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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Neil Van Boeyen

v. (23805)

Her Majesty The Queen (B.C.)

G.D. McKinnon
Crim. Appeals and Special Prosecutions
Min. A.G. of B.C.

FILING DATE 5.11.1993

E.O. Merrell Baldwin

Robert Burke

v. (23737)

Her Majesty The Queen (Ont.)

Ian Smith
Min. of the A.G.

FILING DATE 26.11.1993

Yvon Descoteaux

c. (23863)

La Banque nationale du Canada (Qué.)

Guy Bilodeau
Smith Saint Martin & Morin

DATE DE PRODUCTION 15.11.1993

**La Société canadienne d'indemnisation pour les
assurances de personnes**

André Prévost
McCarthy Tétrault

c. (23746)

**Les Services de santé du Québec (SSQ, Mutuelle
d'assurance groupe) et al. (Qué.)**

Claude Ouellet
Flynn, Rivard

DATE DE PRODUCTION 29.11.1993

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

Leone Liberati et al.

Mark Zigler
Koskie and Minski

v. (23869)

**The Canada Employment and Immigration
Commission et al. (F.C.A.)(Ont.)**

Harley R. Nott
Dept. of Justice

FILING DATE 29.11.1993

Shore Boat Builders Ltd.

Nils Daugulis & Douglas G. Morrison
Bull, Housser & Tupper

v. (23868)

Charles J. Moses (B.C.)

Gary A. Nelson
Berger & Nelson

FILING DATE 26.11.1993

David Deshane et al.

Earl A. Cherniak, Q.C.
Lerner & Associates

v. (23870)

Deere & Company (Ont.)

John T. Morin, Q.C.
Fasken Campbell Godfrey

FILING DATE 30.11.1993

David Lynn Bishop

Abbott Managh Takada

v. (23871)

Her Majesty The Queen (Alta.)

Earl C. Wilson, Q.C.
A.G. of Alberta

FILING DATE 30.11.1993

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

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

NOVEMBER 30, 1993 / LE 30 NOVEMBRE 1993

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

Lawrence Hibbert

v. (23815)

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

NATURE OF THE CASE

Criminal Law - Offences - Defence - Jury trial - Duress - Whether the trial judge erred in instructing the jury that duress operated as a defence by negating the common intention required for party liability - Whether the trial judge erred in instructing the jury that duress was negated by the availability of a "safe avenue of escape" - Whether the trial judge erred in failing to instruct the jury that the "fact" of a "safe avenue of escape" was to be determined by reference to the Applicant's actual state of mind.

PROCEDURAL HISTORY

March 19, 1992
Ontario Court (General Division)
(Webber J.)

Conviction: Aggravated assault
Sentence: 4 years imprisonment

July 15, 1993
Court of Appeal for Ontario
(Houlden, Tamopolsky and Krever, JJ.A.)

Appeal against conviction dismissed
Appeal against sentence allowed
Sentence varied to the time served

October 29, 1993
Supreme Court of Canada

Application for leave to appeal filed

Glenn Patrick Moore

v. (23810)

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

NATURE OF THE CASE

Criminal law - Procedural law - Statutes - Interpretation - Evidence - Whether the Court of Appeal erred in holding that the disclosure requirements on an application for a renewal, as set out in s. 186(6)(b) of the *Criminal Code*, need not be complied with on an application for a "fresh" authorization, where an existing authorization with respect to some of the same targets is already in place - Whether the Court of Appeal erred in holding that the failure of the affiant to disclose on the application for a fresh authorization that a device for intercepting private communications had been installed on a telephone line registered to a commercial premises, pursuant to the "resort to" clause in the original authorization, did not constitute a substantive defect undermining the lawfulness of the authorization.

PROCEDURAL HISTORY

March 27, 1992 Provincial Court of British Columbia (Romilly P.C.J.)	Conviction: two counts of conspiracy to traffic in a narcotic; two counts of possession of a narcotic
May 17, 1993 Court of Appeal for British Columbia (Toy, Southin and Prowse JJ.A.)	Appeal against conviction dismissed
October 27, 1993 Supreme Court of Canada	Application for leave to appeal filed

Niveqsie Laisa

v. (23819)

Her Majesty the Queen (Crim.)(N.W.T.)

NATURE OF THE CASE

Criminal law - Defence - Evidence - Intoxication - Reasonable doubt - Charge to the jury - Whether the Court of Appeal erred in law in holding that the common sense inference that a person intends the natural consequences of his acts and the concept of reasonable doubt as to intention to commit murder are self-excluding - Whether the trial judge erred in failing to instruct the jury specifically on the effect of intoxication on the foreseeability of the likelihood to cause death - Whether the trial judge's two step approach to the defence of intoxication, namely whether the Applicant had the capacity to form the specific intent to murder and whether he did, in fact, form that specific intent, was prejudicial to the Applicant - Whether the trial judge erred in instructing the jury that they could conclude whether an expert witness was competent in his field of expertise - Whether the trial judge's use of the words "recklessness" and "carelessness" interchangeably was prejudicial to the Applicant - Whether the trial judge's charge would lead a jury to believe that probable guilt was sufficient to found a conviction or that they must be able to give an explanation for their doubt.

PROCEDURAL HISTORY

May 15, 1991 Supreme Court of Northwest Territories (Richard J.)	Conviction: 2 counts of 2nd degree murder contrary to ss. 235(1) and 231(7) of the <i>Criminal Code</i> , R.S.C. 1985, C.C-46.
August 12, 1993 Court of Appeal for Northwest Territories (de Weerd, Fois and Côté JJ.A.)	Appeal dismissed
October 28, 1993 Supreme Court of Canada	Application for leave to appeal filed

Gerardo Volante

v. (23839)

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

NATURE OF THE CASE

Criminal law - Offences - Keeping machines for gambling - Section 202(1)(b) of the *Criminal Code*, R.S.C. 1985, c. C-46
- Whether the Court of Appeal for Ontario erred in upholding the Applicant's conviction on the basis that his machines were gambling machines *per se* - Whether the Court of Appeal erred in not applying the test for "keeping" as set out by this Court in *R. v. Corbeil*, [1991] 1 S.C.R. 830 - Requirements of section 73(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26
- Whether the death of the Applicant renders the application moot.

PROCEDURAL HISTORY

October 24, 1990
(Ontario Court, Provincial Division)
(Kerr P.C.J.)

Conviction: Keeping a common gaming house
Keeping machines for gambling

August 5, 1993
Court of Appeal for Ontario (Morden A.C.J.O.,
Grange and Austin J.J.A.)

Appeal allowed in part

November 1, 1993
Supreme Court of Canada

Application for leave to appeal filed

Charles Bremner

v. (23789)

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

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Jurisdiction - Appeal - Applicant pleading guilty to offence of operating a motor vehicle while his ability was impaired - Applicant's motion under s. 11(b) of the *Charter* dismissed by Provincial Court of Ontario - Whether the Court of Appeal erred in applying s. 686(1)(b)(iii) of the *Criminal Code* in refusing to hear the Applicant's appeal from conviction - Whether the Court of Appeal, in applying s. 686(1)(b)(iii) of the *Criminal Code*, denied the Applicant the opportunity of making full answer and defence in light of the decision in *R. v. Askov*, [199] S.C.R. - Whether the Court of Appeal had jurisdiction to refuse to hear the Applicant's appeal.

PROCEDURAL HISTORY

March 15, 1991 Provincial Court of Ontario (Sharpe P.C.J.)	Conviction: Operating a motor vehicle while ability impaired
May 11, 1993 Ontario Court (General Division) (Clarke J.)	Summary conviction appeal dismissed
August 23, 1993 Court of Appeal for Ontario (Brooke, Goodman and Weiler JJ.A.)	Application for leave to appeal dismissed
October 28, 1993 Supreme Court of Canada	Application for leave to appeal filed

**National Party of Canada, Mel Hurtig and Mel Hurting on behalf of the
members of the National Party of Canada**

v. (23726)

Canadian Broadcasting Corporation (Alta.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Administrative law - Broadcasting - Whether the Respondent is subject to the *Canadian Charter of Rights and Freedoms* in relation to a decision to exclude the Applicant party from participation in the leaders debates on national television - If so, is the decision to so exclude the Applicant contrary to the guarantees expressed in ss. 2(b), 3 and 15 of the *Charter*.

PROCEDURAL HISTORY

September 23, 1993 Court of Queen's Bench of Alberta (Berger J.)	Applicants' application for an order requiring the Respondent to invite the Applicant Hurtig to participate in the leaders debate dismissed
October 1, 1993 Court of Appeal for Alberta (Lieberman, McClung and Irving JJ.A.)	Appeal dismissed
October 1, 1993 Supreme Court of Canada	Application for leave to appeal filed
October 4, 1993 Supreme Court of Canada (Lamer C.J., Cory, McLachlin, Iacobucci and Major JJ.)	Application for abridgment of time dismissed.

Kenneth Benjamin Smith

v. (23366)

His Honour Judge Filmer and the Attorney General of Canada (Crim.)(B.C.)

NATURE OF THE CASE

Criminal law - Courts - Jurisdiction - Does a criminal trial judge have jurisdiction to determine constitutional validity of s. 579 of the *Criminal Code* once proceedings have been stayed - Does a criminal trial judge have jurisdiction to determine if the entry of a stay of proceedings, once a plea has been entered, constitutes an abuse of process, and if so, can he determine the appropriate relief?

