CONTENTS **TABLE DES MATIÈRES**

APPLICATIONS FOR LEAVE TO APPEAL FILED

Charles Frederick Dee
Alain Hepner, Q.C.
Ross Hepner Baker & Ross

v. (23561)

Her Majesty The Queen (Crim.)(Alta.)
Peter Martin, Q.C.
Dept. for A.G. Alta.

FILING DATE 28.4.1993

Peter Mackprang
Julius H. Grey
Grey, Casgrain

c. (23482)

Commission des affaires sociales et al. (Qué.)
Ovila Chrétien

DATE DE PRODUCTION 3.5.1993

Ann V. Kuczerpa

v. (23541)

Her Majesty The Queen (F.C.A.) (B.C.)
Daniel Kiselbach
Dept. of Justice

FILING DATE 20.4.1993

Procureur général du Québec et al.
André Fauteux
Bernard, Roy & Assoc.

c. (23563)

Claude Vanier et al. (Qué.)
Roger David
Chénard, Gagnon

DATE DE PRODUCTION 3.5.1993

DEMANDES D'AUTORISATION D'APPEL PRODUITES

John Monahan
Kelvin J. MacDougall, Q.C.

v. (23564)

Bank of Montreal (Qué.)
Marc Duchesne
McMaster Meighen

FILING DATE 3.5.1993

Nasser Hirbod
Andrew Barbacki

v. (23565)

Her Majesty The Queen (Qué.)
Stella Gabbino

FILING DATE 23.4.1993

Robert Lee Ford
Lauk La Liberté

v. (23486)

Her Majesty The Queen (B.C.)
Smart & Williams

FILING DATE 3.5.1993

Non-Labour Lien Claimants
McDougall Ready

v. (23549)

Her Majesty the Queen in right of Canada as represented by the Min. of National Revenue et al. (Sask.)
Dept. of Justice

FILING DATE 28.4.1993

Vilho A. Partanen

v. (23496)

Her Majesty The Queen in right of Ontario et al. (Ont.)

FILING DATE 5.5.1993

Catherine Squires
David W. Scott, Q.C.
Scott & Aylen

v. (23422)

Her Majesty The Queen in right of the province of Ontario et al. (Ont.)
David Lepofsky
A.G. of Ontario

FILING DATE 30.4.1993

Les Entreprises Raymond Denis Inc.
François Marchand
Jolin Fournier Morisset

c. (23494)

Procureur général du Québec et al. (Qué.)
Martin Paquet
Dir. des affaires juridiques

DATE DE PRODUCTION 3.5.1993

Fred Trofimenkoff et al.
MacLeod Dixon

v. (23567)

The National Victoria and Grey Trust Co. (Alta.)
Parlee McLaws

FILING DATE 3.5.1993

West Park Hospital
Douglas K. Gray
Hicks Morley Hamilton Stewart Storie

v. (23568)

Service Employees International Union Local 204 and H. Ray Illing (Ont.)
Sheila R. Block
Tory, Tory, DesLauriers & Binnington

FILING DATE 6.5.1993

La Garderie Morin Inc. et al.
Gilles Veilleux

c. (23569)

Office des services de garde à l'enfance et al. (Qué.)
Danielle Allard
Bernard, Roy & Assoc.

DATE DE PRODUCTION 5.5.1993

The Municipal Corporation of the City of Etobicoke
Paul J. Green

v. (23570)

William H. Hewes (Ont.)
Peter W.G. Carey
Fasken Campbell Godfrey

FILING DATE 5.5.1993

APRIL 26, 1993 / LE 26 AVRIL 1993

CORAM: THE CHIEF JUSTICE LAMER AND McLACHLIN AND MAJOR JJ. / LE JUGE EN CHEF LAMER ET LES JUGES McLACHLIN ET MAJOR

Frank Garratt Palmer

v. (23421)

Robert St. George Gray, Wayne George Goodwill Derek Thomas McFadden, Donald Gary McKay and Terrance Frederik Watts (Crim.)(B.C.)

NATURE OF THE CASE

Criminal law - Procedural law - Evidence - Application under s. 37 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 - Did the Court of Appeal err in failing to hold that legal advice sought and obtained by the Royal Canadian Mounted Police from the Department of Justice is entitled to the protection afforded by the rules relating to solicitor-client privilege - Did the Court of Appeal err in failing to hold that, in the present circumstances of this case, the public interest in protecting confidential communications between the Royal Canadian Mounted Police and the Department of Justice outweighs the interests of the Respondents?

PROCEDURAL HISTORY

February 18, 1992 Supreme Court of British Columbia (Oppal J.)	Application allowed; Crown's right to solicitor-client privilege is removed
May 27, 1992 Supreme Court of British Columbia (Oppal J.)	Application under s. 37 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 dismissed
February 5, 1993 Court of Appeal for British Columbia (Taylor, Proudfoot and Goldie JJ.A.)	Appeal allowed; decision varied so as to refuse a blanker order protecting communications in question
March 19, 1993 Supreme Court of Canada	Application for leave to appeal filed

David Edward Fairfield

v. (23504)

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

NATURE OF THE CASE

Criminal law - Evidence - Police - Admissibility of statements - Voluntariness of incriminating statement made to police - Whether the Court of Appeal erred in law in finding that the trial judge had applied the correct principles when determining the voluntariness of the Applicant's statement.

PROCEDURAL HISTORY

May 18, 1990 County Court of Vancouver (Hardinge C.C.J.)	Conviction: 4 counts of attempted sexual assault contrary to ss. 152, 271 and 279(2) of the *Criminal Code*, R.S.C. 1985, c. C-46
February 4, 1993 Court of Appeal for British Columbia (Taylor, Rowles and Prowse JJ.A.)	Appeal dismissed
April 2, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Van Hung Nguyen

v. (23474)

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

NATURE OF THE CASE

Immigration - Procedural law - Judicial review - Applicant summoned to inquiry under s. 27(3) of the *Immigration Act*, R.S.C. 1985, c. I-2, for being a person described in ss. 27(1)(*d*)(i) and (ii) of the *Act* - Applicant making a refugee claim at inquiry - Respondent issuing a public danger certificate against the Applicant pursuant to s. 46.01(1)(*e*)(ii) of the *Immigration Act* - Immigration and Refugee Board finding that the Applicant was not eligible to make a refugee claim and issuing a deportation order - Federal Court of Appeal dismissing Applicant's application to quash the decision and set aside the deportation order -Whether a person considered a danger to the public can make a refugee claim.

