour protéger l'intérêt de l'enfant
conformément à la *Loi*?

8.12.1993

CORAM: The Chief Justice Lamer and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory and Major JJ.

David Roblin and Robert Wilson Rowbotham

v. (23300 - 302)

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

Philip Campbell and Delmar Doucette, for the appellants.

D.D.G. Reynolds, Q.C. and David Littlefield, for the respondent.

DISMISSED / REJETÉE

Nature of the case:

Criminal law - Offenses - Evidence - Narcotics - Jurisdiction - Appellants acquitted of conspiracy to traffic in a narcotic - Whether the Court of Appeal erred in holding that the trial judge erred in ruling that there was no evidence that the object of the conspiracy alleged under s. 465(1)(c) of the *Criminal Code* was an offence to be committed inside Canada, and in accordingly directing a verdict of acquittal.

Nature de la cause:

Droit criminel - Infractions - Preuve - Stupéfiants - Compétence - Les appelants ont été acquittés d'une accusation de complot en vue de faire le trafic de stupéfiants - La Cour d'appel a-t-elle commis une erreur en concluant que le juge du procès n'aurait pas dû conclure qu'il n'y avait aucune preuve que l'objet du complot allégué en vertu de l'al. 465(1)c) du *Code criminel* était une infraction devant être commise au Canada et en ordonnant par conséquent de rendre un verdict d'acquittement?

9.12.1993

CORAM:Le juge en chef Lamer et les les juges La Forest, L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci et Major

Dans l'affaire des questions soumises par le gouverneur en conseil sur la compétence de la législature du Québec et de la législature d'une province d'adopter une loi imposant une taxe similaire à la taxe sur les produits et services imposée par la Partie IX de la *Loi sur la taxe d'accise*, par le décret C.P. 1993-1740 en date du 26 août 1993 (Qué.)(23690)/

In the Matter of a Reference in Respect of the Quebec Sales Tax and (Que.) (Under section 53 of the SC Act) (23690)

Jean-Marc Aubry, c.r., James M. Mabbutt, c.r., et Marie-Claude P. Larin, pour le procureur général du Canada.

Jean-François Jobin et Monique Rousseau, pour le procureur général du Québec.

Wilfrid Lefebvre, c.r. et Patrice Marceau, pour l'amicus curiae.

EN DÉLIBÉRÉ / RESERVED

Nature of the case:

Constitutional law - Division of powers - Taxation -
Goods and services tax - Power of Quebec legislature
or legislature of province to adopt legislation
imposing tax similar to goods and services tax
imposed by GST Act.

Nature de la cause:

Droit constitutionnel - Partage des pouvoirs -
Taxation - Taxe sur les produits et services
-Compétence de la législature du Québec ou de la
législature d'une province d'adopter une loi imposant
une taxe similaire à la taxe sur les produits et
services imposée par la Loi sur la TPS.

WEEKLY AGENDA

**ORDRE DU JOUR DE LA
SEMAINE**

AGENDA for the week beginning December 13, 1993.

ORDRE DU JOUR pour la semaine commençant le 13 décembre 1993.

<u>Date of Hearing/ Date d'audition</u>	<u>NO.</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
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The Court is not sitting this week

La Cour ne siège pas cette semaine

NOTE:

This agenda is subject to change. Hearing dates should be confirmed with Process Registry staff at (613) 996-8666.

Cet ordre du jour est sujet à modification. Les dates d'audience devraient être confirmées auprès du personnel du greffe au (613) 996-8666.

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

Pursuant to Rule 23.1 of the *Rules of the Supreme Court of Canada*, the following deadlines must be met before a motion before the Court can be heard:

Motion day : **December 6, 1993**

Service : November 15, 1993
Filing : November 22, 1993
Respondent : November 29, 1993

DEVANT LA COUR:

Conformément à l'article 23.1 des *Règles de la Cour suprême du Canada*, les délais suivants doivent être respectés pour qu'une requête soit entendue par la Cour:

Audience du : **6 décembre 1993**

Signification : 15 novembre 1993
Dépot : 22 novembre 1993
Intimé : 29 novembre 1993

APPEALS HEARD SINCE LAST ISSUE AND
DISPOSITION

APPELS ENTENDUS DEPUIS LA DERNIÈRE
PARUTION ET RÉSULTAT

Motion day : February 7, 1994

Service : January 17, 1994
Filing : January 24, 1994
Respondent : January 31, 1994

