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**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Her Majesty The Queen
William F. Ehrcke
Min. of the A.G.

v. (24302)

Donald Robinson (B.C.)
G.D. McKinnon, Q.C.

FILING DATE 7.11.1994

Ronald Webber et al.
Eric T. Sigurdson
Roberts, MacDonald & Sigurdson

v. (24383)

A. Jourdain Investments Ltd. (Ont.)
Anthony J. Frost
Garvey, Ferriss

FILING DATE 4.11.1994

Bluebird Footwear Inc. et al.
Gabriel Tardi

c. (24386)

**General Motors Acceptance Corp. of Canada
Ltd. et al. (Qué.)**
Marc Savoie
Guy & Gilbert

DATE DE PRODUCTION 11.11.1994

Gabriel Tardi
Gabriel Tardi

c. (24387)

**General Motors Acceptance Corp. du Canada
Ltée et al. (Qué.)**
Marc Savoie
Lebrun, Savoie, Joubert

FILING DATE 12.10.1994

Linsay Skelding et al.
Peter C.P. Behie
Ramsay Thomson Lampman

v. (24389)

John Franklin Skelding (B.C.)
Guy P. Brown
Harper Grey Easton

FILING DATE 4.11.1994

Wayne Elmer Peters

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

Richard A. Gibbons
Wilhelm Migneault Gibbons Greenwood

v. (24391)

Her Majesty The Queen (Crim.)(Sask.)
Daryl L. Rayner
A.G. of Sask.

FILING DATE 7.11.1994

Richard Couture
Jean Villeneuve
Shadley, Melançon, Boro

c. (24392)

Sa Majesté La Reine (Crim.)(Qué.)
Robert Marchi
Min. de la Justice

DATE DE PRODUCTION 8.11.1994

Randy Andre McMaster et al.
Terence C. Semenuk
Singleton Urquhart MacDonald

v. (24395)

Her Majesty The Queen (Crim.)(Alta.)
Paul C. Bourque
Agent of the A.G. of Alberta

FILING DATE 10.11.1994

Bate Equipment Ltd. et al.
W. Donald Goodfellow, Q.C.

v. (24396)

Ellis-Don Ltd. et al. (Alta.)
Doreen A. Sulyman, Q.C.
Cox, Trofimuk, Campbell-Sulyma &
Stewart

FILING DATE 10.11.1994

Her Majesty The Queen
Graham J. Sleeth, Q.C.
Office of the A.G.

v. (24397)

Donald I. MacLeod (N.B.)
James C. Crocco
Crocco, Hunter, Purvis & Depow

FILING DATE 10.11.1994

Dr. Khalid J. Hasan

E.J. Mockler, Q.C.
Mockler, Allen & Dixon

v. (24398)

**The Council of the College of Physicians and
Surgeons of New Brunswick (N.B.)**

John P. Barry, Q.C.
Barry & O'Neil

FILING DATE 14.11.1994

Stephen Ross

Jay I. Solomon

v. (24400)

United States of America (B.C.)

Kenneth J. Yule
A.G. of Canada

FILING DATE 14.11.1994

Leonard Peckham

Paul Burstein
Burstein & Paine

v. (24401)

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

A.G. of Ontario

FILING DATE 14.11.1994

Tarel Hotel Ltd.

W.J. Herle
Herle and Company

v. (24402)

**Saskatchewan Co-Operative Financial Services
Ltd. (Sask.)**

P.A. Kelly, Q.C.
Gauley & Co.

FILING DATE 14.11.1994

Edit Joan Noble et al.

Brian Barrington-Foote, Q.C.
Burnet, Duckworth & Palmer

v. (24403)

First City Trust Co. (Alta.)

James E. Redmond, Q.C.
Milner Fenerty

FILING DATE 14.11.1994

Allen T. Fletcher et al.
D.A. Thurmeier
Beaumont, Church

v. (24404)

Scurry-Rainbow Oil Ltd. et al. (Alta.)

R.A. McLennan, Q.C.
McLennan Ross

FILING DATE 14.11.1994

Daisy Marie Burden et al.

John B. Ballem, Q.C.
Ballem McDill MacInnes Eden

v. (24405)

Scurry-Rainbow Oil Ltd. (Alta.)

R. A. McLennan, Q.C.
McLennan Ross

FILING DATE 14.11.1994

Olivia Grace Logoza

Terrence M. Kulasa
Kulasa, Campbell & Bokenfohr

v. (24406)

Thomas Golder et al. (Alta.)

Paul Belzil
Chatwin Belzil

FILING DATE 15.11.1994

Sa Majesté La Reine

Michel St-Cyr
Subs. procureur général

c. (24408)

Claude Simard (Crim.)(Qué.)

Claude Hamann
Hamann, Grenon, Barbeau

DATE DE PRODUCTION 17.11.1994

NOVEMBER 10, 1994 /

LE 10 NOVEMBRE 1994

**CORAM: CHIEF JUSTICE LAMER AND L'HEUREUX-DUBÉ AND GONTHIER JJ. /
LE JUGE EN CHEF LAMER ET LES JUGES L'HEUREUX-DUBÉ ET GONTHIER**

Gabriel Tardi

c. (24387)

General Motors Acceptance Corporation du Canada Limitée

- and -

Les Chaussures L'Oiseau Bleu Inc. (Qué.)