PROCEDURAL HISTORY

June 24, 1991 Immigration and Refugee Board (Moffatt, J.L., adjudicator)	Applicant not eligible to make a refugee claim and deportation order issued
January 15, 1993 Federal Court of Appeal (Marceau J.A., Hugessen and Décary JJ.A.)	Applicant's application to quash the decision and set aside the deportation order dismissed

March 16, 1993
Supreme Court of Canada

Application for leave to appeal filed

Canadian Northern Shield

v. (23469)

Insurance Corporation of British Columbia

- and -

**Fraser Valley Taxi Cabs Ltd., and
White Rock South Surrey Taxi Ltd. (B.C.)**

NATURE OF THE CASE

Torts - Insurance - Motor vehicles - Causation - Insurance liability coverage - Taxi passenger expelled from taxi and subsequently killed when struck by an oncoming motor vehicle - Whether claim made against the taxi company arose out of the ownership, use or operation of a motor vehicle so as to fall within the liability coverage provided by the Respondent and be excluded from the liability coverage of the Applicant.

PROCEDURAL HISTORY

January 8, 1992
Supreme Court of British Columbia
(Skipp J.)

Claim falls under the coverage liability of the Applicant

January 19, 1993
Court of Appeal for British Columbia
(Seaton, Southin and Cumming [dissenting] JJ.A.)

Appeal dismissed

March 11, 1993
Supreme Court of Canada

Application for leave to appeal filed

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

Peter J. Pitre

v. (23434)

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

NATURE OF THE CASE

Criminal law - Evidence - Narcotics - Identification evidence - Applicant charged with trafficking in cocaine contrary to s. 4(1) of the *Narcotic Control Act of Canada*, R.S.C. 1985, C. N-1 - Whether the Crown has proved, beyond a reasonable doubt, the identity of the Applicant as the cocaine vendor - Whether there was a miscarriage of justice.

PROCEDURAL HISTORY

April 2, 1992 Court of Queen's Bench of New Brunswick (Turnbull J.)	Conviction: trafficking in cocaine contrary to s. 4(1) of the *Narcotic Control Act of Canada*, R.S.C. 1985, C. N-1
September 10, 1992 Court of Appeal of New Brunswick (Hoyt, Rice and Ryan JJ.A.)	Leave to appeal refused
February 25, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Elizabeth Vincent

c. (23485)

Sa Majesté la Reine (Ont.)

NATURE DE LA CAUSE

Indiens - Droit constitutionnel - Droit international - Interprétation - Demanderesse trouvée coupable de possession de marchandise illégalement importée au Canada, du tabac, selon l'art. 160 de la *Loi sur les douanes*, S.C. 1986, ch. 1, par la Cour de justice de l'Ontario, Division provinciale - Appel rejeté par la Cour d'appel de l'Ontario - Est-ce que le Traité Jay est un traité au sens de l'art. 35 de la *Loi constitutionnelle de 1982*? - Est-ce que l'art. 3 du Traité Jay peut être source de droit pour une catégorie de citoyens d'une des parties contractantes, les Indiens du Canada, ou corrélativement d'une obligation pour la Couronne du Chef du Canada à l'égard de ces Indiens? - Est-ce que les droits reconnus par l'art. 3 du Traité Jay aux Indiens sont devenus caducs? - Quel est le sens de l'art. 3 du Traité Jay et de l'expression "their own proper goods and effects" qui y est contenue?

HISTORIQUE PROCÉDURAL

Le 16 août 1991 Cour de justice de l'Ontario (Division provinciale) (Masse J.C.O.)	Demanderesse trouvée coupable de possession de marchandise illégalement importée au Canada selon l'art. 160 de la *Loi sur les douanes*
Le 22 janvier 1993 Cour d'Appel de l'Ontario (Lacourcière J.C.A., Galligan et Labrosse JJ.C.A.)	Appel rejeté
Le 17 mars 1993 Cour Suprême du Canada	Demande d'autorisation d'appel

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John A. Harrison

v. (23488)

Christopher J. Haber, R. Alan Eagleson, Regent Investments Limited, 425520 Ontario Limited and James Van Wyck (Ont.)

NATURE OF THE CASE

Procedural law - Pre-trial procedure - Actions - Limitation of actions - Barristers and solicitors - Supreme Court of Ontario dismissing Applicant's action in damages against Respondents pursuant to Rule 48.14 of the *Ontario Rules of Civil Procedure*, O.Reg. 560/84, following the Applicant lawyer's failure to attend on a status hearing - Supreme Court of Ontario dismissing Applicant's Motion for an Order setting aside the dismissal order - Court of Appeal for Ontario dismissing appeal - Whether the Court of Appeal erred in determining that, as "no error having been found in the trial court office", the Order dismissing the action pursuant to Rule 48.14 of the *Ontario Rules of Civil Procedure*, O.Reg. 560/84, should not be set aside.

PROCEDURAL HISTORY

June 15, 1990 Supreme Court of Ontario (Montgomery J.)	Applicant's Motion for an Order setting aside the dismissal order dismissed
January 18, 1993 Court of Appeal for Ontario (Tarnopolsky J.A., Galligan and Osborne JJ.A.)	Appeal dismissed
March 19, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Salvatore Tozzo

v. (23447)

Salvatore Zaffino (Ont.)

NATURE OF THE CASE

Property law - Mortgages - Forgiveness of debt - Sale agreement - Promissory notes - Cause of action - Respondent and Applicant were partners in real estate business - Agreement whereby one partner agreed to pay the other for half his interest in the property, part of the price to be satisfied by way of mortgage and part through a forgiveness of debt - Whether the Court of Appeal erred in failing to grant the Applicant a new trial - Whether the mortgage was in default when the action was commenced.

PROCEDURAL HISTORY

May 10, 1990 Supreme Court of Ontario (Farley J.)	Respondent's action allowed
December 23, 1992 Court of Appeal of Ontario (Houlden, Goodman and Krever JJ.A.)	Appeal dismissed
February 15, 1993 Supreme Court of Canada	Application for leave to appeal filed

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

Nicole Brunet

c. (23489)

**Commission des affaires sociales,
M. Claude Beauvais et M. Maurice Leclerc**

et

**Le ministère de la Main-d'oeuvre et de la Sécurité du revenu,
Le procureur général de la province de Québec (Qué.)**

NATURE DE LA CAUSE

Droit administratif - Procédure - Législation - Brefs de prérogative - Contrôle judiciaire - Interprétation - Bien-être social - Clause privative partielle - Erreur de droit manifestement déraisonnable - Principe de la réserve judiciare - Le recours en révision judiciaire prévu à l'article 846(4) du *Code de procédure civile* permet-il, en l'absence d'une clause privative, le contrôle judiciaire de la simple erreur de droit intrajuridictionnelle? - Y a-t-il erreur de droit manifestement déraisonnable si une interprétation téléologique d'une disposition d'une loi à caractère social et réparateur (*Loi sur l'aide sociale*, L.R.Q., ch. A-16) a pour conséquence d'ajouter à la loi et ainsi de priver un administré du droit à des bénéfices sociaux

contrairement à l'enseignement de cette Cour dans les arrêts *Canadien Pacifique Ltée c. P.G. du Canada*, [1986] 1 R.C.S 678, *Abrahams c. P.G. du Canada*, [1983] 1 R.C.S. 2 et *Hills c. P.G. du Canada*, [1988] 1 R.C.S. 513? (SGDJ - 03, 113, 128, 111, 78, 76, 127)

HISTORIQUE PROCÉDURAL

Le 12 septembre 1988 Commission des affaires sociales (Beauvais et Leclerc)	La demanderesse est tenue de rembourser la somme de 3 729$ à l'aide sociale
Le 16 mai 1989 Cour supérieure du Québec (Legris J.C.S.)	Requête de la demanderesse en évocation rejetée
Le 19 janvier 1993 Cour d'appel du Québec (Beauregard [dissident], Gendreau et Baudouin, JJ.C.A.)	Appel rejeté
Le 18 mars 1993 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Ville de Montréal

c. (23505)

Commerce and Industry Insurance Company et la Société immobilière Benmiel Inc. (Qué.)