PROCEDURAL HISTORY

December 4, 1991 Provincial Court of British Columbia (Filmer P.C.J.)	Stay of proceedings directed by Crown
January 6, 1992 Provincial Court of British Columbia (Filmer P.C.J.)	Ruling that trial judge not without jurisdiction to consider <i>Charter</i> motion
February 14, 1992 Supreme Court of British Columbia (Murphy J.)	Respondent's application for prohibition dismissed
December 21, 1992 Court of Appeal for British Columbia (Carrothers, Gibbs and Hollinrake JJ.A.)	Appeal allowed
November 9, 1993 Supreme Court of Canada	Application for leave to appeal and motion for extension of time filed

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

Dow Corning Corporation

v. (23776)

Susan Hollis and John Robert Birch (B.C.)

NATURE OF THE CASE

Torts - Procedural law - Negligence - Product liability - Respondent Hollis bringing action against Applicant for negligent manufacture of breast implant and for failure of duty to warn - *Buchan v. Ortho Pharmaceutical (Canada) Ltd.* (1986), 25 D.L.R.(4d) 658(Ont. C.A.) - Legal test to be applied in determining the probable conduct of a consumer in products liability cases, if the consumer had received an adequate warning of the risks involved - Whether it is just for an appellate court to direct a new trial for one defendant but refuse a new trial to another defendant, when the new trial will deal with evidence and legal issues which are common to the defences of both defendants and will permit the possibility of inconsistent findings as to those defendants - Which of the divergent legal tests should apply to determine whether any

failure to provide a proper warning is a proximate cause of a plaintiff's injury in a products liability case - Whether the failure of a manufacturer of a prescription medical device to warn a learned intermediary of a particular risk may be held to constitute a proximate cause of a plaintiff's injury when the learned intermediary had actual knowledge of the risk but failed to warn the plaintiff - Whether the manufacturer's warning can be held to be negligent when the product failure could have been caused by one of the very risks mentioned in the manufacturer's warning.

PROCEDURAL HISTORY

May 7, 1990 Supreme Court of British Columbia (Bouck J.)	Respondent Hollis' action against the Applicant allowed; Action against Respondent Birch dismissed
June 21, 1993 Court of Appeal for British Columbia (McEachern C.J., Southin [dissenting] and Prowse J.J.A.)	Applicant's appeal dismissed; New trial ordered against Respondent Birch
October 21, 1993 Supreme Court of Canada	Application for leave to appeal filed

Mojgan Sagharichi

v. (23826)

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

NATURE OF THE CASE

Immigration - Procedural law - Evidence - Appeal - Jurisdiction - Convention refugee status - Whether the Federal Court of Appeal erred in law in applying in the absence of a privative clause an inappropriate standard of review in assessing the Immigration and Refugee Board's application of the facts to the law - Whether the Court erred in law where credibility was not in issue by failing to determine the correct legal definition of "persecution" and whether such legal criteria had been applied to the facts by the Immigration and Refugee Board.

PROCEDURAL HISTORY

October 18, 1990 Immigration and Refugee Board Convention Refugee Determination Division (De Morais and DeFaria)	Applicant's claim to Convention refugee status denied
August 5, 1993 Federal Court of Appeal (Isaac C.J., Marceau and McDonald J.J.A.)	Appeal dismissed
October 29, 1993 Supreme Court of Canada	Application for leave to appeal filed

The Minister of Employment and Immigration

v. (23834)

Dai Nguyen, Groupe Solidarité, Luong Manh Nguyen (F.C.A.)(Man.)

NATURE OF THE CASE

Immigration - Administrative law - Prerogative writs - Jurisdiction - Did the Federal Court of Appeal err in holding that internal administrative directives could form the basis of a public duty at law, sufficient to support an order in the nature of *mandamus*? - Did the Federal Court of Appeal err in finding that there existed a duty on the Minister of Employment and Immigration, enforceable by way of *mandamus*, to provide an Application for Landing to a foreign national domiciled outside of Canada?

PROCEDURAL HISTORY

February 1, 1991
Federal Court, Trial Division
(Cullen J.)

Motion for an order in the nature of *certiorari* and *mandamus* dismissed

July 12, 1993
Federal Court, Appeal Division
(Isaac C.J. [dissenting],
Hugessen and Stone J.J.A.)

Appeal allowed and order in the nature of *mandamus* issued

November 1, 1993
Supreme Court of Canada

Application for leave to appeal filed

Commercial Union Assurance Company of Canada

v. (23777)

The Bank of Nova Scotia, a Canadian Chartered Bank (N.S.)

NATURE OF THE CASE

Commercial law - Insurance - Interpretation - Applicant issuing fire insurance policy for house on which Respondent was mortgagee - Policy lapsing without notice to Respondent - House burning after policy lapsed and Applicant rejecting Respondent's claim for loss - Obligation of an insurer to notify mortgagees of the lapse of policy coverage - Supreme Court of Nova Scotia, Trial Division, holding Applicant liable to Respondent - Whether the majority of the Court of Appeal erred in interpreting the standard mortgage clause in the insurance policy so as to impose on the Applicant an obligation to notify the Respondent of the lapse of the insurance policy by the passage of time.

PROCEDURAL HISTORY

June 12, 1991 Supreme Court of Nova Scotia, Trial Division (Tidman J.)	Respondent's action allowed
June 25, 1993 Court of Appeal for Nova Scotia (Hallett [dissenting], Freeman and Roscoe JJ.A.)	Appeal dismissed
October 21, 1993 Supreme Court of Canada	Application for leave to appeal filed

Saul Messinger

v. (23797)

Bramalea Limited and Shaftesbury Developments Limited (Ont.)

NATURE OF THE CASE

Procedural law - Pre-trial procedure - Respondent bringing motion for dismissal of action - Applicant's request for an adjournment dismissed and Respondent's motion allowed - Whether the Court of Appeal erred in failing to realize that the trial judge erred in his decision to allow the Respondents to proceed with their motion, therefore eliminating the Applicant's rights to proceed to trial and rights to natural justice - Whether the Court of Appeal erred in dismissing the Applicant's appeal.

PROCEDURAL HISTORY

October 16, 1992 Ontario Court (General Division) (Lissaman J.)	Action for specific performance dismissed
June 24, 1993 Court of Appeal for Ontario (Grange, Tarnopolsky and Krever JJ.A.)	Appeal dismissed
October 25, 1993 Supreme Court of Canada	Application for leave to appeal filed

C & M McNally Engineering Inc.

v. (23768)

Greater Moncton Sewage Commission

and

**Jacques Whitford & Associates Limited, APD & Associates Ltd. and
Sandwell Swan Wooster Inc.**

and

Touchie Engineering Ltd.

and

**Jacques, Whitford & Associates Limited, APD & Associates Ltd. and
Sandwell Swan Wooster Inc. (N.B.)**

NATURE OF THE CASE

Torts - Negligence - Duty of care - Commercial law - Tender for contract to build sewage tunnel under river, and for dredging - Did trial judge err in finding that contractor could not rely on conclusions and opinions in soil report? - Did trial judge err by imposing a duty on the contractor to retain an expert to analyze soil report?

PROCEDURAL HISTORY

March 28, 1991 Court of Queen's Bench (Savoie J.)	Action dismissed
June 25, 1993 Court of Appeal for New Brunswick (Angers, Ayles and Ryan JJ.A.)	Appeal dismissed
October 14, 1993 Supreme Court of Canada	Application for leave to appeal filed

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

Marc Michaud

c. (23764)

**Le Procureur général du Québec et
la Sûreté du Québec (Qué.)**

NATURE DE LA CAUSE

Droit criminel - Preuve - Procédure préalable au procès - Interception de communications privées - Demandeur sujet à l'interception de ses communications privées présente une requête pour ouvrir paquet scellé sous garde du tribunal selon l'article 187 du *Code criminel*, L.R.C. 1985, ch. C-46 - Le jugement final de la Cour supérieure pouvait-il conclure que le demandeur devait faire la demande d'accès au paquet scellé qu'au juge de procès civil et non au juge de la Cour supérieure de juridiction criminelle - Quels sont les droits d'un justiciable non accusé à l'égard du paquet scellé? Se limitent-ils à la réception de l'avis selon l'article 196 du *Code criminel*? - Quels moyens ce justiciable peut-il invoquer pour contester une autorisation d'écoute électronique, pour contester la véracité de l'affidavit et pour contre-interroger l'affiant et ce, devant quel tribunal?

HISTORIQUE PROCÉDURAL

Le 4 décembre 1992
Cour supérieure, chambre criminelle
(Pinard j.c.s.)

Saisie illégale sauf pour disquettes électroniques;
arrestation illégale, arbitraire et abusive

Le 19 mai 1993
Cour supérieure, chambre civile
(Paul j.c.s.)

Requête pour faire ouvrir paquet scellé sous garde
du tribunal selon l'art. 187 du *Code criminel* rejetée

Le 17 septembre 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Richard Victor

v. (23820)

134154 Canada Inc. (Qué.)

NATURE OF THE CASE

Procedural law - Civil procedure - Appeal - Delays - Whether the Court of Appeal erred in law in determining that the grounds raised in the Applicant's motion for permission to file an appeal outside delay did not constitute sufficient reasons pursuant to s. 523 of the *Code of civil procedure* - Whether the Court of Appeal erred in law in determining that the Applicant's incapacity to act as a result of his attorney's hospitalization did not constitute an impossibility to act sooner as contemplated in s. 523 *C.p.c.*

PROCEDURAL HISTORY

May 5, 1993 Superior Court of Quebec (Nolin S.C.J.)	Applicant condemned to pay the Respondent \$2,272.04 Applicant's cross-demand dismissed
August 2, 1993 Court of Appeal of Quebec (Brossard, Proulx and Chamberland, J.J.A.)	Applicant's motion for permission to file an appeal outside legal delays dismissed; Respondent's motion to dismiss the Applicant's appeal allowed
October 28, 1993 Supreme Court of Canada	Application for leave to appeal filed

Ville de Sept-Iles

c. (23825)

Claudette Lussier (Qué.)