NATURE OF THE CASE

Procedural law - Civil procedure - Pre-trial procedure - Respondent applying for repossession of motor vehicle purchased by Les Chaussures L'Oiseau Bleu Inc. - Applicant representing Les Chaussures in proceedings - Respondent's preliminary motion granted and Les Chaussures ordered to obtain counsel - Applicant's motion for revocation of judgment and for leave to intervene dismissed - Respondent's motion to repossess granted - Respondent's motion for dismissal of the appeal allowed and Applicant's appeal dismissed - Whether the Court of Appeal erred in allowing the Respondent's motion for dismissal of the appeal and in dismissing the Applicant's appeal.

PROCEDURAL HISTORY

June 29, 1994
Superior Court of Quebec (Crépeau J.)

Respondent's motion to repossess allowed

August 4, 1994
Court of Appeal of Quebec
(Brossard, Proulx and Chamberland JJ.A.)

Respondent's motion for dismissal of appeal
allowed; Applicant's appeal dismissed

October 12, 1994
Supreme Court of Canada

Application for leave to appeal filed

La Commission scolaire de la Jonquière

c. (24338)

Le Syndicat du personnel de soutien de Jonquière (C.E.Q.) (Qué.)

NATURE DE LA CAUSE

Droit du travail - Droit administratif - Contrôle judiciaire - Compétence - Arbitrage - Convention collective - Article 73 de la *Loi sur le régime de négociation des conventions collectives dans les secteurs public et parapublic*, L.R.Q. 1977, ch. R-8.2 - L'arbitre de griefs agissait-il dans le cadre d'une compétence exclusive compte tenu de l'article 100.12 a) du *Code du travail*, L.R.Q. 1977, ch. C-27? - Dans la négative, la Cour supérieure et la Cour d'appel devaient-elles intervenir puisque l'arbitre a commis une erreur de droit? - Subsidièrement, est-ce que l'arbitre de griefs a commis une erreur manifestement déraisonnable en cautionnant une disposition de la convention collective qui va directement à l'encontre d'une loi d'ordre général et d'intérêt public?

HISTORIQUE PROCÉDURAL

Le 14 septembre 1992
Cour supérieure du Québec (Walters j.c.s.)

Requête en révision d'une décision arbitrale
majoritaire rejetée

Le 13 juin 1994
Cour d'appel du Québec
(Tyndale, LeBel et Baudouin jj.c.a.)

Pourvoi rejeté

Le 13 octobre 1994
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

F.J.U.

v. (24159)

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

NATURE OF THE CASE

Criminal law - Evidence - *Voir dire* at trial held that the Applicant's statement was a free and voluntary confession - Whether Court of Appeal erred in holding that the reasons of the trial judge for ruling the Applicant's statement was not in violation of s. 10(b) of the *Charter* were "sufficient" to meet the requirements established in *R. v. Burns* - Dissent in Court of Appeal on basis whether the trial judge erred in his direction that the jury could compare similarities in complainant's prior inconsistent statement and Applicant's statement in determining whether Applicant's statement was true.

PROCEDURAL HISTORY

December 13, 1990
Ontario Court of Justice (General
Division) (Allen J.)

Conviction: 1 count of incest and 2 counts of sexual
interference

May 17, 1994
Court of Appeal for Ontario
(Houlden [dissenting], Carthy and Osborne JJ.A.)

Appeal dismissed

May 20, 1994
Supreme Court of Canada

Notice of appeal as of right filed. Dissent on basis
that the trial judge erred in his direction that the jury
could compare similarities in complainant's prior
inconsistent statement and Applicant's statement in
determining whether Applicant's statement was true.

October 18, 1994
Supreme Court of Canada

Application for leave to appeal filed

Bobby Glenn Holt

v. (24362)

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

NATURE OF THE CASE

Criminal law - Evidence - Defences - Party to the offence - Whether the Court of Appeal erred in law in holding that the trial judge did not err in stating that he was bound to weigh the evidence of flight against the Applicant - Whether the Court of Appeal erred in law in holding that the trial judge did not err in failing to refer to or give any weight to the disposition of the deceased for violence - Whether the Court of Appeal erred in law in dealing with the issues of flight and the disposition of the deceased for violence as distinct from the issues of self-defence and provocation - Whether the Court

of Appeal erred in law in confirming the finding of the trial judge that the Applicant was guilty as a party to the offence of murder, as an aider, by virtue of s. 21(1)(b) of the *Criminal Code*.

PROCEDURAL HISTORY

May 14, 1993
Court of Queen's Bench of Alberta (Waite J.)

Conviction: second degree murder

June 24, 1994
Court of Appeal of Alberta
(Lomas, Irving and Côté JJ.A)

Appeal dismissed

October 20, 1994
Supreme Court of Canada

Application for leave to appeal filed

Bernard Ratelle et Michel Ste-Marie

c. (24333)

Sa Majesté La Reine (Qué.)