NATURE DE LA CAUSE

Code civil - Droit commercial - Assurance - Créancier et débiteur - Législation - Interprétation - Procédure - Actions - Prescription - Subrogation - Poursuite intentée par l'assureur suite à un incendie causant des dommages à l'immeuble de son assurée - Droit de l'assureur d'amender sa déclaration en cours d'instance pour ajouter à sa réclamation les sommes additionnelles versées à son assurée après l'institution de la poursuite - La Cour d'appel a-t-elle erré quant à l'interprétation des art. 2224 et 2576 *C.c.B.C.*?

HISTORIQUE PROCÉDURAL

Le 20 décembre 1989 Cour supérieure du Québec (Michaud J.)	Requête de la compagnie intimée pour amender sa déclaration rejetée
Le 26 janvier 1993 Cour d'appel du Québec (Nichols, Fish et Chevalier jj.c.a.)	Appel accueilli

Le 24 mars 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Éric Boulanger

c. (23487)

Exposition agricole de Beauce Inc.

et

Société de l'assurance automobile du Québec (Qué.)

NATURE DE LA CAUSE

Droit administratif - Législation - Procédure - Procédure civile - Dommages - Compétence -Recours - La Société d'assurance automobile du Québec et le tribunal de droit commun exercent-ils une compétence concurrente pour déterminer si le préjudice corporel résultant d'un accident susceptible d'entraîner l'application de l'article 10 de la Loi est couvert par l'indemnisation prévue par la Loi ou les règles de droit commun? - La victime peut-elle s'adresser simultanément aux deux instances? - En cas de conflit, laquelle des deux instances a préséance sur l'autre? - La décision de la Société d'assurance automobile du Québec d'indemniser la victime en fonction de la Loi constitue-t-elle une fin de non-recevoir à l'action intentée devant le tribunal de droit commun?

HISTORIQUE PROCÉDURAL

Le 13 juillet 1992
Cour supérieure du Québec
(Boisvert J.)

Requête de l'intimée en irrecevabilité accueillie

Le 21 janvier 1993
Cour d'appel du Québec
(Chouinard, Gendreau et Delisle, JJ.C.A.)

Appel du demandeur rejeté

Le 18 mars 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Les Services de Béton Universels Ltée.

v. (23449)

Signalization de Montréal Inc. (Qué.)

NATURE OF THE CASE

Procedural law - Property law - Statutes - Interpretation - Patents - Civil procedure - Respondent bringing patent infringement action against Applicant and making application for an interlocutory injunction pending trial on the action -Applicant making application to strike out the statement of claim on the ground that the Respondent was not a "patentee" or "person claiming under the patentee" as required by s. 55(1) of the *Patent Act*, R.S.C. 1985, c. P-4 - Federal Court, Trial Division, granting Applicant's application to strike out the statement of claim and dismissing Respondent's application for an interlocutory injunction - Federal Court of Appeal allowing Respondent's appeal in part - Whether the Federal Court of Appeal erred in holding that the Respondent had status to bring the action - Whether the Federal Court of Appeal improperly applied s. 55(1) of the *Patent Act* so as to permit any purchaser of any patented article to bring a patent infringement action regardless whether such person has the licence or permission of the patent owner to do so.

PROCEDURAL HISTORY

July 24, 1992 Federal Court, Trial Division (Rouleau J.)	Applicant's application to strike out the statement of claim granted; Respondent's application for an interlocutory injunction dismissed
December 21, 1992 Federal Court of Appeal (Hugessen J.A., Décary [dissenting] and Létourneau JJ.A.)	Respondent's appeal allowed in part
February 17, 1993 Supreme Court of Canada	Application for leave to appeal filed

MAY 3, 1993 / LE 3 MAI 1993

CORAM: THE CHIEF JUSTICE LAMER AND McLACHLIN AND MAJOR JJ. / LE JUGE EN CHEF LAMER ET LES JUGES McLACHLIN ET MAJOR

Joseph Harold Scallion

v. (23473)

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

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Procedural law - Evidence - Applicant and Waite charged with first degree murder - Applicant convicted by Supreme Court of Nova Scotia, Trial Division - Supreme Court of Nova Scotia, Appeal Division, dismissing appeal - Whether the Court of Appeal erred in concluding that the Respondent had not made inflammatory and prejudicial comments in his address to the jury and that the trial judge had not erred in not correcting or commenting on the addresses of counsel - Whether the Court of Appeal erred in concluding that the trial judge had properly instructed the jury on the meaning of planning and deliberation and with respect to the issue of

drunkenness as it pertains to first and second degree murder and to manslaughter - Whether the Court of Appeal erred in concluding that the hacksaw blade and gun case were admissible - Whether the Court of Appeal erred in concluding that the trial judge was not required to direct the jury with respect to what use, if any, could be made by the jury of previous inconsistent statements which were put to a number of witnesses - Whether the Court of Appeal erred in concluding that the trial judge's direction to the jury was adequate in relation to reviewing the evidence as it related to the theory of the Applicant and of the Respondent so that they could appreciate the value and effect of the evidence and how the law was to be applied to the facts as they found them.

PROCEDURAL HISTORY

April 15, 1991 Supreme Court of Nova Scotia, Trial Division (Tidman J.)	Conviction: first degree murder
November 10, 1992 Supreme Court of Nova Scotia, Appeal Division (Jones J.A., Hallett and Chipman JJ.A.)	Appeal against conviction dismissed
March 10, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Tracey Lynne Mercs

v. (23497)

Gulshan H. Nanji (Alta.)

NATURE OF THE CASE

Torts - Damages - Insurance - Disability benefits - Proceeds of a policy of private disability insurance - Whether and when disability benefits should be deducted from damages awards for loss of income in order to avoid double recovery - Whether the Court of Appeal's decision is contrary to the underlying rationale of the Supreme Court of Canada in *Ratych v. Bloomer*, [1990] 1 S.C.R. 940 - Whether the Respondent should be required to deduct the disability benefits she received from her claims of loss of income even though she paid 50% of the premium for the disability insurance.