NATURE DE LA CAUSE

Procédure - Droit municipal - Procédure civile - Législation - Interprétation - Prescription - *Code civil* - Pouvoir de taxation des municipalités et des commissions scolaires - Immeubles cédés à l'intimée en paiement suite à avis de défaut de payer des taxes municipales et scolaires - Jugement rendu par la Cour municipale contre l'ancien propriétaire en faveur de la demanderesse pour arrérages de taxes - Intimée payant arrérages de taxes sur un immeuble pour le vendre libre de tout privilège et hypothèque - Action en répétition de l'indu de l'intimée accueillie en partie par la Cour supérieure du Québec - Est-ce que le jugement de la Cour municipale en faveur de la demanderesse a interrompu la prescription de trente ans de sa créance? - La demanderesse était-elle justifiée de réclamer les arrérages de taxes de l'ancien propriétaire et de l'intimée selon l'art. 498 de la *Loi sur les cités et villes*? - La convention entre l'ancien propriétaire et l'intimée a-t-elle éteint le privilège immobilier avec droit de suite de la demanderesse selon l'art. 498 de la *Loi sur les cités et villes*?

HISTORIQUE PROCÉDURAL

Le 30 mai 1991 Cour supérieure du Québec (Tremblay j.c.s.)	Action en répétition de l'indu accueillie en partie
Le 13 septembre 1993 Cour d'appel du Québec (Tyndale [dissident], Brossard et Rousseau-Houle j.j.c.a.)	Appel rejeté
Le 4 novembre 1993 Cour Suprême du Canada	Demande d'autorisation d'appel déposée

Philip Holton Gilbert Brock and June Alice Brock

v. (23774)

**Attorney General of Canada and the Corporation of the District
of West Vancouver (B.C.)**

NATURE OF THE CASE

Property law - Personal property - Did the Court of Appeal err in stating the criteria necessary to constitute possession of personal property found inside a private motor vehicle and the criteria necessary to establish a possessory right to such property on behalf of its true owners?

PROCEDURAL HISTORY

September 26, 1991 Supreme Court of British Columbia (Macdonell J.)	Following interpleader petition, money paid to Applicants
August 5, 1993 Court of Appeal for British Columbia (Hinkson, Taylor and Hinds J.J.A.)	Appeal allowed
October 21, 1993 Supreme Court of Canada	Application for leave to appeal filed

Ursula Hecht

v. (23751)

Gerald Andrew Reid and Roberts S. Whyte, Executors of the Estate of John Rolf Hecht; Robert S. Whyte, Norman Napier, Raymond Wheeler and George Siborne, Trustees of the John Hecht Memorial Trust and the Omega Trust; Gerald Andrew Reid, Trustee of the John Hecht Memorial Trust; William Forsyth, Trustee of the Omega Trust and the said Gerald Andrew Reid (B.C.)

NATURE OF THE CASE

Family law - Property law - Wills and Estates - Executors and administrators - Applicant challenging husband's will on the basis that the testator had not adequately provided for her maintenance and support - Dependents relief legislation as it applies to spouses - Application of *Walker v. McDermott*, [1931] S.C.R. 94 - "Moral duty" test in *Walker - Wills Variation Act* R.S.B.C., 1979, c. 435.

PROCEDURAL HISTORY

August 16, 1991 Supreme Court of British Columbia (Boyd J.)	Applicant's action dismissed
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June 11, 1993
Court of Appeal for British Columbia
(Hutcheon, Taylor and Prowse JJ.A.)

Appeal dismissed

October 8, 1993
Supreme Court of Canada

Application for leave to appeal filed

Nabil Nassif and Doris Laham

v. (23836)

Youssef Y. Nassif (Qué.)

NATURE OF THE CASE

Family law - Maintenance - Whether the Court of Appeal erred in fact and in law in not granting the Applicants' motion for leave to appeal - Whether the judgment rendered by the Superior Court is an interlocutory judgment which falls under sections 29 and 511 of the *Code of Civil Procedure*?

PROCEDURAL HISTORY

August 19, 1993
Superior Court of Quebec
(Hannan S.C.J.)

Respondent ordered to pay the Applicants \$150 per week

September 10, 1993
Court of Appeal of Quebec
(Deschamps, J.A.)

Motion for leave to appeal dismissed

November 9, 1993
Supreme Court of Canada

Application for leave to appeal filed

NOVEMBER 26, 1993 / LE 26 NOVEMBRE 1993

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

Angelo Del Zotto

v. (23842)

**Minister of National Revenue, John Edward Thompson and
D. Reilly Watson (F.C.A.)(Ont.)**

NATURE OF THE CASE

Taxation - Assessments - Administrative law - Judicial Review - Appeal - Whether s. 231.4 of the *Income Tax Act*, R.S.C. 1952, c. 148, as amended, gives the Minister of National Revenue the right to establish a far-reaching inquiry into the affairs of the Applicant without having to satisfy any prerequisites - Role of the Tax Court of Canada under s. 231.4 of the Act - Nature of the inquiry under s. 231.4 of the Act.

PROCEDURAL HISTORY

December 2, 1992
Tax Court of Canada
(Couture, CJ)

Order appointing Mr. Reilly Watson as hearing officer for the inquiry into the affairs of the Applicant

May 28, 1993
Federal Court of Appeal
(Hugessen J.A.)

Order staying the proceeding before the hearing officer until final judgment on the application for judicial review

September 9, 1993
Federal Court of Appeal
(Hugessen, Linden and Robertson, JJ.A.)

Application for judicial review dismissed

November 8, 1993
Supreme Court of Canada

Application for leave to appeal filed

November 18, 1993
Supreme Court of Canada

Application for a stay pursuant to Rule 27 of the *Rules of the Supreme Court of Canada*

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

NOVEMBER 29, 1993 / LE 29 NOVEMBRE 1993

23794 AMANDA THOMSON v. PAUL THOMSON (Man.)

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

The application for leave to appeal is granted on condition that the appeal be perfected so that it may be heard in the week of January 24, 1994. It is ordered that appellant give notice to the Attorneys General of Canada and of the provinces, and to the Ministers of Justice of the Territories, within six days hereof. It is open to appellant, respondent and eventual interveners, if any, to apply to the rota judge for relaxation of the Rules of this court as regards perfection of appeals.

La demande d'autorisation d'appel est accordée à la condition que l'appel soit mis en état de manière à pouvoir être entendu pendant la semaine du 24 janvier 1994. Il est ordonné à l'appelante d'aviser, dans les six jours du présent jugement, les procureurs généraux du Canada et des provinces, de même que les ministres de la Justice des territoires. L'appelante, l'intimé et les intervenants éventuels pourront demander au juge de service d'assouplir les règles de notre Cour en matière de mise en état des appels.

NATURE OF THE CASE

Family law - International law - Custody - Conflict of laws - Infants - Access - Application of *The Child Custody Enforcement Act*, R.S.M. 1987, c. C360 and *The Convention on the Civil Aspects of International Child Abduction* - Does art. 13 of the Convention allow the Court to consider only the consequences of returning the child to his originating jurisdiction without considering effect of removing him from his present caregivers - Whether child had been wrongfully removed to or was wrongfully being retained in Manitoba - Whether the Court of Appeal gave undue consideration to the importance of recognizing the order of an extra-provincial tribunal and insufficient consideration to either the risk of harm to the child or placing the child in an intolerable situation within the meaning of Article 13 - Whether decisions taken contrary to the best interests of a child of tender years on fundamental issues of residence and caregiving exposed the child to a grave risk of physical or psychological harm or an intolerable situation and thus unduly narrowed the scope of Article 13.

DECEMBER 2, 1993 / LE 2 DÉCEMBRE 1993

23697 KYLE WAYNE UNGER - v. - HER MAJESTY THE QUEEN (Crim.) (Man.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation de pourvoi est rejetée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Detention - Pre-trial procedure - Police - Admissibility of evidence - Participant surveillance - Applicant induced to admit murder during a police undercover operation - Whether the design and implementation of a police undercover operation is reviewable under s. 7 of the

Charter? -If so, under what circumstances will an undercover operation violate s. 7? - Do the provisions of Part VI of the *Criminal Code*, which govern the interception of private communications, apply to wiretap authorizations obtained for participant surveillance operations? - If so, does the absence of compliance with the *Criminal Code* provisions result in automatic exclusion of the evidence pursuant to s. 189 of the *Criminal Code*, or is the issue of admissibility considered under s. 24(2) of the *Charter*?

23692VALERIE A. CLOVER v. JAMES B. HURLEY (B.C.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for extension of time is granted. The application for leave to appeal is dismissed.

La demande de prorogation de délai est accordée. La demande d'autorisation de pourvoi est rejetée.

NATURE OF THE CASE

Procedural law - Torts - Statutes - Interpretation - Negligence - Prescription - Applicant bringing action in negligence against Respondent for medical malpractice - Respondent making application to strike out the Statement of Claim - Whether the Courts erred in barring the Applicant's action because of the six-year limitation period of s. 8(1) of the *Limitation Act*, R.S.B.C. 1979, c. 236.

23719Meyer Michel Marciano v. Belle Freda Millo (formerly Marciano) (Man.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for extension of time for service of reply is dismissed. The application for leave to appeal is dismissed with costs.

La demande de prorogation du délai imparti pour signifier une réplique est rejetée. La demande d'autorisation d'appel est rejetée avec dépens.

NATURE OF THE CASE

Family law - Custody and access - Costs - Applicant denied access to children - Whether best interests test is applicable to access decision - Whether best interests of children are met by denying Applicant access - Did Court of Appeal err in making decision without regard to compelling evidence - Did Court of Appeal err in award of costs.

23741DARRYL GHOSTKEEPER v. HER MAJESTY THE QUEEN (Crim.) (B.C.)