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit commercial - Faillite - Caractère vague et imprécis de l'al. 202(1)f) de la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, ch. B-3 - Jugement déclaratoire portant que l'al. 202(1)f) de la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, ch. B-3, porte atteinte aux art. 2b) et 7 de la *Charte canadienne* - La Cour d'appel du Québec a-t-elle erré en droit lorsqu'elle conclut que l'al. 202(1)f) ne porte pas atteinte aux principes de justice fondamentale prévus à l'art. 7 de la *Charte* par son caractère vague et imprécis? - La Cour d'appel a-t-elle erré en droit lorsqu'elle conclut que l'al. 202(1)f) brime la liberté d'expression prévue à l'al. 2b) de la *Charte Canadienne*, mais que cette violation est justifiée en vertu de l'art. 1 de la *Charte Canadienne*?

HISTORIQUE PROCÉDURAL

Le 27 janvier 1992
Cour du Québec (Bonin J.C.Q.)

Jugement déclaratoire portant que l'alinéa 202(1)f) de la *Loi sur la faillite et l'insolvabilité*, L.R.C. 1985, ch. B-3, porte atteinte aux articles 2b) et 7 de la *Charte canadienne*; Demandeurs acquittés

Le 12 juin 1992
Cour supérieure du Québec (Paul, J.C.S.)

Appel de l'intimée rejeté

Le 17 juin 1994
Cour d'appel du Québec (Tourigny, Deschamps et Chamberland, J.J.C.A.)

Appel de l'intimée accueilli

Le 17 octobre 1994
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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

Ralph Adler

v. (24341)

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

NATURE OF THE CASE

Taxation - Assessment - Interpretation - Applicant not including amount received as severance pay on his retirement in income for 1991 taxation year - Minister of National Revenue's reassessment including amount in Applicant's income under subparagraph 56(1)(a)(ii) of the *Income Tax Act*, R.S.C. 1952, c. 148, as amended - Whether the Courts erred in concluding that the amount received by the Applicant was a retiring allowance included in the Applicant's income under subparagraph 56(1)(a)(ii) of the *Income Tax Act*.

PROCEDURAL HISTORY

February 15, 1994
Tax Court of Canada (Margeson J.)

Applicant's appeal from income tax assessment
dismissed

September 13, 1994
Federal Court of Appeal
(MacGuigan, Létourneau and Robertson JJ.A.)

Application for judicial review dismissed

October 19, 1994
Supreme Court of Canada

Application for leave to appeal filed

Canadian Pacific Limited

v. (24315)

Her Majesty the Queen (F.C.A.)(B.C.)

NATURE OF THE CASE

Administrative law - Statutes - Taxation - Appeals - Interpretation - Customs and excise - Role of the Court of Appeal - Rules of interpretation of statutes in technical matters - Interpretation of fiscal laws - Use of extrinsic materials to interpret taxation statutes - Meaning of the phrase "prime metal stage" in tax rebate provisions in the *Excise Tax Act*, R.S.C. 1970, Ch. E-13, and the *Primary Industries Levy Offset Program Regulations*, SOR/85-336 - Whether the transportation of coal fell, in the circumstances, within the definition of "mining" set out in subsection 49.01(1) of the *Excise Tax Act* so as to entitle the Applicant to a rebate of tax paid on diesel fuel used to power the transporting trains - Whether the Court of Appeal erred in giving preference to the French version of the legislation - Whether the Court of Appeal erred in overruling the learned trial judge's findings of fact without finding that he had made palpable and overriding errors which affected his assessment of the facts - Whether the Court of Appeal erred in holding that the learned judge was wrong in his determination of the ordinary or popular sense meaning of the legislation.

PROCEDURAL HISTORY

June 3, 1991
Canadian International Trade Tribunal
(Trudeau, Presiding Member, and Macmillan and
Fraleigh, Members)

Appeal pursuant to sections 51.19 and 51.21 (now
81.19 and 81.21) of the *Excise Tax Act* from a
Notice of Determination not allowed

March 24, 1994
Federal Court, Trial Division (Denault J.)

Appeal by way of trial *de novo* allowed

June 15, 1994
Federal Court of Appeal
(Mahoney, Stone and Linden J.J.A.)

Appeal allowed

October 5, 1994
Supreme Court of Canada

Application for leave to appeal filed

Canadian National Railway Company

v. (24340)

Her Majesty the Queen (F.C.A.)(Ont.)

NATURE OF THE CASE

Administrative law - Statutes - Taxation - Appeals - Interpretation - Customs and excise - Role of the Court of Appeal - Rules of interpretation of statutes in technical matters - Interpretation of fiscal laws - Use of extrinsic materials to interpret taxation statutes - Meaning of the phrase "prime metal stage" in tax rebate provisions in the *Excise Tax Act*, R.S.C. 1970, Ch. E-13, and the *Primary Industries Levy Offset Program Regulations*, SOR/85-336 - Whether the transportation of coal fell, in the circumstances, within the definition of "mining" set out in subsection 49.01(1) of the *Excise Tax Act* so as to entitle the Applicant to a rebate of tax paid on diesel fuel used to power the transporting trains - Whether the Court of Appeal erred in giving preference to the French version of the legislation - Whether the Court of Appeal erred in overruling the learned trial judge's findings of fact without finding that he had made palpable and overriding errors which affected his assessment of the facts - Whether the Court of Appeal erred in holding that the learned judge was wrong in his determination of the ordinary or popular sense meaning of the legislation.

PROCEDURAL HISTORY

June 3, 1991
Canadian International Trade Tribunal
(Trudeau, Presiding Member, and Macmillan and
Fraleigh, Members)

Appeal pursuant to sections 51.19 and 51.21 (now
81.19 and 81.21) of the *Excise Tax Act* from three
Notice of Determination not allowed

March 24, 1994
Federal Court, Trial Division (Denault J.)