PROCEDURAL HISTORY

April 15, 1991 Court of Queen's Bench of Alberta (Rowbotham J.)	Claim for damages allowed in the amount of $28,317.07
January 28, 1993 Court of Appeal for Alberta (Foisy J.A., Irving and Conrad JJ.A.)	Respondent's appeal allowed
March 24, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Edmund Kopen

v. (23498)

61345 Manitoba Ltd.

- and -

E.F. Moon Construction Ltd. (Man.)

NATURE OF THE CASE

Torts - Negligence - Occupier's liability - Statutory duty of care - Damages - Assessment - Collateral benefits - Applicant slipping and falling on ice on parking lot - Duty of care of an occupier - Whether proceeds of a long-term disability insurance policy paid for entirely by the employer are subject to the rule against double recovery - *The Occupier's Liability Act*, R.S.M. 1987, c. 08, s. 3(1).

PROCEDURAL HISTORY

March 11, 1992 Court of Queen's Bench (Krindle J.)	Claim under *The Occupier's Liability Act* dismissed
January 22, 1993 Court of Appeal of Manitoba (Twaddle and Helper, JJ.A. and Barkman, J. (*ad hoc*))	Appeal dismissed
March 23, 1993 Supreme Court of Canada	Application for leave to appeal filed

Comfort Duodo Boakye

v. (23500)

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

NATURE OF THE CASE

Administrative law - Immigration - Judicial review - Evidence - Convention refugee status -Solicitor-client privilege - Whether the Federal Court of Appeal erred in law by failing to find that solicitor-client privilege was violated by admission of the Applicant's former solicitor's testimony at her credible basis hearing under the *Immigration Act* - Whether the Federal Court of Appeal erred in law by finding that a claim to solicitor-client privilege cannot be raised on judicial review where there has been no objection at the forum of first instance - Whether the Federal Court of Appeal erred in law by suggesting that administrative tribunals composed of lay persons are not competent to enforce a claim of evidentiary privilege - Whether the Federal Court of Appeal erred in law by failing to recognize that the admission of the former testimony of the Applicant's former solicitor constituted a breach of natural justice.

PROCEDURAL HISTORY

September 7, 1990 Immigration Refugee Board (Convention Refugee Determination Division) (Lee, Adjudicator, and Hulak, Member)	Convention Refugee Status dismissed
January 26, 1993 Federal Court of Appeal (Mahoney and Robertson JJ.A, and Gray D.J.)	Application under s. 28 of the *Federal Court Act* dismissed
March 25, 1993 Supreme Court of Canada	Application for leave to appeal filed

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

Evelyn Rose Graff

v. (23522)

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

NATURE OF THE CASE

Criminal law - Administrative law - Sentencing - Judicial review - Barristers and solicitors -Appeal - Applicant pleaded guilty to conspiracy to murder and was sentenced to 10 years imprisonment - Applicant's daughter also pleaded guilty to the same offence and was sentenced to 18 months imprisonment - Counsel for the Applicant is the father of counsel for the Applicant's daughter - Whether the Court of Appeal of Alberta erred in law in holding that the Applicant must show that there was an actual conflict of interest and that that actual conflict adversely affected the lawyer's performance on behalf of the Applicant in order to successfully challenge the sentence on appeal - Whether the Court of Appeal erred in law in holding that there was no real or apparent conflict of interest in this case.

PROCEDURAL HISTORY

March 6, 1992 Court of Queen's Bench of Alberta (Conrad, C.Q.B.A.)	Guilty plea: Conspiracy to commit murder Sentence: 10 years imprisonment
February 8, 1993 Court of Appeal for Alberta (McDonald and McBain JJ.A.)	Appeal against sentence dismissed
April 7, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Sobeys Inc. and Antigonish Mall Limited

v. (23492)

Xanadu Investments Limited and Atlantic Wholesalers (N.S.)

NATURE OF THE CASE

Procedural law - Statutes - Interpretation - Appeal - Judicial review - Evidence - Application for approval of a shopping centre pursuant to s. 11 of the *Shopping Centre Development Act*, R.S.N.S. 1989, c. 427 - Whether the Court of Appeal erred in law in applying an incorrect standard of review and in characterizing the grounds of appeal as based on binding and conclusive findings of fact - Whether the Court of Appeal erred in law in dismissing the appeal from the Board which interpreted the *Shopping Centre Development Act* as imposing an obligation on the Applicants to present direct evidence of an anticipated negative impact of a proposed new shopping centre development and in restricting the nature and sources of any such direct evidence - Whether the Court of Appeal erred in law in dismissing the appeal from the Board which interpreted the *Shopping Centre Development Act* as not requiring the Board to consider the need for or desirability of a particular type or proposed store and which failed to determine whether there is excess capacity in the area for additional retail grocery space contrary to the provisions of s. 6(*b*) of the *Act*.

PROCEDURAL HISTORY

May 22, 1992 Nova Scotia Municipal Board (L.D. Garber, Vice-Chairman, R.A. Robertson and A. Green, members)	Appeal dismissed
January 20, 1993 Supreme Court of Nova Scotia, Appeal Division (Clarke C.J.N.S., Matthews and Chipman JJ.A.)	Appeal dismissed
March 19, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Michael Elik

v. (23507)

Patricia May Elik (Ont.)

NATURE OF THE CASE

Family law - Division of property - Maintenance - Action for relief pursuant to the *Family Law Act, 1986*, S.O. 1986 c.4 - Value of shares in company owned by the spouses - Whether valuation of business should proceed on an liquidation of assets basis or as a going concern -In a matrimonial action for an equalisation of net family assets, whether the valuation of a spouses' business as a going concern on a discounted future income stream basis is appropriate when the business is a franchise or license operation - Whether order of support on appeal is valid.

PROCEDURAL HISTORY

October 14, 1988 Supreme Court of Ontario (Bowlby J.)	Order: Applicant to pay $1,075,000.00 as consideration for the Respondent's conveyance of 100% share holdings in company owned by the parties
February 2, 1993 Court of Appeal for Ontario (Houlden, Blair and Abella JJ.A.)	Appeal dismissed; cross-appeal allowed: Applicant ordered to pay support to the Respondent
April 2, 1993 Supreme Court of Canada	Application for leave to appeal filed

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Attorney General for the Province of Ontario

v. (23415)

Carlo Montemurro; The Regional Municipality of Niagara; Helen Maud Gross and William Slovak, administrators for the estate of Douglas Franklin Gross; George Leonard Preston, Executor of the Estate of Helen Laurene Preston (Ont.)

NATURE OF THE CASE

Property law - Real property - Land titles - Executors and administrators - *Planning Act, 1983*, S.O. 1983, c. 1, s. 49(3) - Subdivision of land through testamentary devise - Was scheme entered into by Respondents a fraud upon the *Planning Act*? - Did Court of Appeal err in not holding that trial judge erred in finding there was no agreement under s. 49(3) of the *Planning Act*?