CORAM: The Chief Justice and McLachlin and Major 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 - Trial - Charge to the jury - Applicant convicted of second degree murder - Whether the trial judge erred in the charge to the jury with both non-direction and mis-direction as to causation, intent, and the permissive inference which may be drawn as to a person intending the natural and probable consequences of their actions.

23694GREGORY HENRY JOSEPH WILLIAMS v. HER MAJESTY THE QUEEN (Crim.) (B.C.)

CORAM:La Forest, Cory and Jacobucci JJ.

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

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Defence - Admissibility of statements - Intoxication - Charge to the jury with respect to the defence of intoxication - Right not to be arbitrarily detained or imprisoned - Whether the Court of Appeal erred in applying the curative provisions in s. 686(1)(b)(iii) of the *Criminal Code of Canada* to dismiss the appeal, given the possibility of a different verdict - Whether the Courts below erred in admitting as evidence the oral and written statements of the Applicant, made to the police during interrogation and to an undercover police officer, when these were obtained in violation of his rights pursuant to ss. 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*.

23688MARLENE RANKEL, DEBBY BODDINGTON and PAULA SCHAAP v. THE PSYCHOLOGISTS ASSOCIATION OF ALBERTA and SANDRA WOLFE, REGISTRAR OF THE PSYCHOLOGISTS ASSOCIATION OF ALBERTA (Alta.)

CORAM:La Forest, Cory and Jacobucci 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 - Judicial review - Jurisdiction - Prerogative writs - Appeal - Statutes - Interpretation - Respondent Registrar failing to comply with statutory duty to act forthwith under the *Psychology Profession Act*, S.A. 1985, c.P-25.01, with respect to complaints made against the Applicants - Whether the Court of Appeal erred in finding that the Respondent Registrar's failure to comply with the statutory duty to act forthwith as prescribed by s. 30(a) and 32(a) of the *Psychology Profession Act* does not go to jurisdiction - Whether the Court of Appeal erred in stating that the remedy for failure to comply with the statutory time requirements was an order in the nature of *mandamus* - Whether the decision of the Court of Appeal is a marked departure from basic principles of Canadian administrative law with respect to loss of jurisdiction and the availability of *certiorari* and prohibition.

23686 FREDERICK W.L. BLACK, NsC CORPORATION LTD. v. ERNST & YOUNG INC., TRUSTEE OF THE ESTATE OF THE BANKRUPT, NsC DIESEL POWER INC. (N.S.)

CORAM: La Forest, Cory and Major JJ.

The application for leave to appeal is dismissed with costs and the motion to review the refusal to grant a stay is dismissed with costs.

La demande d'autorisation d'appel est rejetée avec dépens et la requête en révision du refus d'accorder une suspension d'instance est rejetée avec dépens.

NATURE OF THE CASE

Procedural law - Pre-trial procedure - Barristers and solicitors - Applicant Black, not being an attorney, representing Applicant NsC Corporation in proceedings relating to bankruptcy of NsC Diesel - Respondent making application for a declaration to have the Applicant removed as attorney and for an order staying proceedings until counsel engaged - Applicant Black applying for intervenor status on the ground that Respondent's application was not properly served - Whether the Court of Appeal exercised proper judgment in considering the bankruptcy judge's discretionary decision - Whether the Courts erred in considering matters respecting the role of the Applicant Black in the affairs of the Applicant NsC Corporation, and the rights and duties of the Applicants pursuant to the *Canadian Charter of Rights and Freedoms*, the *Constitution Act, 1982*, and the *Canadian Bill of Rights* - Whether the Court of Appeal erred in considering the prejudice visited on the Applicants.

25.11.1993

Before / Devant: THE REGISTRAR

Motion to file an application for leave in its present form

Requête en production de la demande d'autorisation dans sa forme actuelle

Rodalfo Pacificador

v. (23792)

The Republic of the Phillipines (Ont.)

GRANTED / ACCORDÉE

26.11.1993

Before / Devant: THE REGISTRAR

Motion to dispense with printing

Requête en dispense d'impression

RJR MacDonald Inc.

v. (23460)

The Attorney General of Canada

and between

Imperial Tobacco Ltd.

v. (23490)

The Attorney General of Canada (Qué.)

GRANTED in accordance to attached order / ACCORDÉE conformément à l'ordonnance ci-jointe

IT IS ORDERED that one copy of the "Dossier conjoint" as prepared and filed by the Attorney General of Canada in the Quebec Court of Appeal shall be filed for the use of the Supreme Court of Canada;

AND IT IS ORDERED that twenty-four copies of a case on appeal containing all the pleadings, the judgment of the Quebec Superior Court, the judgment and reasons for judgment of the Court of Appeal and all of the evidence and exhibits the appellants intend to rely upon shall be prepared for the use of the Supreme Court of Canada by the appellants and filed concurrently with the appellants' factum;

AND IT IS FURTHER ORDERED that twenty-four copies of a supplementary case on appeal containing any additional evidence and exhibits the respondent intends to rely upon shall be prepared for the use of the Supreme Court of Canada by the respondent and filed concurrently with the respondent's factum;

26.11.1993

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'intimée

Glenn Patrick Moore

v. (23810)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE Time extended to November 24, 1993.

30.11.1993

Before / Devant: THE REGISTRAR

Motion to extend the time in which to serve and file a response

Requête en prorogation du délai de signification et de production d'une réponse

Normand Arthur Gold

v. (23817)

Gwendolyn Jean Gold (B.C.)

GRANTED / ACCORDÉE Time extended to November 23, 1993.

1.12.1993

Before / Devant: LE REGISTRAIRE

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

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

Le Syndicat de l'Enseignement de Champlain et al.

c. (23188)

La Commission scolaire régionale de Chambly (Qué.)

ACCORDÉE / GRANTED Délai prorogé au 23 décembre 1993.

1.12.1993

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

Willmor Discount Corporation

c. (23220)

Ville de Vaudreuil (Qué.)

ACCORDÉE / GRANTED Délai prorogé au 29 décembre 1993.

2.12.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion for an order that this appeal is to be deemed not abandoned

Requête en déclaration que le présent appel est censé ne pas avoir été abandonné

Quoc Dung Tran

v. (23321)

Her Majesty The Queen (N.S.)

GRANTED / ACCORDÉE on the condition that the appeal be ready to proceed during the winter term.

2.12.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to extend the time in which to serve and file the appellant's factum and for an order that this appeal is to be deemed not abandoned

Requête en prorogation du délai de signification et de production du mémoire de l'appelant et requête en déclaration que le présent appel est censé ne pas avoir été abandonné

Hatjinderpal Singh Nagra

v. (23582)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE

1.12.1993

CORAM: The Chief Justice Lamer and Cory and Iacobucci JJ.

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

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

Kenneth Benjamin Smith

v. (23366)

His Honour Judge Filmer and the Attorney General of Canada (Crim.)(B.C.)

DISMISSED / REJETÉE

**NOTICES OF APPEAL FILED SINCE
LAST ISSUE**

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

12.11.1993

Kenneth Doucet

v. (23867)

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

AS OF RIGHT

26.11.1993

David Allan Chaplin et al.

v. (23865)

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

AS OF RIGHT

**NOTICES OF INTERVENTION
FILED SINCE LAST ISSUE**

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

BY/PAR:Attorney General of Canada

IN/DANS: **George Henry Howard**

v. (22999)

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

**NOTICES OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

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

29.11.1993

Garland Allan William Gabriel Johnson

v. (23583)

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

(appeal)

30.11.1993

F.D.

v. (23325)

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

(appeal)

1.12.1993

Kenneth Doucet

v. (23867)

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

(appeal)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

29.11.1993

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

The United States of America

c. (23343)

Pierre Doyer (Crim.)(Qué.)

THE CHIEF JUSTICE (orally for the Court) -- The Court is ready to render judgment now. Justice La Forest will read the judgment of the Court.

LA FOREST J. (orally for the Court) -- We are all of the view that the appeal is governed by *McVey (Re); McVey v. United States of America*, [1992] 3 S.C.R. 475, which had not been decided when the case came before the Court of Appeal. Accordingly, the appeal is allowed, the judgment of the Court of Appeal is set aside, and the warrant of committal issued by Downs J. is restored.

James L. Brunton and Nancy Boillat, pour l'appellant / for the appellant.

Richard Corriveau et Lawrence Corriveau, c.r., pour l'intimé / for the respondent.

LE JUGE EN CHEF (oralement au nom de la Cour) -- La Cour est prête à rendre jugement séance tenante, lequel sera prononcé par le juge La Forest.

LE JUGE LA FOREST (oralement au nom de la Cour) -- Nous sommes tous d'avis que le pourvoi est régi par l'arrêt *McVey (Re); McVey c. États-Unis d'Amérique*, [1992] 3 R.C.S. 475, qui n'avait pas été rendu lorsque la Cour d'appel a été saisie de l'affaire. En conséquence, le pourvoi est accueilli, l'arrêt de la Cour d'appel est infirmé et le mandat de dépôt décerné par le juge Downs est rétabli.

29.11.1993

CORAM: The Chief Justice Lamer and L'Heureux-Dubé, Cory, McLachlin and Major JJ.

Donald Moran

v. (23326)

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

Bruce Duncan, for the appellant.

Jocelyn Speyer, for the respondent.

THE CHIEF JUSTICE (orally) -- A majority, in substantial agreement with Mr. Justice Grange as regards there not being in this case a violation of the oath-helping rule, would dismiss the appeal. The Chief Justice and Justice McLachlin, in dissent, and in agreement with Mr. Justice Finlayson, would allow the appeal, set aside the conviction and order a new trial.

The appeal is accordingly dismissed.