Appeal by way of trial *de novo* allowed

June 15, 1994
Federal Court of Appeal
(Mahoney, Stone and Linden JJ.A.)

Appeal allowed

October 5, 1994
Supreme Court of Canada

Application for leave to appeal filed

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

Lionel Désaulniers

c. (24356)

Sa Majesté La Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Preuve - Agression sexuelle - Crédibilité des témoins - Connaissance judiciaire - La Cour d'appel a-t-elle erré en ne statuant pas que le juge du procès avait commis une erreur de droit en prenant connaissance d'office de la preuve d'expert contenue dans le jugement rendu dans *R. c. Gilles Benoit* no 700-01-001093-894? - La Cour d'appel a-t-elle erré en ne statuant pas que le juge du procès avait commis une erreur de droit en prenant connaissance d'office du livre *Précis de pharmacologie*? - La Cour d'appel a-t-elle erré en appliquant l'article 686(1)b(iii) du *Code criminel* malgré l'effet cumulatif des erreurs de droit commises par le juge du procès qui a pris connaissance d'office du *Rapport Badgley* et de l'ouvrage intitulé *Abus sexuels*.

HISTORIQUE PROCÉDURAL

APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST ISSUE

REQUÊTES SOUMISES À LA COUR DEPUIS
LA DERNIÈRE PARUTION

Le 1^{er} février 1991
Cour du Québec (Pronovost J.C.Q.)

Déclaration de culpabilité: 2 chefs d'agression
sexuelle

Le 1^{er} mars 1991
Cour du Québec (Pronovost J.C.Q.)

Peines à être purgées de manière concurrente: 3 ans
sur le premier chef, 2 ans sur le deuxième

Le 7 mars 1991
Cour d'appel du Québec (Gendreau, J.C.A.)

Autorisation d'interjeter appel accordée;
Mise en liberté provisoire pendant l'appel accordée

Le 15 août 1994
Cour d'appel du Québec (LeBel, Tourigny et
Chamberland, J.J.C.A.)

Appel contre la déclaration de culpabilité et la peine
rejeté

Le 24 octobre 1994
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Harald Horst Ludwig

v. (24327)

Carolyn Crick (B.C.)

NATURE OF THE CASE

Family law - Division of property - Unjust enrichment - Parties living together in a common law relationship for just over two years - Respondent providing household and health care services to the Applicant, while economic contribution to the property insignificant - Whether Court of Appeal erred in extending the remedy for a constructive trust where the relationship was of a short duration and no link demonstrated between the contribution and the subject property - Whether the majority of the Court of Appeal ignored the central findings of the trial judge and offended the decision in *Stein v. The Ship "Kathy K"*.

PROCEDURAL HISTORY

October 16, 1992
Supreme Court of British Columbia (Paris J.)

Respondent's claim dismissed

August 16, 1994
Court of Appeal for British Columbia
(Southin [dissenting], Proudfoot and Goldie JJ.A.)

Appeal allowed; Applicant liable to Respondent

October 11, 1994
Supreme Court of Canada

Application for leave to appeal filed

Simcoe Erie Group

v. (24330)

Barton Myers and Barton Myers Architect Inc. (Ont.)

NATURE OF THE CASE

Commercial law - Insurance - Damages - Actions - Interpretation of professional liability insurance contract - Whether insurer required to defend professional insureds in action for return of fees and damages if a defence and set-off relating to alleged negligence against the professional insured is successful - Whether insurer required to defend professional insureds in actions for return of fees and damages even though the insured cannot be liable to pay any damages for an alleged error or omission by the professional insured.

PROCEDURAL HISTORY

May 13, 1994
Ontario Court of Justice (General Division)
(Greer J.)

Applicants ordered to defend Respondents

June 23, 1994
Court of Appeal for Ontario
(Griffiths, Carthy and Galligan JJ.A.)

Appeal allowed to extent that formal order amended
to clarify that Applicant liable only for amounts
relating to professional negligence

October 14, 1994
Supreme Court of Canada

Application for leave to appeal filed

NOVEMBER 17, 1994 / LE 17 NOVEMBRE 1994

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

Wendel Dewald

v. (24363)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Evidence - Police - Exclusion of evidence - Whether the Court of Appeal erred in holding that the determination as to whether to delay the administration of a road side screening device pursuant to s. 254(2) of the *Criminal Code* should be abdicated to the police officer based on his opinion as to whether a proper analysis can be obtained - Whether the majority of the Court of Appeal erred in interfering with the trial judge's conclusions relating to the exclusion of evidence pursuant to s. 24(2) of the *Canadian Charter of Rights and Freedoms* - Whether the majority of the Court of Appeal erred in determining the appropriate principles which ought to apply to a finding pursuant to s. 24(2) of the *Charter* - Whether the majority of the Court of Appeal erred while determining the applicability of s. 24(2) of the *Charter* and in holding that the subsequent breathalyser reading was real evidence not induced by the action of police - Whether the majority of the Court of Appeal erred in concluding that once the Applicant's ss. 8 and 10(b) *Charter* rights were violated, that the exclusion from evidence of a breathalyser reading would bring the administration of justice into dispute.