PROCEDURAL HISTORY

February 25, 1991 Ontario Court of Justice (General Division) (Gravely J.)	Declaration that parcels of land created by will were not valid lots; ruling that Town had no standing to enforce *Planning Act*

March 3, 1992 Ontario Court, General Division (Borkovich J.)	Applicant's application for declaratory relief dismissed
January 20, 1993 Court of Appeal for Ontario (Morden A.C.J.O. and Finlayson J.A. [dissenting in part] and Arbour J.A.)	Appeals and cross-appeals dismissed
February 8, 1993 Court of Appeal for Ontario (Dubin C.J.O. and Labrosse and Abella JJ.A.)	Stay of proceedings pending decision of Supreme Court of Canada on application for leave granted
March 18, 1993 Supreme Court of Canada	Application for leave to appeal filed

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

Donald C. Loiselle

c. (23523)

La Société Canada Trust, Le Permanent (Qué.)

NATURE DE LA CAUSE

Procédure - Procédure civile - Actions - Droit du travail - Contrats - Recours collectif - Agents d'immeuble rémunérés à commission - Clause du contrat de travail obligeant les agents à contribuer au fonds de promotion de leur employeur - Requête du demandeur pour être autorisé à exercer un recours collectif contre l'intimée en nullité de la clause relative au fonds de promotion et en remboursement des sommes illégalement perçues - Requête rejetée au motif que le demandeur ne rencontre pas les exigences des par. 1003a) et 1003b) du *Code de procédure civile*, L.R.Q. (1977), ch. C-25 - Appel rejeté.

HISTORIQUE PROCÉDURAL

Le 27 février 1992 Cour supérieure du Québec (Larue j.c.s.)	Requête pour être autorisé à exercer un recours collectif rejetée
Le 19 février 1993 Cour d'appel du Québec (Nichols, Vallerand et LeBel jj.c.a.)	Appel rejeté
Le 8 avril 1993 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Jean-Marc Trudel Inc.

c. (23499)

Réal Fafard
Atlas Construction Inc. et Dumez Construction Inc.
(Atlas-Dumez) (Qué.)

NATURE DE LA CAUSE

Code civil - Droit commercial - Créancier et débiteur - Intérêts - Procédure - Procédure civile - Actions - Saisie - Appel - Compétence - Jugements et ordonnances - Action sur compte - Saisie-arrêt avant jugement - Compétence de la Cour d'appel lors d'une requête en rectification de jugement - La demanderesse a-t-elle droit à l'indemnité additionnelle prévue à l'art. 1078.1 *C.c.B.C.*? - Effet de la saisie-arrêt quant au montant de la créance du saisissant.

HISTORIQUE PROCÉDURAL

Le 15 décembre 1987 Cour supérieure du Québec (Croteau j.c.s.)	Requête pour jugement déclaratoire accordée
Le 8 septembre 1992 Cour d'appel du Québec (Vallerand, Proulx et Rousseau-Houle jj.c.a.)	Pourvoi du syndic Réal Fafard accueilli
Le 25 janvier 1993 Cour d'appel du Québec (Vallerand, Proulx et Rousseau-Houle jj.c.a.)	Requête en rectification de l'arrêt du 8 septembre 1992 accueillie
Le 25 mars 1993 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Dame Pauline Simard

c. (23515)

Le Procureur général du Québec, le Syndicat des Professionnelles et Professionnels du Gouvernement du Québec, Me Francine Gauthier Montplaisir, M. François Garon et M. René Labossière (Qué.)

NATURE DE LA CAUSE

Droit du travail - Arbitrage - Relations de travail - Droit administratif - Procédure - Brefs de prérogative - Contrôle judiciaire - Législation - Interprétation - Libertés publiques - Art. 23 de la *Charte des droits et libertés de la personne*, L.R.Q. (1977), ch. C-12 - Portée du droit du salarié d'intervenir personnellement à l'arbitrage aux termes de l'art. 100.5 du *Code du travail*, L.R.Q. (1977), ch. C-27 - La demanderesse peut-elle se prévaloir du recours en évocation prévu à l'art. 846 du *Code de procédure civile* à l'encontre de la décision de l'arbitre qui rejette sa requête en intervention et en réouverture d'enquête?

HISTORIQUE PROCÉDURAL

Le 23 octobre 1991 Tribunal d'arbitrage	Requête en intervention et en réouverture d'enquête rejetée
Le 17 avril 1992 Tribunal d'arbitrage	Griefs rejetés
Le 9 septembre 1992 Cour supérieure du Québec (Boisvert j.c.s.)	Requête en irrecevabilité accueillie et requête en évocation rejetée
Le 1er février 1993 Cour d'appel du Québec (Bisson j.c.q., Gendreau et Rousseau-Houle jj.c.a.)	Requête en rejet d'appel accueillie
Le 1er avril 1993 Cour suprême du Canada	Demande d'autorisation d'appel déposée

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Gabriel Tardi

v. (23290)

Caisse Populaire d'Óutremont and Caroline Marrazza (Qué.)

NATURE OF THE CASE

Procedural law - Appeal - Petition for a Receiving Order granted to the Respondents - Superior Court of Quebec, Bankruptcy Division, dismissing Applicant's motion to revoke receiving order - Court of Appeal for Quebec dismissing Respondents' motion for dismissal of appeal and for security - Court of Appeal dismissing Applicant's appeal - Whether the Court of Appeal erred in allowing the Respondents' motion and dismissing the Applicant's appeal after previously dismissing the Respondents' motion - Whether the Court of Appeal erred by not ruling that the Respondents' motion was

illfounded in facts and in law and in not dismissing the motion - Whether the Superior Court, Bankruptcy Division, erred in dismissing the motion to revoke the receiving order.

PROCEDURAL HISTORY

March 3, 1992 Superior Court of Quebec, Bankruptcy Division (Gomery J.)	Applicant's motion to revoke receiving order dismissed
July 9, 1992 Court of Appeal for Quebec (Rothman J.A., Brossard and Fish JJ.A.)	Respondents' motion for dismissal of appeal and for security allowed; Applicant's appeal dismissed
November 9, 1992 Supreme Court of Canada	Application for leave to appeal filed

MAY 6, 1993 / LE 6 MAI 1993

23297 **LACOMBE NURSERIES LIMITED, DONALD HAY, BARBARA HAY AND NORTHSTAR DEVELOPMENTS LTD. *v.* FARM CREDIT CORPORATION** (Alta.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed with costs on a solicitor-client basis.

La demande d'autorisation d'appel est rejetée avec dépens par la base procureur-client.

NATURE OF THE CASE

Commercial law - Property law - Loan - Mortgage - Respondent granting loan to the Applicants under a commodity-based loans program - Applicants' mortgage as security containing clerical oversight in that interest rate not filled in - Respondent bringing action in foreclosure and requesting that mortgage be rectified as to interest rate - Court of Queen's Bench for Alberta allowing Respondent's action and ordering that mortgage be rectified - Court of Appeal for Alberta dismissing Applicants' appeal - Whether the Court of Appeal erred in holding that the commodity-based mortgage loan was not applicable - Whether the Court of Appeal erred in holding that *Interest Act*, R.S.C 1970, c. I-18 [R.S.C. 1985, c. I-18], was not applicable.