Audience du : 7 février 1994

Signification : 17 janvier 1994
Dépot : 24 janvier 1994
Intimé : 31 janvier 1994

Motion day : March 7, 1994

Service : February 14, 1994
Filing : February 21, 1994
Respondent : February 28, 1994

Audience du : 7 mars 1994

Signification : 14 février 1994
Dépot : 21 février 1994
Intimé : 28 février 1994

Motion day : May 2, 1994

Service : April 11, 1994
Filing : April 18, 1994
Respondent : April 25, 1994

Audience du : 2 mai 1994

Signification : 11 avril 1994
Dépot : 18 avril 1994
Intimé : 25 avril 1994

Motion day : June 6, 1994

Service : May 16, 1994
Filing : May 23, 1994
Respondent : May 30, 1994

Audience du : 6 juin 1994

Signification : 16 mai 1994
Dépot : 23 mai 1994
Intimé : 30 mai 1994

BEFORE A JUDGE OR THE REGISTRAR:

Pursuant to Rule 22 of the *Rules of the Supreme Court of Canada*, a motion before a judge or the Registrar must be filed not later than three clear days before the time of the hearing.

Please call (613) 996-8666 for further information.

DEVANT UN JUGE OU LE REGISTRAIRE:

Conformément à l'article 22 des *Règles de la Cour suprême du Canada*, une requête présentée devant un juge ou le registraire doit être déposée au moins trois jours francs avant la date d'audition.

Pour de plus amples renseignements, veuillez appeler au (613) 996-8666.

DEADLINES: APPEALS

DÉLAIS: APPELS

The next session of the Supreme Court of Canada commences on January 24, 1994.

La prochaine session de la Cour suprême du Canada débute le 24 janvier 1994.

Pursuant to the *Supreme Court Act* and *Rules*, the following requirements for filing must be complied with before an appeal will be inscribed and set down for hearing:

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

Case on appeal must be filed within three months of the filing of the notice of appeal.

Le dossier d'appel doit être déposé dans les trois mois du dépôt de l'avis d'appel.

Appellant's factum must be filed within five months of the filing of the notice of appeal.

Le mémoire de l'appelant doit être déposé dans les cinq mois du dépôt de l'avis d'appel.

Respondent's factum must be filed within eight weeks of the date of service of the appellant's factum.

Le mémoire de l'intimé doit être déposé dans les huit semaines suivant la signification de celui de l'appelant.

Intervener's factum must be filed within two weeks of the date of service of the respondent's factum.

Le mémoire de l'intervenant doit être déposé dans les deux semaines suivant la signification de celui de l'intimé.

The Registrar shall inscribe the appeal for hearing upon the filing of the respondent's factum or after the expiry of the time for filing the respondent's factum

Le registraire inscrit l'appel pour audition après le dépôt du mémoire de l'intimé ou à l'expiration du délai de signification du mémoire de l'intimé.

The Registrar shall enter on a list all appeals inscribed for hearing at the January 1994 Session on November 30, 1993.

Le 30 novembre 1993, le registraire met au rôle de la session de janvier 1994 tous les appels inscrits pour audition.

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

Judgments reported in [1993] 3 S.C.R., Part 2

Auto Concrete Curb Ltd. v. South Nation River
Conservation Authority, [1993] 3 S.C.R. 201

Edgeworth Construction Ltd. v. N.D. Lea &
Associates Ltd., [1993] 3 S.C.R. 206

R. v. E. (A.W.), [1993] 3 S.C.R. 155

R. v. Grant, [1993] 3 S.C.R. 223

R. v. Harbottle, [1993] 3 S.C.R. 306

R. v. Plant, [1993] 3 S.C.R. 281

R. v. Wiley, [1993] 3 S.C.R. 263

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

Jugements publiés dans [1993] 3 R.C.S., partie 2

Auto Concrete Curb Ltd. c. Société d'aménagement de
la rivière Nation-Sud, [1993] 3 R.C.S. 201

Edgeworth Construction Ltd. c. N.D. Lea &
Associates Ltd., [1993] 3 R.C.S. 206

R. c. E. (A.W.), [1993] 3 R.C.S. 155

R. c. Grant, [1993] 3 R.C.S. 223

R. c. Harbottle, [1993] 3 R.C.S. 306

R. c. Plant, [1993] 3 R.C.S. 281

R. c. Wiley, [1993] 3 R.C.S. 263