PROCEDURAL HISTORY

January 12, 1993
Ontario Court (Provincial Division) (Taillon J.)

Charge pursuant to s. 254(2) of the *Criminal Code*
stayed

October 13, 1993
Ontario Court (General Division) (McLean J.)

Appeal allowed: new trial ordered

August 24, 1994
Court of Appeal for Ontario
(Grange, Galligan and Arbour [dissenting] JJ.A.)

Appeal dismissed

October 25, 1994
Supreme Court of Canada

Application for leave to appeal filed

Battlefords and District Co-operative Ltd.

v. (24342)

Betty-Lu Clara Gibbs and Saskatchewan Human Rights Commission (Sask.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Civil rights - Interpretation - Insurance - Discrimination on the basis of mental disability - Respondent Gibbs receiving insurance benefits for mental disability for 24 months under health insurance policy - Whether an employer who provides a disability plan which limits benefits for one kind of disability, but not for others, discriminates on the basis of disability contrary to s. 16(1) of *The Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1 -Whether the Court of Appeal erred in dismissing the Applicant's appeal.

PROCEDURAL HISTORY

July 28, 1992
Board of Inquiry

Complaint of discrimination allowed

February 9, 1993
Court of Queen's Bench of Saskatchewan
(Lawton J.)

Appeal dismissed

June 14, 1994
Court of Appeal for Saskatchewan (Bayda C.J.A.,
Wakeling [dissenting] and Jackson J.J.A.)

Appeal dismissed

October 14, 1994
Supreme Court of Canada

Application for leave to appeal filed

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

Ronald A. Wilson

v. (24358)

Chris McRea, Wood Gundy Inc., Gerald McKendry and Tia McKendry (Ont.)

NATURE OF THE CASE

Commercial law - Stockbrokers - Procedural law - Applicant investing in stock of company - Company going bankrupt - Motion for summary judgment under Rule 20 as not showing a genuine issue for trial - Whether right to a trial affected by the interpretation of Ontario Rule 20 - Whether parameters of the common law duty of a broker and the right to recover losses from a company promoter changed.

PROCEDURAL HISTORY

November 27, 1992
Ontario Court (General Division) (Byers J.)

Claim dismissed

August 23, 1994
Court of Appeal for Ontario
(Robins, Finlayson and Carthy JJ.A.)

Appeal dismissed

October 20, 1994
Supreme Court of Canada

Application for leave to appeal filed

John M. Tennant

v. (24339)

Her Majesty The Queen (F.C.A.)(B.C.)

NATURE OF THE CASE

Taxation - Statutes - Interpretation - Income tax - Deduction of interest expenses incurred on a loan - Borrowed funds used to purchase 1,000,000 shares of Realwest Energy Corporation for purpose of earning income - Applicant entering into agreement of purchase and sale with arms length corporation, TWL Holdings Ltd. pursuant to s. 85 of the *Income Tax Act*, under which he exchanged shares for 1,000 shares in TWL - New shares also used for earning income - Whether Applicant entitled to continue to deduct interest expense for loan used to purchase first shares.

PROCEDURAL HISTORY

January 15, 1993
Federal Court of Canada, Trial Division
(Teitelbaum J.)

Applicant's appeal denied;
Notices of Reassessments upheld

June 21, 1994
Federal Court of Appeal
(Mahoney, Desjardins and McDonald JJ.A.)

Appeal dismissed

October 17, 1994
Supreme Court of Canada

Application for leave to appeal filed

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

Sa Majesté La Reine

c. (24350)

Roger Aubin (Crim.)(Qué.)

NATURE DE LA CAUSE

Droit criminel - Preuve - Preuve circonstancielle - Pertinence de la preuve, force probante et préjudice pour l'accusé - Critère d'admissibilité d'une preuve - Admissibilité en preuve de l'arme saisie au moment de l'arrestation du demandeur en l'absence de preuve établissant de façon précise l'identité de l'arme causant la mort de la victime - La Cour d'appel du Québec a-t-elle erré en droit dans la détermination du critère d'admissibilité d'une preuve?

HISTORIQUE PROCÉDURAL

Le 12 février 1991
Cour supérieure du Québec (Desjardins, J.C.S.)

Déclaration de culpabilité: Meurtre au deuxième
degré

Le 2 août 1994
Cour d'appel du Québec (LeBel, Tourigny et
Chamberland, J.J.C.A.)

Appel accueilli; cassation du verdict de culpabilité;
ordonnance de nouveau procès

Le 27 octobre 1994
Cour suprême du Canada

Demande d'autorisation d'appel déposée

The Minister of Justice of Canada

v. (24253)

Daniel Jamieson (Crim.)(Qué.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - International law - Extradition - Criminal law - Narcotics - Respondent facing in Michigan a mandatory minimum sentence of 20 years' imprisonment for trafficking in 273 grams of a mixture containing cocaine - Whether the Court of Appeal erred in law in setting aside the Warrant of Surrender and in granting *habeas corpus* with *certiorari* in aid, on the basis that the said Warrant violated the Respondent's rights under s. 7 of the *Charter* - Whether the Court of Appeal erred in its interpretation of *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779, in reviewing the Minister's decision to surrender, by focusing on the mandatory minimum penalty and the interpretation of Michigan State law rather than balancing the criteria set out in *Kindler*, and allowing due deference to the Minister, in deciding that the Minister's decision to surrender Jamieson violated s. 7 of the *Charter* - Whether the Court of Appeal erred by deciding the sentence Jamieson would face under Michigan State Law if convicted, in its review of the decisions of the judge on *habeas corpus* and the Minister on surrender, and the question of a violation of s. 7 of the *Charter*.