23377 **RED RIVER FOREST PRODUCTS INC. *v.* GEORGE LESLIE FERGUSON** (Man.)

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

Commercial law - Constitutional law - Division of powers - Property and civil rights - Bills of exchange - Contract - *Bills of Exchange Act*, R.S.C., 1985, c. B-4 - Contracts - Gaming debts - Enforceability of promissory note - Rights of holder in due course - *The Gaming Acts* of England - *Queen's Bench Act* - *Manitoba Act* - Language rights - Bilingual statutes - Did the Court of Appeal of Manitoba err in not considering the constitutional question of whether the *Gaming Act* is null and void by reason of non-compliance with Section 23 of the *Manitoba Act* - Whether the Court of Appeal of Manitoba erred in not considering the rights of the Franco-Manitoban French minority to equal access, in both official languages, to legislation - Whether the Court of Appeal of Manitoba erred in not dealing with the extent in which provincial legislatures encroach on exclusive federal jurisdiction, and in not clarifying what constitutes valid consideration, as defined by the *Bills of Exchange Act*.

23392 **WESTERN SURETY COMPANY *v.* PRICE WATERHOUSE LIMITED** (B.C.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Banks and banking operations - Creditor and debtor - Absolute assignment of book debts to bank - Priority as between bank and creditor - Whether assignment merely a floating charge - Equitable interest of debenture holder - Crystallization of floating charge - Secured creditors - Whether Court of Appeal erred in holding that Respondent's security interest took priority over that held by Applicant.

23436 GREGORY WILLIAM PITTMAN *v.* HER MAJESTY THE QUEEN (Crim.) (N.S.)

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 - Second degree murder - Evidence - Trial - Verdicts - Whether the Appeal Court erred in law when it rejected the Applicant's third ground of appeal that the Trial Judge erred in law when she permitted the Crown Attorney to speculate in suggesting inferences to be drawn by the Jury when there was no evidence upon which such speculation or inferences could be based - Whether Appeal Court erred in law when it rejected the Applicant's fourth ground of appeal, namely that the Jury erred in law in that the verdict of guilty was premised on a piece of wiretap evidence which is founded in heresay and other inadmissible evidence, contrary to the directions of the Learned Trial Judge - Whether the Learned Appeal Court erred in law when it rejected the Applicant's argument that the verdict was perverse in light of the evidence before the Court - Whether the Appeal Court erred in law when it rejected the Applicant's seventh ground of appeal, namely: That the Trial Judge erred in law when she instructed the Jury that to find Mr. Pittman guilty of manslaughter, the Crown must satisfy you beyond a reasonable doubt either that Mr. Pittman was so drunk that he could not form the intent, or that there was provocation as described.

23472 OREST RUSNAK *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

Canadian Charter of Rights and Freedoms - Criminal law - Pre-trial delay - Right to full answer and defence - Alleged fraud taking place four years prior to the charge being laid - Whether the Court of Appeal erred in law in finding that the delay which occurred prior to the Applicant having been charged did not violate ss. 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* - Whether the Court of Appeal erred in law in applying s. 686(1)(b)(iii) of the *Criminal Code*.

23281 GREATER EDMONTON DEVELOPMENT CORPORATION *v.* BTK HOLDINGS LTD. (Alta.)

CORAM: La Forest, 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

Procedural law - Pre-trial procedure - Barristers and Solicitors - Action arising out of Agreements of Sale between the Applicant purchaser and the Respondent vendor - Solicitor and representative of the Respondent not attending examination for discovery - Applicant's application to compel the Respondent to produce its solicitor for examination for discovery dismissed by the Court of Queen's Bench of Alberta - Court of Appeal dismissing Applicant's appeal - Whether the Court of Appeal of Alberta erred in holding that a solicitor who acted for a party in a commercial transaction is immune from examination in subsequent civil proceedings arising out of that same examination - Whether the Court of Appeal erred in holding that the solicitor could not be examined for discovery pursuant to *Rule* 200 of the Alberta *Rules of Court* as an officer of the Respondent because of the potential difficulties in separating privileged from non-privileged information - Whether the Court of Appeal erred in finding that the Respondent had not waived solicitor-client privilege.

23286 DODD Q. CHU *v.* LAURENTIAN BANK OF CANADA, FORMERLY EATON BAY TRUST COMPANY, FORMERLY COMMERCE CAPITAL TRUST (Alta.)

CORAM: La Forest, 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

Property law - Land titles - Mortgages - Trusts - Respondent holding mortgages on land owned by the Applicant - Mortgagee making a proposal in bankruptcy and transferring land titles to company - Company transferring land titles to another company - Company transferring land titles to Applicant - Applicant not making payments on mortgages - Court of Queen's Bench of Alberta allowing Respondent's action in debt on the covenant for payment of the mortgages - Court of Appeal of Alberta dismissing Applicant's appeal - Whether the Court of Appeal erred in law in failing to find that a sale by a Trustee under a Proposal pursuant to the provisions of the *Bankruptcy Act*, R.S.C. 1970, c. B-3, conveys title to a Purchaser free of any claims by the party under the Proposal including any claims for indemnity pursuant to s. 62 of the *Alberta Land Titles Act*, R.S.A. 1980, c. L-5.

23279 **GARNET LANE DEVELOPMENTS LTD. *v.* ROGER SAMUEL WEBSTER AND LOIS EDITH WEBSTER** (Ont.)

CORAM: La Forest, 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

Property law - Statutes - Mortgages - Interpretation - Damages - Agreement of purchase and sale of the Respondents' property containing an obligation that the purchaser construct a new house on the property - Respondents to give abatement on mortgage back once new house constructed - Applicant buying property and amending mortgage - Supreme Court of Ontario allowing Respondents' action for specific performance - Court of Appeal for Ontario dismissing Applicant's appeal and allowing Respondents' cross-appeal - Whether the Courts erred in law in finding that s. 20(3) of the *Mortgages Act*, R.S.O. 1990, c. M-40, does not prohibit the Respondents from recovering from the Applicant - Whether the Courts erred in law in finding that an obligation to perform services to supply materials in the future contained in the original mortgage is an obligation that can fix both a subsequent land owner and the original mortgagor with liability under s. 20(3) of the *Mortgages Act*, and in awarding damages against the Applicant for the breach of contact of the original mortgagors - Whether a judicial authority can make a finding contrary to a provision in a statute - Whether the law in Ontario in transactions where land is acquired with existing mortgages is altered.

23309 **ROBERT LONGCHAMPS *v.* FARM CREDIT CORPORATION AN AGENT OF HER MAJESTY THE QUEEN** (Alta.)