LE JUGE EN CHEF LAMER (oralement) -- Souscrivait, pour l'essentiel, à l'opinion du juge Grange quant à l'absence ici d'une violation de la règle interdisant les témoignages justificatifs, la Cour à la majorité est d'avis de rejeter le pourvoi. Le Juge en chef et le juge McLachlin, dissidents et d'accord avec le juge Finlayson, accueilleraient le pourvoi, annuleraient la déclaration de culpabilité et ordonneraient la tenue d'un nouveau procès.

Le pourvoi est donc rejeté.

30.11.1993

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

Mobil Oil Canada Ltd. et al.

v. (22948)

Canada-Newfoundland Offshore Petroleum Board (Nfld.)

Michael F. Harrington, Q.C., for the appellants / respondent.

T.B. Smith, Q.C. and D. Angus Taylor, for the respondent/ appellants.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Administrative law - Statutes - Interpretation - Judicial review - Prerogative writs - Natural justice - *Audi alteram partem* - Offshore oil and gas exploration - Issuance of oil and gas exploration interests - *Canada-Newfoundland Atlantic Accord Implementation Act*, S.C. 1988, c. 28 - Whether the Applicants, as applicants for a significant discovery area declaration, were entitled to a hearing before the Respondent - Whether the Court of Appeal erred in its interpretation of Federal-Provincial legislation regulating offshore oil and gas exploration and in particular the declaration of significant discovery area affecting exploration areas offshore the province of Newfoundland - Whether the Court of Appeal incorrectly bifurcated the decision-making process of making a significant discovery area declaration.

Nature de la cause:

Droit administratif - Lois - Interprétation - Contrôle judiciaire - Brefs de prérogative - Justice naturelle - *Audi alteram partem* - Prospection extracôtière d'hydrocarbures - Octroi de titres de prospections d'hydrocarbures - *Loi de mise en oeuvre de l'Accord atlantique Canada-Terre-Neuve*, L.C. 1987, ch. 3 - Les requérantes, qui ont demandé une déclaration de périmètre de découverte importante, avaient-elles droit à une audience devant l'intimé? - La Cour d'appel a-t-elle commis une erreur dans son interprétation de la loi provinciale-fédérale réglementant la prospection extracôtière d'hydrocarbures et en particulier la déclaration de périmètre de découverte importante visant les périmètres de prospection au large de Terre-Neuve? - La Cour d'appel a-t-elle irrégulièrement esquivé le processus décisionnel qui consiste à faire une déclaration de périmètre de découverte importante?

01.12.1993

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

Air Products Canada Ltd. et al.

v. (23047)

Gunter Schmidt, in his personal capacity and on behalf of the beneficiaries of Stearns Catalytic Ltd. et al. (Alta.)

AND BETWEEN

Gunter Schmidt, in his personal capacity and on behalf of the beneficiaries of the Stearns Catalytic et al.

v. (23057)

Air Products Canada Ltd. et al. (Alta.)

Dennis R. O'Connor, Q.C., Anne Corbet and Barry L. Glaspell, for the appellants Air Products Canada Ltd. et al.

Neil C. Wittman, Q.C. and Kenneth J. Warren, for the respondents Beneficiaries of the Catalytic Enterprises Ltd. - Pension Plan.

Aleck H. Trawick and Leslie O'Donoghue, for the appellants Gunter Schmidt et al.

Dennis R. O'Connor, Q.C., for the respondents on the cross-appeal Air Products Canada Ltd. et al.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Labour law - Pensions - Trusts - Contracts - Entitlement to surplus in employee defined benefit pension plans, which had been terminated by sale of company - Nature of an employer's funding obligation.

Nature de la cause:

Droit du travail -- Pensions - Fiducie - Contrats -- Droit au surplus de régimes de pensions d'employés abolis par la vente de la société -- Nature de l'obligation de contribuer de l'employeur.

02.12.1993

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

Attorney General of Canada

Eric A. Bowie, Q.C., Lewis E. Levy, Q.C. and John R. Haig, Q.C., for the appellant.

v. (22758)

Attorney General of British Columbia (B.C.)

George H. Copley and Patrick O'Rourke, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Constitutional law - Statutes - Administrative law - Jurisdiction - Canada agreeing to provide railway service between Victoria and Nanaimo, British Columbia as a condition of British Columbia entering confederation - Whether Canada is required to maintain railway in perpetuity - If Parliament has the power to terminate service, how is that power to be exercised? - Was Order in Council terminating service made without jurisdiction?

Nature de la cause:

Droit constitutionnel - Législation - Droit administratif - Compétence - Le Canada a accepté de fournir un service ferroviaire entre Victoria et Nanaimo (Colombie-Britannique) comme condition pour l'entrée de la Colombie-Britannique dans la Confédération - Le Canada est-il tenu de maintenir à perpétuité le service ferroviaire? - Si le Parlement a le pouvoir de mettre fin au service, de quelle façon ce pouvoir doit-il être exercé? - Le décret qui a mis fin au service a-t-il été pris sans compétence?

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning December 6, 1993.

ORDRE DU JOUR pour la semaine commençant le 6 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>
06/12/93		Motions - Requêtes
06/12/93	6	Robert L. Hodgkinson v. David L. Simms & Jerry S. Waldman, carrying on business as Simms & Waldman, et al. (B.C.)(23033)
07/12/93	43	C.M. v. Catholic Children's Aid Society of Metropolitan Toronto et al. (Ont.)(23644)
08/12/93	31	David Roblin et al. v. Her Majesty The Queen (Crim.)(Ont.)(23300)
08/12/93	32	Robert Wilson Rowbotham et al. v. Her Majesty The Queen (Crim.)(Ont.)(23302)
09/12/93	24	In the matter of a Reference in respect of the Quebec Sales Tax (Qué.) (Under section 53 of the SC Act) (23690)
10/12/93	2	Her Majesty The Queen v. Robert Howard Burns (Crim.)(B.C.)(23115)
10/12/93	46	Her Majesty The Queen v. Richard Brian McAnespie (Crim.)(Ont.)(23674)

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.

23033 ROBERT L. HODGKINSON v. DAVID I. SIMMS ET AL.

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.

The Appellant, a young but experienced and successful stockbroker, had a very large income which he wished to shelter against the incidence of tax. He had a few minor tax shelter investments when he first met the Respondent Simms, a partner in a small firm of chartered accountants. The Respondent Simms and the Appellant settled upon multiple unit residential buildings (MURB's) as the likely vehicle for the Appellant to invest in. The Respondent Simms had already been requested by another client to examine a proposal for such an investment being developed by Olma Bros. On the Respondent Simms' recommendation, the Appellant invested substantial funds in that Murb and other projects developed by Olma Bros. During this time, the Respondent Simms was also billing Olma Bros. for financial services performed in connection with these projects. He made no disclosure of this fact to the Appellant. The Appellant made one further investment in a development on the recommendation of the Respondent Simms which was promoted by a friend and client of the Respondent Simms who paid fees to the Respondent for structuring the project. The Respondent Simms also invested personally in most of these projects. When the real estate market crashed in 1981, the Appellant lost substantially on all these investments. The Appellant sought to recover all his losses on the four investments recommended by the Respondent based upon breach of fiduciary duty or contract on the ground that the Respondent failed to make an appropriate disclosure of his relationships with the developers by which he received fees and other payments for accounting and other financial services performed in connection with those projects. The trial judge allowed the Appellant's action for breach of fiduciary duty and breach of contract and awarded damages in the amount of \$350,507.62. The Court of Appeal allowed the Respondent's appeal and reduced the damage award.

The following are the issues raised in this appeal:

1. Whether the Court of Appeal wrongly interpreted the majority decision in *Lac Minerals* to restrict the circumstances in which a fiduciary duty will be owed by professional advisors to clients.
2. Whether the Court of Appeal erred in holding that there is no remedy for investment loss where a professional advisor, by non-disclosure of his own self-interest, induces a client into self interested investments the client otherwise would not purchase, and
3. Whether, in the absence of palpable and overriding error, the Court of Appeal erred by refusing to give effect to clear and reasoned findings of fact by the trial judge.

Origin of the case: British Columbia

File No: 23033

Judgment of the Court of Appeal: March 16, 1992

Counsel: E. A. Cherniak for the Appellant
G. Urquhart for the Respondents

23033

ROBERT L. HODGKINSON c. DAVID SIMMS ET AUTRE

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.

L'appelant, un jeune courtier mais expérimenté et prospère, avait un revenu très important qu'il voulait protéger contre le fisc. Il avait quelques petits abris fiscaux lorsqu'il a rencontré l'intimé Simms, un associé dans un petit cabinet de comptables agréés. L'intimé Simms et l'appelant ont convenu que les immeubles résidentiels à logements multiples constituaient le meilleur investissement pour l'appelant. Un autre client avait déjà demandé à l'intimé Simms d'examiner un tel projet d'investissement réalisé par Olma Bros. Selon la recommandation de l'intimé Simms, l'appelant a investi des montants importants dans cet IRLM et dans d'autres projets réalisés par Olma Bros. Pendant ce temps, l'intimé Simms facturait Olma Bros. pour des services financiers rendus relativement à ces projets. Il n'a pas mentionné ce fait à l'appelant. L'appelant a fait un autre investissement dans un projet recommandé par l'intimé Simms et réalisé par un ami et client de ce dernier qui lui versait des honoraires pour élaborer le projet. L'intimé Simms a également investi personnellement dans la plupart de ces projets. Lorsque le marché de l'immobilier s'est effondré en 1981, l'appelant a subi des pertes importantes à l'égard de tous ces investissements. L'appelant a cherché à recouvrer toutes les pertes résultant des quatre investissements recommandés par l'intimé sur le fondement d'un manquement à l'obligation fiduciaire ou d'une violation du contrat parce que l'intimé n'avait pas divulgué les rapports qu'il entretenait avec les promoteurs qui lui versaient des honoraires et d'autres paiements pour des services financiers et comptables fournis relativement à ces projets. Le juge de première instance a accueilli l'action de l'appelant fondée sur un manquement à l'obligation fiduciaire et sur la violation du contrat et a accordé des dommages-intérêts de 350 507,62 \$. La Cour d'appel a accueilli l'appel de l'intimé et a réduit le montant des dommages-intérêts.