PROCEDURAL HISTORY

APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST ISSUE

REQUÊTES SOUMISES À LA COUR DEPUIS
LA DERNIÈRE PARUTION

September 23, 1993
Superior Court of Quebec (Mayrand J.S.C.)

Application for *habeas corpus* with *certiorari* in aid
dismissed

August 25, 1994
Court of Appeal of Quebec (Beauregard, Baudouin
[dissenting] and Fish JJ.A.)

Appeal allowed

August 31, 1994
Supreme Court of Canada (L'Heureux-Dubé J.)

Motion for a stay of proceedings granted

October 25, 1994
Supreme Court of Canada

Application for leave to appeal filed

NOVEMBER 17, 1994 / LE 17 NOVEMBRE 1994

24290 **PAN OCEAN OIL LTD. - v. - HER MAJESTY THE QUEEN** (F.C.A.)

CORAM: The Chief Justice and Cory and Iacobucci 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

Taxation - Commercial law - Assessment - Statutes - Interpretation - Amalgamation - Does the corporate law principle that an amalgamating corporation continues to exist in the amalgamated corporation as decided in *Black and Decker Manufacturing Co. Ltd.*, [1975] 1 S.C.R. 411 apply for income tax purposes as previously decided by the Federal Court of Appeal in *The Queen v. Guaranty Properties Ltd. et al.*, (1990) 44 DTC 6363? - Is an amalgamated corporation a new corporation by virtue of the wording of par. 87(2)(a) of the *Income Tax Act* with the result that its tax attributes and entitlement to deductions are limited to those set forth in s. 87 of the *Act* thus resulting in a loss of tax attributes and deductions of an amalgamating corporation to the amalgamated corporation? - Interpretation and application of s. 87 of the *Income Tax Act*.

24235 **CANADIAN FOREST PRODUCTS LTD. v. BOVAR INC. AND BOVAR INVESTMENTS INC.,
CARRYING ON BUSINESS AS MAINLAND MANUFACTURING, AND POWELL
MACHINERY LTD.** (B.C.)

CORAM: L'Heureux-Dubé, Gonthier and McLachlin 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

Commercial law - Contracts - Novation - Whether the Court of Appeal erred in overturning the trial judge's findings of fact on a summary trial without finding a palpable or overriding error - Whether the Court of Appeal erred in finding that the naming of the original debtor as a defendant in this action claiming novation was a relevant factor in determining whether the Applicant had released the original debtor and whether the Respondent Mainland Manufacturing had assumed the original obligation by way of a novation - Whether the Court of Appeal erred in misapplying the requirement in *National Trust v. Mead*, [1990] 2 S.C.R. 410 for compelling evidence in determining whether the Respondent Mainland Manufacturing assumed obligations under a guarantee by way of a novation.

24242 **INGE STEPHENS c. LES SERVICES DE SANTÉ DU QUÉBEC** (Qué.)

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

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

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

NATURE DE LA CAUSE

Code civil - Assurance - Preuve - Assurance-invalidité - Transsexualisme - Quel degré de preuve un tribunal peut-il exiger d'un assuré en matière d'assurance-invalidité? - Compte tenu de l'article 2537 du *C.c.B.C.* (art. 2437 du *C.c.Q.*) un assureur peut-il négliger de verser des prestations d'invalidité à son assuré sans auparavant lui demander de faire la preuve de la continuation de l'invalidité ou apporter lui-même une preuve contraire?

10.11.1994

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai de dépôt du mémoire de l'intervenant

RJR MacDonald Inc.

c. (23460)

Procureur général du Canada (Qué.)

et entre

Imperial Oil Ltd.

c. (23490)

Procureur général du Canada (Qué.)

Motion to extend the time in which to file an intervener's factum

With the consent of the parties. / Avec le consentement des parties.

ACCORDÉE / GRANTED Délai prorogé au 27 octobre 1994.

10.11.1994

Before / Devant: LE JUGE IACOBUCCI

**Requête en prorogation du délai pour obtenir
l'autorisation d'appel**

Richard Couture

c. (24392)

Sa Majesté La Reine (Qué.)

**Motion to extend the time in which to apply for
leave to appeal**

Avec le consentement des parties.

ACCORDÉE / GRANTED Délai prorogé au 8 novembre 1994.

10.11.1994

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to file the
intervener's factum**

**Requête en prorogation du délai de dépôt du
mémoire de l'intervenant**

BY/PAR: A.G. of Quebec
 A.G. of Ontario

With the consent of the parties.

The Tseshaht et al.

v. (23234)

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

GRANTED / ACCORDÉE

15.11.1994

Before / Devant: LA FOREST J.

**Motion to extend the time in which to apply for
leave to appeal**

Leonard Joseph Henry

v. (24384)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE Time extended to November 4, 1994.

**Requête en prorogation du délai pour obtenir
l'autorisation d'appel**

With the consent of the parties.