CORAM: La Forest, Cory and Iacobucci JJ.

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

La demande de prorogation de delai est accordée. La demande d'autorisation d'appel est rejetée avec dépens.

NATURE OF THE CASE

Torts - Negligence - Crown - Procedural law - Action - Civil procedure - Governmental lending agency - Loan application denied by the Respondent - Applicant brought action against the Respondent seeking damages for economic loss - Application to strike out statement of claim granted - Whether the Respondent owed a duty of care to the Applicant? - *Farm Credit Act*, R.S.C. 1985, c. F-2.

23329 **THE HONOURABLE THE MINISTER OF FINANCE FOR THE PROVINCE OF NEWFOUNDLAND *v.* HOPE BROOK GOLD INC.** (Nfld.)

CORAM: La Forest, 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 - Statutes - Interpretation - Respondent owning and operating ore mine - Respondent's application for exemption under *Retail Sales Tax Regulations, 1979*, dismissed by Applicant - Supreme Court of Newfoundland, Trial Division, dismissing Respondent's appeal - Court of Appeal of Newfoundland allowing Respondent's appeal - Whether the Court of Appeal of Newfoundland erred in its interpretation and application of the "manufacturers" exemption for "productive capital equipment" provided in s. 20(o) of the *Retail Sales Tax Act*, S.N. 1978, c. 36, and ss. 2(f.1), (f.2), (h.1) and s. 24(1)(zzb) of the *Retail Sales Tax Regulations, 1979*, by finding that the "Integrated Plant Concept" applies and underground mining activities constitute "manufacturing" - Whether the decision of the Court of Appeal throws into confusion the test to be applied when considering entitlement to the exemption in Newfoundland and other jurisdictions with similar provisions for manufacturers in sales tax and other legislation - Whether the decision of the Court of Appeal means that a considerable amount of tax collected pursuant to the legislation since 1982 is now subject to refund, with unacceptable consequences to the provincial Treasury - Whether guidance of the Supreme Court of Canada is desirable to clarify for all jurisdictions the proper interpretation of terms such as "manufacturing" and "processing", in light of developments since this Court's decision in *Her Majesty the Queen v. York Marble Tile*, [1968] S.C.R. 140, and to clarify the scope and application of the "integrated plant concept" adopted by this Court in *Irving Oil v. Provincial Secretary New Brunswick*, [1980] 1 S.C.R. 787.

23347 WENDY ABDOOL ET AL *v.* SOMERSET PLACE DEVELOPMENTS OF GEORGETOWN LIMITED, CANTERRA DEVELOPMENTS INC., 379059 ONTARIO LTD., c.o.b. RETAIL ENGINEERING AND PRENOR EQUITY INC. (Ont.)

CORAM: La Forest, 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

Property law - Real property - Statutes - Interpretation - Condominiums - Agreement of purchase and sale - Disclosure statement - Whether purchaser can rescind if disclosure statement does not comply with the *Act* - Interpretation of *Condominium Act*, R.S.O. 1980, c. 84, s. 52 - Did the Court of Appeal err in finding that the disclosure statement complied with the *Condominium Act*? - Did the Court of Appeal err in finding that there was no requirement to deliver an amendment to the disclosure statement? - Did the Court of Appeal err in holding that a mortgagee that takes over all aspects of a condominium project from a vendor that has abandoned the project, does not stand in the place of the vendor/declarant? - Did the Court of Appeal err in finding that there were no other grounds to declare the agreements not binding and that there should be no refund of occupancy fees?

23346 YONGE-ESPLANADE ENTERPRISES LIMITED *v.* VERNON ACKLAND ET AL (Ont.)

CORAM:La Forest, 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

Property law - Real property - Interest - Interpretation - Statutes - Condominiums - Obligation of vendor to pay interest on deposit at prescribed rate based on rates paid by Province of Ontario Savings Office - Meaning of "prescribed rate of interest" pursuant to s. 53(3) of the *Condominium Act*, R.S.O. 1980, c. 84 and s. 33 of Reg. 121, R.R.O. 1980, made under the *Act* - Whether statute to have fixed application or continuously updated application - Whether the purchasers of condominium properties are entitled to interest on their deposits at a rate higher than the developer has paid.

23328 SUSAN WHITE *v.* LUMBERMEN'S MUTUAL CASUALTY COMPANY (Ont.)

CORAM:La Forest, 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

Torts - Procedural law - Trial - Evidence - Applicant "rear-ending" a parked truck, and suffering permanent injuries - Applicant claiming that unidentified oncoming automobile caused the accident - Applicant cross-examined on statement she had made to an adjuster concerning amount of alcohol she had consumed on the night of the accident - Statement wrongfully admitted into evidence - Trial judge and Court of Appeal dismissing Applicant's claim for damages - Whether Court of Appeal erred in dismissing appeal when there was or may have been reliance on the wrongfully admitted statement - Whether the Court erred in failing to consider that the only evidence of impairment was the wrongfully admitted statement, which was contradicted by the Applicant's evidence and the testimony of the emergency room physician - Whether the Court of Appeal erred in stating that "there is no justification for the conclusion" that the statement influenced the decision of the trial judge as to the credibility of the Applicant, the major issue at trial - Whether the Court of Appeal erred in failing to consider that there was no other evidence of impairment apart from a smell of alcohol on the Applicant's breath -Whether the Court of Appeal erred in failing to consider that there was no evidence of excessive speed or that the Applicant was not keeping a proper lookout.

23348 BARBARA ANN BILLETT and ALAN T. BILLETT and DOUGLAS R. LINT, ADMINISTRATOR AD LITEM OF THE ESTATE OF SHELDON B. JESSON, DECEASED *v.* BONITA JOAN LAFRAMBOISE (Alta.)

CORAM:La Forest, 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

Torts - Damages - Evidence - Measure of damages - Whether the Court of Appeal erred in law and in fact in concluding that the trial judgment was based almost entirely upon errors of law, omitted issues, and reliance upon items not in evidence and consequently in finding clear and palpable error - In what circumstances can an appellate court interfere with the overall findings of a trial judge where the key issue at trial is credibility of the witnesses - To what extent an appellate court may interfere with the overall findings of a trial judge on the basis that all of the evidence was not expressly analyzed by the trial judge during delivery of his oral reasons for judgment and, consequently, the ability of trial judges to deliver oral reasons at all - Whether counsel is required to expressly raise credibility in the pleadings or during an opening statement.

23336 MAURICE MOLONEY *v.* HER MAJESTY THE QUEEN (F.C.A.) (B.C.)

CORAM: La Forest, 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 - Income tax - Statutes - Interpretation - Deductions from income disallowed - Whether Federal Court of Appeal erred in not looking at business enterprise through the eyes of the taxpayer - Whether Federal Court of Appeal erred in failing to find that the taxpayer had a reasonable expectation of profit when he entered into the transaction.