Voici les questions qui sont soulevées dans le présent pourvoi :

1. La Cour d'appel a-t-elle interprété à tort l'arrêt de la majorité dans *Lac Minerals* pour limiter les circonstances dans lesquelles les conseillers professionnels auront une obligation fiduciaire envers leurs clients ?
2. La Cour d'appel a-t-elle commis une erreur lorsqu'elle a conclu qu'il n'y avait aucun redressement à l'égard d'une perte découlant d'un investissement dans le cas où un conseiller professionnel, par la non divulgation de ses intérêts personnels, a incité un client à investir dans un projet dans lequel il avait lui-même des intérêts et dans lequel le client n'aurait pas autrement investi ?
3. En l'absence d'une erreur tangible et flagrante, la Cour d'appel a-t-elle commis une erreur lorsqu'elle a refusé de faire droit à des conclusions de faits claires et bien étayées du juge de première instance ?

Origine : Colombie-Britannique

N° du greffe : 23033

Arrêt de la Cour d'appel : le 16 mars 1992

Avocats : E. A. Cherniak pour l'appelant
G. Urquhart pour les intimés

23644 C.M. v. CATHOLIC CHILDREN'S AID SOCIETY OF METROPOLITAN TORONTO

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*?

The Appellant, a Portuguese immigrant, came to Canada at the age of twenty and worked until 1984 at which time she had a child. She gave that child up for adoption and returned to Portugal for two years. Upon her return to Canada in 1985, she found work until the birth of her daughter in 1986. A year later, the father of the child left the country because of immigration difficulties. The Appellant's daughter was initially apprehended by the Respondent in 1987 after the Society had been told that the Appellant was abandoning the child. These allegations were denied at trial by the Appellant. The child was returned to her mother's care periodically under a supervision order. The child was again apprehended by the Respondent in February, 1989, when the Appellant was hospitalized for emotional problems. The child was placed in one foster home for two months and was then moved to her present foster where she has remained. In August, 1989, the child was made a ward of the Respondent for four months. In December, 1989, the Respondent brought a status review application seeking an order of crown wardship for purposes of adoption. The trial judge made an order pursuant to s. 57(9) of the *Child and Family Services Act* that the child be returned to the Appellant. The Respondent's appeal to the General Division was dismissed. The Respondent's subsequent appeal to the Court of Appeal was allowed and the order that the child be returned to her natural mother was set aside. The Court of Appeal ordered that the child be made a Crown ward, without access, for purposes of adoption.

Origin of the case: Ontario

File No: 23644

Judgment of the Court of Appeal: May 4, 1993

Counsel: Ian R. Mang for the Appellant
Marvin Bernstein for the Respondent

23644 C.M.C. CATHOLIC CHILDREN'S AID SOCIETY OF METROPOLITAN TORONTO

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*?

L'appelante, une immigrante portugaise, est venue au Canada à l'âge de 20 ans, et elle y a travaillé jusqu'à ce qu'elle ait un enfant en 1984. Elle a remis cet enfant en adoption et est retournée au Portugal pendant deux ans. À son retour au Canada en 1985, elle a travaillé jusqu'à la naissance de sa fille, en 1986. Un an plus tard, le père de l'enfant a quitté le pays en raison de difficultés avec l'immigration. La fille de l'appelante a pour la première fois été prise sous la garde de l'intimée en 1987, après que la société eut été avisée que l'appelant abandonnait son enfant. Ces allégations ont été niées au procès par l'appelante. L'enfant a été remise aux soins de sa mère périodiquement, sous réserve d'une ordonnance de surveillance. L'enfant a de nouveau été prise sous la garde de l'intimée en février 1989, l'appelante ayant été hospitalisée pour des problèmes affectifs. L'enfant a été confiée à une première famille d'accueil pendant deux mois, puis à la famille actuelle, où elle est demeurée. En août 1989, l'enfant est devenue pupille de l'intimée. Quatre mois plus tard, soit en décembre 1989, l'intimée a présenté une demande de révision du statut, sollicitant une ordonnance de tutelle par la Couronne en vue de l'adoption. Le juge de première instance en a rendu une ordonnance conformément au par. 57(9) de la *Loi sur les services à l'enfance et à la famille* afin que l'enfant soit retournée à l'appelante. L'appel de l'intimée à la division générale a été rejeté. Son appel à la Cour d'appel a été accueilli et l'ordonnance prévoyant le retour de l'enfant à sa mère biologique a été infirmée. La Cour d'appel a ordonné que l'enfant devienne pupille de la Couronne, sans droit de visite, aux fins de son adoption.

Origine :Ontario

N° du greffe :23644

Arrêt de la Cour d'appel: le 4 mai 1993

Avocats :Ian R. Mang pour l'appelante
Marvin Bernstein pour l'intimée

23300-23302 ROBERT ROWBOTHAM AND DAVID ROBLIN v. HER MAJESTY THE QUEEN

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.

The Appellants were charged that, between February 1, 1989, and May 17, 1989, in Toronto, Ontario, and in Austin, Texas, U.S.A., they unlawfully did conspire and agree together to commit the indictable offence of trafficking in a narcotic, marihuana, contrary to s. 4(1) of the *Narcotic Control Act*, R.S.C. 1985, c. N-1, and s. 465(1)(c) of the *Criminal Code*, R.S.C. 1985, c. C-46. The evidence revealed that the Appellant Rowbotham and Spatzner, a drug dealer working undercover with the police, discussed a drug deal in Toronto. The price and the Appellant Rowbotham's share of the deal were discussed. The Appellant Rowbotham told Spatzner that he had a friend who could supply large quantities of marijuana and he introduced Spatzner to the Appellant Roblin. The Appellant Roblin knew that Spatzner wanted the drugs delivered in Canada but insisted that delivery and payment take place in Texas where he would get the drugs. The deal was pursued by telephone between the Appellant Roblin in Austin, Texas, and Spatzner in Toronto. There was evidence that they kept the Appellant Rowbotham informed of their discussions. The Appellant Roblin was to take care of the Appellant Rowbotham's share in Texas. Spatzner sent a runner, an undercover police officer in Texas, to complete the deal on his behalf. Telephone conversations and a meeting took place between the Appellant Roblin and the runner but the Appellant Roblin became suspicious and broke off contact. The deal was never completed.

The Appellants brought a motion for a directed verdict of acquittal on the ground that the court did not have jurisdiction to try the Appellants for a conspiracy made in Canada to commit acts elsewhere. The Appellants' motion was allowed and they were acquitted. The Respondent appealed to the Court of Appeal on the ground that the trial judge erred in directing a verdict of acquittal because it was entitled to rely on the general conspiracy provisions of s. 465(1)(c) of the *Criminal Code* and did not have to rely on s. 465(3) of the *Code*. The Court of Appeal allowed the Respondent's appeal, set aside the acquittals and directed a new trial.

Origin of the case: Ontario

File No.: 23300-23302

Judgment of the Court of Appeal: October 16, 1992

Counsel: Delmar Doucette for the Appellant Rowbotham
Philip Campbell for the Appellant Roblin
D.D. Graham Reynolds, Q.C. for the Respondent

23300-23302 ROBERT ROWBOTHAM ET DAVID ROBLIN c. SA MAJESTÉ LA REINE

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?

Les appelants ont été accusés d'avoir, entre le 1^{er} février 1989 et le 17 mai 1989 à Toronto (Ontario) et à Austin, Texas, États-Unis, illégalement comploté en vue de commettre l'acte criminel qui consiste à faire le trafic de stupéfiants et de chanvre indien, en contravention du par. 4(1) de la *Loi sur les stupéfiants*, L.R.C. (1985), ch. N-1 et de l'al. 465(1)c) du *Code criminel*, L.R.C. (1985), ch. C-46. La preuve a révélé que l'appelant Rowbotham et Spatzner, un trafiquant de drogue travaillant de concert avec la police à titre d'agent d'infiltration, ont discuté d'une transaction de drogue à Toronto. Le prix de la transaction et la part de l'appelant Rowbotham ont été discutés. L'appelant Rowbotham a dit à Spatzner qu'un ami pouvait fournir des quantités importantes de chanvre indien, et il lui a présenté l'appelant Roblin. Ce dernier savait que Spatzner désirait que la drogue soit livrée au Canada, mais il a insisté pour que la livraison et le paiement s'effectuent au Texas, là où il obtiendrait la drogue. La transaction s'est poursuivie au téléphone entre l'appelant Roblin au Texas et Spatzner à Toronto. Selon la preuve, ils ont tenu l'appelant Rowbotham informé de leurs discussions. L'appelant Roblin devait s'occuper de la part de l'appelant Rowbotham au Texas. Spatzner a envoyé un passeur, un agent d'infiltration au Texas, pour clore la transaction en son nom. L'appelant Roblin et le passeur ont eu des conversations téléphoniques et se sont rencontrés, mais l'appelant Roblin s'est méfié et a rompu la relation. La transaction n'a jamais été conclue.