15.11.1994

Before / Devant: LE JUGE LA FOREST

Requête en vue de surseoir à l'exécution

Motion for a stay of execution

Procureur général du Québec

c. (24309)

2747-3174 Québec Inc. (Qué.)

ACCORDÉE / GRANTED

16.11.1994

Before / Devant: LA FOREST J.

Motion for leave to intervene

BY/PAR: HIV-T Group and the Canadian
Association of Transfused Hepatitis
C Survivors

IN/DANS: Kobe ter Neuzen

v. (23773)

Dr. Gerald Korn (B.C.)

Requête en autorisation d'intervention

Kenneth Arenson, for the motion.

B.A. Crane, Q.C., contra.

Consent filed by the appellant.

GRANTED / ACCORDÉE

It is hereby ordered that:

1. The motion for leave to intervene is granted. The HIV-T Group and the Canadian Association of Transfused Hepatitis C Survivors may file a 20-page factum in the above referenced appeal before December 9, 1994. The Respondent may file a response before January 9, 1995.
2. There will be no order as to costs on this motion. Costs on the appeal are to be determined by the Court.

16.11.1994

Before / Devant: THE REGISTRAR

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

Hubert Patrick O'Connor

v. (24114)

Her Majesty The Queen (B.C.)

GRANTED / ACCORDÉE

**Requête en prorogation du délai de dépôt du
mémoire de l'appelant**

With the consent of the parties.

16.11.1994

Before / Devant: THE REGISTRAR

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

Requête en prorogation du délai de dépôt de la réplique de la requérante

Atlific (Nfld.) Ltd.

With the consent of the parties.

v. (24313)

Hotel Buildings Ltd. et al. (Nfld.)

GRANTED / ACCORDÉE Time extended to November 18, 1994.

16.11.1994

Before / Devant: THE REGISTRAR

**Motion to extend the time in which to file the case
on appeal**

Allan Jacob Lewis et al.

v. (23802)

Her Majesty The Queen in right of Canada (B.C.)

**Requête en prorogation du délai de dépôt du
dossier d'appel**

With the consent of the parties.

GRANTED / ACCORDÉE

16.11.1994

Before / Devant: THE REGISTRAR

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

Kobe ter Neuzen

v. (23773)

Dr. Gerald Korn (B.C.)

Requête en prorogation du délai de dépôt du mémoire de l'intimé

With the consent of the parties.

GRANTED / ACCORDÉE

16.11.1994

Before / Devant: THE REGISTRAR

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

Percival Whitley

v. (23891)

Her Majesty The Queen (Ont.)

Requête en prorogation du délai de dépôt du mémoire de l'intimé

With the consent of the parties.

GRANTED / ACCORDÉE

16.11.1994

Before / Devant: THE REGISTRAR

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

Timothy Erin Mowers

v. (23890)

Her Majesty The Queen (Ont.)

Requête en prorogation du délai de dépôt du mémoire de l'intimé

With the consent of the parties.

GRANTED / ACCORDÉE

16.11.1994

Before / Devant: THE REGISTRAR

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

Merck & Co. Inc. et al.

v. (23905)

Apotex Inc. et al. (Alta.)

Requête en prorogation du délai de dépôt du mémoire de l'intimé

With the consent of the parties.

GRANTED / ACCORDÉE

17.11.1994

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai de dépôt du
mémoire de l'appelant**

Kwong Hung Chan

With the consent of the parties.

v. (23813)

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

GRANTED / ACCORDÉE

17.11.1994

Before / Devant: THE REGISTRAR

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

Steven Levis et al.

v. (23809)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE

**Requête en prorogation du délai de dépôt du
mémoire de l'intimé**

With the consent of the parties.

17.11.1994

Before / Devant: THE REGISTRAR

Motion to extend the time in which to file the respondent's supplementary case on appeal and factum

Requête en prorogation du délai de dépôt du dossier supplémentaire de l'intimé et mémoire

B.I. Maksymec et al.

With the consent of the parties.

v. (23519)

Y.R. Botiuk (Ont.)

GRANTED / ACCORDÉE

16.11.1994

Before / Devant: THE REGISTRAR

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

Telecommunications Workers Union

v. (23778)

C.R.T.C. et al. (F.C.A.)(Ont.)

GRANTED / ACCORDÉE

Requête en prorogation du délai de dépôt du mémoire de l'appelante

With the consent of the parties.

**NOTICES OF APPEAL FILED SINCE
LAST ISSUE**

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

14.11.1994

Stephan Mills

v. (23728)

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

10.11.1994

Noel Edwin Bell

v. (24134)

**Canadian Human Rights Commission
(F.C.A.)(B.C.)**

10.11.1994

David John Cooper

v. (24135)

**Canadian Human Rights Commission
(F.C.A.)(B.C.)**

10.11.1994

William Wade

v. (24153)

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

16.11.1994

Morris Manning

v. (24216)

S. Casey Hill et al. (Ont.)

**NOTICES OF INTERVENTION FILED
SINCE LAST ISSUE**

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

BY/PAR: Attorney General of Alberta
Attorney General of Ontario
Attorney General of Saskatchewan

IN/DANS: **Donald and William Gladstone**

v. (23801)

Her Majesty The Queen (B.C.)

BY/PAR: Attorney General of Alberta
Attorney General of Newfoundland
Attorney General of Ontario
Attorney General of Saskatchewan

IN/DANS: **NTC Smokehouse Ltd.**

v. (23800)

Her Majesty The Queen (B.C.)

BY/PAR: Attorney General of Alberta
Procureur général du Québec
Attorney General of Ontario
Attorney General of Saskatchewan

IN/DANS: **Jerry Benjamin Nikal**

v. (23804)

Her Majesty The Queen (B.C.)

BY/PAR: Attorney General of Alberta
Procureur général du Québec
Attorney General of Ontario
Attorney General of Saskatchewan

IN/DANS: **Dorothy Marie Van Der Peet**

v. (23803)

Her Majesty The Queen (B.C.)

BY/PAR: Attorney General of Alberta
Attorney General of New Brunswick
Attorney General of Newfoundland
Attorney General of Ontario
Procureur général du Canada

IN/DANS: **Franck Cote et al.**

c. (23707)

Sa Majesté La Reine (Qué.)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

10.11.1994

CORAM: Sopinka, Gonthier, Cory, Iacobucci and Major JJ.

Her Majesty The Queen

v. (23978)

William John Dubazs (Crim.)(Alta.)

SOPINKA J. -- For the reasons of Foisy J.A., dissenting, in the Court of Appeal, we agree that the majority of the Court of Appeal erred in setting aside the conviction. The appeal is allowed, the judgment of the Court of Appeal is set aside and the conviction at trial is restored. The matter is remitted to the Court of Appeal to deal with the appeal as to sentence.

Paul C. Bourque, for the appellant.

David B. Mercer, for the respondent.

LE JUGE SOPINKA -- Pour les motifs donnés par le juge Foisy, dissident, de la Cour d'appel, nous sommes d'accord pour dire que la Cour d'appel à la majorité a commis une erreur en annulant la déclaration de culpabilité. Le pourvoi est accueilli, le jugement de la Cour d'appel est infirmé et la déclaration de culpabilité prononcée au procès est rétablie. La question est retournée à la Cour d'appel pour qu'elle statue sur l'appel contre la peine.

10.11.1994

CORAM: Sopinka, Gonthier, Cory, Iacobucci and Major JJ.

Her Majesty The Queen

v. (23974)

John Paul Lepage (Crim.)(Ont.)

James W. Leising and Lucia P. Favret, for the appellant.

Donald Oraziotti, Q.C., for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Food and drugs - Offences - Trial - Evidence - Appeal - Jurisdiction - Did the majority of the Court of Appeal err in concluding that the trial judge erred in finding that the Crown had proven the Respondent's possession of L.S.D. from the evidence presented at the trial, including the evidence of the presence of the Respondent's fingerprints on the clear bag which contained L.S.D.? - Did the majority of the Court of Appeal err in usurping the function of the trial judge by substituting their view of the evidence for that of the trial judge's in a situation where there was no error in the trial judge's evaluation of the evidence and the conclusions that she drew from it?

Nature de la cause:

Droit criminel - Aliments et drogues - Infractions - Procès - Preuve - Appel - Compétence - La Cour d'appel à la majorité a-t-elle commis une erreur en concluant que le juge du procès a commis une erreur quand elle a conclu de la preuve présentée au procès, dont la preuve de la présence d'empreintes digitales de l'intimé sur le sac transparent contenant du L.S.D., que la poursuite avait prouvé que l'intimé était en possession de L.S.D.? - La Cour d'appel à la majorité a-t-elle commis une erreur en usurpant le rôle du juge du procès en substituant son opinion quant à la preuve à celle du juge du procès dans une situation où celle-ci n'avait pas commis d'erreur dans l'appréciation de la preuve et la conclusion qu'elle en a tirée?

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning November 21, 1994.

ORDRE DU JOUR pour la semaine commençant le 21 novembre 1994.

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

La Cour ne siège pas cette semaine

NOTE:

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

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

DEADLINES: MOTIONS

DÉLAIS: REQUÊTES

BEFORE THE COURT:

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

Motion day : **December 5, 1994**
Service : November 14, 1994
Filing : November 21, 1994
Respondent : November 28, 1994

DÉVANT 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 : **5 décembre 1994**
Signification : 14 novembre 1994
Dépôt : 21 novembre 1994
Intimé : 28 novembre 1994

DEADLINES: APPEALS

The next session of the Supreme Court of Canada commences on October 3, 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:

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

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

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

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

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

The Registrar shall enter on a list all appeals inscribed for hearing at the October 1994 Session on August 9, 1994.

DÉLAIS: APPELS

La prochaine session de la Cour suprême du Canada débute le 3 octobre 1994.

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:

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

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

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

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

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.

Le 9 août 1994, le registraire met au rôle de la session d'octobre 1994 tous les appels inscrits pour audition.

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

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

Judgments reported in [1994] 2 S.C.R., Part 6

R. v. C. (T.L.), [1994] 2 S.C.R. 1012

R. v. Moyer, [1994] 2 S.C.R. 899

R. v. Tran, [1994] 2 S.C.R. 951

R. v. Whittle, [1994] 2 S.C.R. 914

Jugements publiés dans [1994] 2 R.C.S., partie 6

R. c. C. (T.L.), [1994] 2 R.C.S. 1012

R. c. Moyer, [1994] 2 R.C.S. 899

R. c. Tran, [1994] 2 R.C.S. 951

R. c. Whittle, [1994] 2 R.C.S. 914