Les appelants ont présenté une requête afin qu'un verdict d'acquittement soit ordonné pour le motif que la cour n'avait pas compétence pour juger les appelants de complot au Canada en vue de commettre des actes à l'étranger. La requête des appelants a été accueillie et ils ont été acquittés. L'intimée a interjeté appel à la Cour d'appel pour le motif que le juge du procès avait commis une erreur en ordonnant un verdict d'acquittement puisqu'elle pouvait invoquer les dispositions générales de complot de l'al. 465(1)c) du *Code criminel* sans se fonder sur le par. 465(3) du *Code*. La Cour d'appel a accueilli l'appel de l'intimée, infirmé les acquittements et ordonné la tenue d'un nouveau procès.

Origine :Ontario

N° du greffe :23300-23302

Arrêt de la Cour d'appel:le 16 octobre 1992

Avocats :Delmar Doucette pour l'appelant Rowbotham
Philip Campbell pour l'appelant Roblin
D.D. Graham Reynolds, c.r., pour l'intimée

23690 IN RES. 53 OF THE SUPREME COURT ACT; IN RE MATTERS SUBMITTED BY THE GOVERNOR IN COUNCIL REGARDING THE POWER OF THE QUEBEC LEGISLATURE OR THE LEGISLATURE OF A PROVINCE TO ADOPT LEGISLATION IMPOSING A TAX SIMILAR TO THE GOODS AND SERVICES TAX IMPOSED BY PART IX OF THE EXCISE TAX ACT BY ORDER IN COUNCIL P.C. 1993-1740, DATED AUGUST 26, 1993.

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.

On August 26, 1993 the Governor General in Council adopted Order in Council P.C. 1993-1740 pursuant to s. 53 of the *Supreme Court Act*, by which he submitted for the judgment of this Court the following two questions:

1. Is it within the legislative authority of the Legislature of Quebec to impose, by way of provisions similar to those in the schedule attached hereto, a tax in respect of the supply of property or a service to a recipient who receives it for the sole purpose of making a new supply of it, or in respect of the supply of a property or a service to a recipient who receives it for the sole purpose of its becoming a component part of another property or service to be supplied by the recipient, particularly in view of the input tax refund provisions? If not, in what particular or particulars and to what extent?
2. Is it within the legislative authority of the Legislature of a Province to impose a tax within the province similar to the goods and services tax imposed pursuant to the Excise Tax Act, R.S.C. 1985, c. E-15, Part IX, as amended by S.C. 1990, c. 45? If not, in what particular or particulars and to what extent?

In preparation for the introduction of the GST Act, the Government of Canada and the Government of Quebec signed a memorandum of agreement on August 30, 1990 by which the Government of Quebec undertook to recommend to the Quebec National Assembly the adoption of legislation to substantially harmonize the tax base of the Quebec consumer tax with the tax base imposed by the GST Act which the Government of Canada had recommended for adoption by the federal Parliament. The National Assembly adopted two statutes: *An Act to amend the Retail Sales Tax Act and other fiscal legislation*, S.Q. 1990, c. 60 (the "1990 amending Act") and the *Act respecting the Quebec sales tax and amending various fiscal legislation*, S.Q. 1991, c. 67 (the "QST Act"). According to the 1990 amending Act the tax rate on movable property was reduced to 8 percent and the base of this tax was widened to take in all movable property tax under the GST Act. The QST Act introduced a new consumer tax with a provision for reimbursement of the tax on input similar to that imposed by the GST Act.

The base of the QST is substantially similar to that of the GST, but does not include "non taxable supply" as defined in section 1 of the QST Act. As it appears from the schedule attached to the Order in Council P.C. 1993-1740, "non taxable supply" would disappear so that these goods and services be included from now on in "taxable supply".

On September 7, 1993 Lamer C.J. formulated the questions submitted by the Governor General in Council as constitutional questions.

File No.:23690

Counsel: Jean-Marc Aubry for the Attorney General of Canada

Wilfrid Lefebvre, *amicus curiae*, to present arguments contrary to those of the Attorney General of Canada

23690 DANS L'AFFAIRE DE L'ARTICLE 53 DE LA LOI SUR LA COUR SUPRÊME; DANS L'AFFAIRE DES QUESTIONS SOUMISES PAR LE GOUVERNEUR EN CONSEIL SUR LA 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 PARTIE IX DE LA LOI SUR LA TAXE D'ACCISE, PAR LE DÉCRET C.P. 1993-1740 EN DATE DU 26 AOÛT 1993.

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.

Le 26 août 1993 le Gouverneur général en conseil prenait le décret C.P. 1993-1740 en vertu de l'article 53 de la *Loi sur la Cour suprême* par lequel il soumettait au jugement de cette Cour les deux questions suivantes:

1. La législature du Québec est-elle compétente pour imposer, selon des modalités semblables à celles contenues au document produit en annexe, une taxe à l'égard de la fourniture d'un bien et ou d'un service à un acquéreur qui le reçoit uniquement afin d'en effectuer à nouveau la fourniture, ou à l'égard de la fourniture d'un bien ou d'un service à un acquéreur qui le reçoit uniquement afin qu'il soit composant d'un autre bien ou d'un autre service dont il effectuera la fourniture, compte tenu notamment des modalités relatives au remboursement de la taxe sur les intrants? Dans la négative, à quel égard ou à quels égards et dans quelle mesure?
2. La législature d'une province est-elle compétente pour adopter une loi visant à imposer une taxe, à l'intérieur de la province, similaire à la taxe sur les produits et services imposée par la partie IX de la *Loi sur la taxe d'accise*, L.R.C. (1985), ch. E-15, amendée par L.C. (1990), ch. 45? Dans la négative, à quel égard ou à quels égards et dans quelle mesure?

En prévision de l'entrée en vigueur de la Loi sur la TPS, le gouvernement du Canada et le gouvernement du Québec signaient un protocole d'entente le 30 août 1990 en vertu duquel le gouvernement du Québec s'engageait à recommander au Parlement du Québec l'adoption de mesures législatives ayant pour effet d'harmoniser substantiellement l'assiette fiscale de la taxe à la consommation du Québec du Québec avec l'assiette fiscale prévue dans la Loi sur la TPS dont le gouvernement du Canada avait recommandé l'adoption au Parlement du Canada. L'Assemblée nationale adoptait deux lois: *Loi modifiant la Loi concernant l'impôt sur la vente en détail et d'autres dispositions législatives d'ordre fiscal*, L.Q. 1990, c. 60 (la "Loi modificatrice de 1990") et *Loi sur la taxe de vente du Québec et modifiant diverses dispositions législatives d'ordre fiscale*, L.Q. 1991, c. 67 (la "Loi sur la TVQ"). Selon la Loi modificatrice de 1990, le taux de la taxe à l'égard des biens mobiliers était abaissé à 8% et l'assiette de cette taxe était élargie à l'ensemble des biens mobiliers taxés en vertu de la Loi sur la TPS. La Loi sur la TVQ instaurait une nouvelle taxe à la consommation avec un régime de remboursement de la taxe sur les intrants, semblable à celle imposée par la Loi sur la TPS.

L'assiette de la TVQ est substantiellement semblable à celle de la TPS, mais ne comprend pas les "fournitures non taxables" définies à l'article 1 de la Loi sur la TVQ. Tel qu'il appert de l'hypothèse envisagée dans le document annexé au décret 1993-1740, la désignation de "fournitures non taxables" disparaîtrait de sorte que ces biens et services seraient désormais compris dans les "fournitures taxables".

Le 7 septembre 1993, le Juge en chef La mer a formulé les questions soumises par le Gouverneur général en conseil comme questions constitutionnelles.

N° de greffe: 23690
Avocats: Me Jean-Marc Aubry pour le Procureur général du Canada
Me Wilfrid Lefebvre, *amicus curiae*, pour faire valoir des arguments contraires à ceux du procureur général du Canada

23115 HER MAJESTY THE QUEEN v. ROBERT HOWARD BURNS

Criminal law - Offences - Evidence - Credibility of complainant.

The Respondent was charged with one count of indecent assault and one count of sexual assault. The complainant was born on August 27, 1971. She was between 9 and 12 during the first period charged and between 12 and 16 years during the second period. Her mother died when she was four years of age and her father, an admitted alcoholic, attempted to care for her but she lived in a foster home for more than six years. The Respondent and the complainant's father are friends and visit one another occasionally.

In June 1987, the complainant was charged with sexually abusing five young boys while baby-sitting them. As result of these charges, she received counselling and psychological care. She disclosed at that time that she also had been sexually abused. She also disclosed having been sexually assaulted by her stepbrother. She first said that her stepbrother had sexually assaulted her 50 to 60 times, but later reduced that number to 20 and alleged that it was the Respondent who assaulted her 50 to 60 times.

At trial, she testified that, in or about 1980, the Respondent had driven her to a side road and had indecently assaulted her. She also testified that acts of sexual touching without her consent continued when the Respondent was alone with the complainant in her father's mobile home. The complainant also referred specifically to two other similar incidents. In January 1987, the complainant stated that, while alone in the mobile home, the Respondent entered the home and had sexual intercourse with her without her consent.

During the pre-charge period, the Respondent was interviewed several times by the police during which he denied any misconduct with the complainant. He consented to a polygraph test which the police say he failed. After that, and in the course of long post-polygraph interview, the Respondent admitted to one incident of consensual sexual intercourse with the complainant, when she was either 15 or 16 years. The Respondent did not testify at trial.

The trial judge found the Respondent guilty as charged and sentenced him to imprisonment for two years less one day on each count, to be served concurrently. The Court of Appeal allowed the Respondent's appeal and ordered a new trial. The Crown was granted leave to appeal. The appeal raises the following issues:

1. The British Columbia Court of Appeal erred in law in reversing the learned trial judge's assessment of the credibility of the complainant
2. The British Columbia Court of Appeal erred in law in holding that the learned trial judge was required to give reasons why he accepted the complainant's evidence about the indecent and sexual assaults she said were committed upon her by the Respondent.

Origin of the case: British Columbia

File No.: 23115

Judgment of the Court of Appeal: June 18, 1992

Counsel: Alexander Budlovsky for the Appellant
Jack Cram for the Respondent

23115 SA MAJESTÉ LA REINE c. ROBERT HOWARD BURNS

Droit pénal - Infractions - Preuve - Crédibilité de la plaignante.

L'intimé a été inculpé sous deux chefs d'accusation : attentat à la pudeur et agression sexuelle. La plaignante est née le 27 août 1971. Elle était âgée de 9 à 12 ans pendant la période visée par le premier chef et de 12 à 16 ans pendant la période visée par le second chef. Sa mère est morte alors qu'elle avait quatre ans. Son père, alcoolique notoire, a tenté d'en prendre soin mais elle a passé plus de six ans dans un foyer d'accueil. L'intimé et le père de la plaignante sont amis et ils se rendent visite de temps à autre.

En juin 1987, la plaignante a été accusée d'agressions sexuelles sur la personne de cinq jeunes garçons qu'elle gardait. À la suite de ces accusations, elle a obtenu des services de counselling et elle a reçu des soins psychologiques. Elle a révélé alors qu'elle aussi avait été victime d'exploitation sexuelle. Elle a également dit qu'elle avait été agressée sexuellement par son demi-frère. Elle a d'abord déclaré qu'il l'avait agressée de 50 à 60 fois pour ensuite réduire ce nombre à 20 fois, en soutenant que c'est plutôt l'intimé qui l'avait agressée de 50 à 60 fois.

Au procès, elle a dit que vers 1980, l'intimé l'avait amenée en voiture sur une voie secondaire et avait attenté à sa pudeur. Au cours de son témoignage, elle a aussi dit que l'intimé avait continué les contacts sexuels sur sa personne sans son consentement lorsqu'il se trouvait seul avec elle dans la maison mobile du père de la plaignante. Celle-ci a aussi fait référence à deux autres incidents similaires précis. La plaignante a déclaré qu'en janvier 1987, alors qu'elle était seule dans la maison mobile, l'intimé est entré et a eu des rapports sexuels avec elle sans son consentement.

Pendant la période qui a précédé la mise en accusation, l'intimé a été interrogé plusieurs fois par la police. Il a nié s'être mal conduit envers la plaignante. Il a consenti à passer un test polygraphique qu'il a échoué selon la police. Au cours d'un long interrogatoire qui a suivi l'administration du test, l'intimé a admis qu'il avait eu des rapports sexuels consensuels une fois avec la plaignante alors qu'elle était âgée de 15 ou 16 ans. L'intimé n'a pas témoigné au procès.

Le juge de première instance a déclaré l'intimé coupable et il l'a condamné à l'égard de chacun des chefs d'accusation à une peine d'emprisonnement de deux ans moins un jour à être purgée concurremment. La Cour d'appel a accueilli l'appui de l'intimé et elle a ordonné la tenue d'un nouveau procès. La Couronne a été autorisée à interjeter appel. L'appel porte sur les questions suivantes :

1. La Cour d'appel de la Colombie-Britannique a commis une erreur de droit en écartant l'appréciation par le juge de première instance de la crédibilité de la plaignante;
2. La Cour d'appel de la Colombie-Britannique a commis une erreur de droit en décidant que le juge de première instance était tenu de motiver sa décision d'accepter le témoignage de la plaignante au sujet des attentats à la pudeur et des agressions sexuelles qu'aurait commis l'intimé.

Origine : Colombie-Britannique

N° du greffe : 23115

Arrêt de la Cour d'appel : Le 18 juin 1992

Avocats : Alexander Budlovsky pour l'appelante
Jack Cram pour l'intimé

23674 HER MAJESTY THE QUEEN v. RICHARD BRIAN MCANESPIE

Criminal law - Procedural law - Evidence - Whether the majority of the Court of Appeal erred in admitting the fresh evidence on the basis that it met the test for such application set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759.

The Respondent was charged with sexual assault, using a weapon in committing a sexual assault, sexual assault causing bodily harm and possession of a weapon for the purpose of committing a sexual assault. The complainant gave numerous statements by which she misled investigators, her friends and family. At trial, the complainant testified that she was in a state of shock, that she did not want to talk to anyone and that she was afraid for her life because she knew the Respondent and saw him regularly. A doctor testified that, based on the complainant's statement and the clinical findings, the complainant had been the victim of a sexual assault, and that it was common for a sexual assault victim to change or add to their story since a victim was usually distraught and in shock when the first details were taken by the police, social workers and medical people.

The Respondent was convicted on all counts. A conviction was registered on counts 3 and 4 and a conditional stay was entered with respect to counts 1 and 2. The Respondent appealed his convictions to the Court of Appeal for Ontario and filed a Notice of Motion submitting that an application would be made at the commencement of the appeal for an order permitting the introduction of fresh evidence. The application to introduce fresh evidence related to evidence of allegations of a prior assault on the victim by the Respondent. Following the trial, but prior to sentencing, counsel for the Respondent was given the victim impact statement that had been made at the request of the trial judge. This statement revealed that the victim alleged that the Respondent had assaulted her two weeks before the attack leading to the charge before the court. The Respondent allegedly hit the complainant, while his arm was in a cast. The Crown had this information prior to trial, but it was not disclosed to the defence. Counsel for the Respondent claimed that, had he cross-examined the complainant on this information during trial, her credibility could have been destroyed to the point where it would have been disbelieved by the trial judge and the Respondent acquitted. The Respondent claimed that, since he was wearing a cast, he could not have committed a sexual assault while armed with a weapon. The Crown argued, in reply, that the fact that the complainant was previously assaulted by the Respondent wearing a cast was brought out during the complainant's cross-examination. The Court of Appeal allowed the application to adduce fresh evidence and allowed the appeal, setting aside the convictions and ordering a new trial. Labrosse J.A. dissented.

Origin of the case: Alberta

File No.: 23674

Judgment of the Court of Appeal: June 10, 1993

Counsel: Rick Libman for the Appellant
Martin Kerbel, Q.C. for the Respondent

23674 SA MAJESTÉ LA REINE c. RICHARD BRIAN MCANESPIE

Droit criminel - Procédure - Preuve - La Cour d'appel à la majorité a-t-elle commis une erreur en admettant une nouvelle preuve pour le motif qu'elle satisfaisait au critère d'application énoncé dans l'arrêt *Palmer c. La Reine*, [1980] 1 R.C.S. 759.

L'intimé a été accusé d'agression sexuelle, d'utilisation d'une arme en commettant une agression sexuelle, d'agression sexuelle causant des lésions corporelles et de possession d'une arme en vue de commettre une agression sexuelle. La plaignante a fait plusieurs déclarations, par lesquelles elle a induit en erreur les enquêteurs, ses amis et sa famille. Au procès, la plaignante a témoigné qu'elle était dans un état de choc, qu'elle ne voulait parler à personne et qu'elle craignait pour sa vie car elle connaissait l'intimé et le voyait régulièrement. Un médecin a témoigné que la déclaration de la plaignante et les conclusions médicales lui permettaient de conclure que la plaignante avait été victime d'une agression sexuelle, et qu'il arrivait communément à une victime d'agression sexuelle de modifier son récit ou d'y ajouter des éléments du fait qu'elle est habituellement affolée et en état de choc lorsque la police, les travailleurs sociaux et le personnel médical recueillent les premiers renseignements.

L'intimé a été déclaré coupable relativement à tous les chefs. Une déclaration de culpabilité a été prononcée quant aux chefs 3 et 4, et un sursis conditionnel a été prononcé relativement aux chefs 1 et 2. L'intimé a interjeté appel de ses déclarations de culpabilité à la Cour d'appel de l'Ontario et déposé un avis de requête exposant qu'au début de l'appel, il demanderait une ordonnance permettant l'introduction d'une nouvelle preuve. La demande visant à introduire une nouvelle preuve visait la preuve d'allégations d'une agression antérieure de la victime par l'intimé. Après le procès, mais avant le prononcé de la sentence, l'avocat de l'intimé a reçu la déclaration de la victime, faite à la demande du juge du procès. Dans cette déclaration, la victime alléguait que l'intimé l'avait agressée deux semaines avant l'agression donnant naissance aux accusations portées devant la cour. L'intimé aurait frappé la plaignante alors que son bras était dans le plâtre. Le ministère public possédait ce renseignement avant la tenue du procès, mais il ne l'a pas communiqué à la défense. L'avocat de l'intimé prétend que, s'il avait contre-interrogé la plaignante sur ce renseignement au cours du procès, sa crédibilité aurait pu être minée à un point tel que le juge du procès ne l'aurait pas crue et aurait acquitté l'intimé. Ce dernier soutient que, son bras étant recouvert d'un plâtre, il ne peut avoir utilisé une arme en commettant une agression sexuelle. Le ministère public soutient en réponse que le fait que la plaignante ait été antérieurement agressée par l'intimé alors que son bras était dans le plâtre est ressorti au cours du contre-interrogatoire de la plaignante. La Cour d'appel a accueilli la demande visant à produire une nouvelle preuve et a accueilli l'appel, infirmant les déclarations de culpabilité et ordonnant la tenue d'un nouveau procès. Le juge Labrosse était dissident.

Origine : Alberta

N° du greffe : 23674

Arrêt de la Cour d'appel : le 10 juin 1993

Avocats : Rick Libman pour l'appelant
Martin Kerbel, c.r., pour l'intimée

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

Motion day : February 7, 1994

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

Motion day : March 7, 1994

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

Motion day : May 2, 1994

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

Motion day : June 6, 1994

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

Audience du : 7 février 1994

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

Audience du : 7 mars 1994

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

Audience du : 2 mai 1994

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

Audience du : 6 juin 1994

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

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.