23354 DALTON BASSANT v. DOMINION TEXTILE INC. and PIERRE BEETZ, ARBITRATOR (Qué.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier 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

Labour law - Statutes - Interpretation - Arbitration - Applicant dismissed by the Respondent company - Respondent making preliminary objection to Arbitrator's jurisdiction because Applicant was not fired pursuant to s. 124 of the *Act respecting Labour Standards*, R.S.Q., c. N-1.1 - Arbitrator allowing Applicant's grievance and ordering his re-instatement on the ground that dismissal was not for good and sufficient cause pursuant to ss. 124 and 128 of the *Act* - Superior Court of Quebec granting Respondent's motion in evocation and quashing Arbitrator's decision - Court of Appeal for Quebec dismissing Applicant's appeal - Whether the Court of Appeal erred in not applying judicial restraint to the judgment of the Superior Court - Whether the Court of Appeal erred in its interpretation and application of ss. 82, 124 and 128 of the *Act* - Whether the Court of Appeal erred in failing to recognize that its distinction between dismissal for cause and dismissal for economic reasons is wrong in the context of the *Act* - Whether the Court of Appeal failed in considering the evidence.

22715 JEAN-GUY SAVARD c. SA MAJESTÉ LA REINE (Qué.)

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

La requête pour prorogation des délais est accordée et la demande d'autorisation d'appel est rejetée.

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

NATURE DE LA CAUSE

Droit criminel - Procédure - Procès - Preuve - Validité de l'acte d'accusation contenant cinq chefs d'accusation distincts - Droits d'un accusé non représenté et devoir de la poursuite face à un tel accusé - Règles relatives à l'assignation des témoins - Droit à la réouverture de la preuve sur voir-dire.

23416 DEMETRE KILIARIS v. BANQUE CANADIENNE IMPÉRIALE DE COMMERCE (Qué.)

CORAM: L'Heureux-Dubé, Sopinka and Gonthier 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

Procedural law - Appeal - Civil procedure - *Ex parte* judgment against Applicant by Superior Court of Quebec which allowed Respondent's action to be declared owner of goods and confirmed seizure - Applicant's motion in revocation granted for reception by the Special Prothonotary of the Superior Court of Quebec - Respondent's motion in revision granted by the Superior Court of Quebec - Respondent's motion to dismiss Applicant's appeal granted by the Court of Appeal for Quebec - Whether the Court of Appeal erred in concluding that the judgment granting the Respondent's motion in revision was an interlocutory judgment, the appeal of which required the permission of the Court of Appeal.

23420 AMARIA BOUKHELEA v. PUBLIC SERVICE COMMISSION APPEAL BOARD (C.A.F.) (Ont.)

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

The application for leave to appeal is dismissed with costs.

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

NATURE DE LA CAUSE

Droit du travail - Relations de travail - Droit administratif - Contrôle judiciaire - Concours visant à combler un poste au sein de la fonction publique fédérale - Candidature de la demanderesse rejetée en raison du résultat de l'évaluation de ses qualités personnelles - Le processus de sélection a-t-il respecté le principe du mérite?

NOTICES OF APPEAL FILED SINCE LAST ISSUE

AVIS D'APPEL PRODUITS DEPUIS LA DERNIÈRE PARUTION

3.5.1993

Her Majesty The Queen

v. (23566)

Eugene Paul Power (Nfld.)

AS OF RIGHT

NOTICES OF INTERVENTION FILED SINCE LAST ISSUE

AVIS D'INTERVENTION PRODUITS DEPUIS LA DERNIÈRE PARUTION

BY/PAR:Attorney General of British Columbia
Procureur général du Québec

IN/DANS: **Reinie Jobin et al.**

v. (23190)

Her Majesty The Queen

and between

John Sawan et al.

v.

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

BY/PAR:L'Association des comités paritaires du Québec Inc.

IN/DANS:**Le Comité paritaire de l'industrie de la chemise et al..**

c. (23083)

Jonathan Potash et al. (Qué.)

BY/PAR:Attorney General of Ontario

IN/DANS:**The Corporation of the City of Peterborough**

v. (22787)

Mr. Kenneth Ramsden (Ont.)

30.4.1993

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

Patrick Slaney

v. (23158)

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

Martin Peters and Thomas McRae, for the appellant.

Colin J. Flynn, for the respondent.

L'HEUREUX-DUBÉ J. (orally for the Court) -- Mr. Justice Sopinka will pronounce the judgment of the Court.

SOPINKA J. -- This is an appeal as of right. In our opinion, applying the principles in *R. v. Askov*, [1990] 2 S.C.R. 1199, and *R. v. Morin*, [1992] 1 S.C.R. 771, there was no unreasonable delay in this case so as to justify the imposition of a stay pursuant to the provisions of s.11(*b*) of the *Canadian Charter of Rights and Freedoms*. In this respect, we are in agreement with the Court of Appeal of Newfoundland.

Applying the relevant factors, we are of the view that there was a maximum of 5 months of systemic delay from the time of the charge to committal. This was not unreasonable. Subsequent to committal, the delay to January 16, 1990 was due to the preparation of the transcript of the preliminary hearing. The period from April 6, 1990 to October 22, 1990, was waived by the appellant. Counsel for the appellant consented to the trial date and there is no indication that he was acquiescing in the inevitable. The Crown was entitled to a reasonable time to prepare for the motion which was served on it on October 17, 1990. In our view, a substantial part of the delay subsequent to committal is explained or waived, and the balance, attributable to systemic delay, is not unreasonable.

LE JUGE L'HEUREUX-DUBÉ (oralement au nom de la Cour) -- Le jugement de la Cour sera prononcé par le juge Sopinka.

LE JUGE SOPINKA -- Il s'agit d'un pourvoi de plein droit. À notre avis, selon les principes énoncés dans les arrêts *R. c. Askov*, [1990] 2 R.C.S. 1199, et *R. c. Morin*, [1992] 1 R.C.S. 771, il n'y a pas eu dans la présente affaire de délai déraisonnable qui justifierait un arrêt des procédures en vertu de l'al. 11*b*) de la *Charte canadienne des droits et libertés*. Nous sommes d'accord avec la Cour d'appel de Terre-Neuve sur ce point.

Si l'on applique les facteur pertinents, nous sommes d'avis qu'il y a eu un délai systémique maximal de cinq mois depuis la mise en accusation jusqu'au renvoi à procès, ce qui n'est pas déraisonnable. Après le renvoi à procès, le délai jusqu'au 16 janvier 1990 était attribuable à la préparation de la transcription de l'enquête préliminaire. L'appelant a renoncé à invoquer la période du 6 avril 1990 au 22 octobre 1990. L'avocat de l'appelant a consenti à la date du procès et rien n'indique qu'il s'agissait d'une reconnaissance de l'inévitable. Le ministère public avait droit à une période raisonnable pour se préparer en vue de la requête qui lui a été signifiée le 17 octobre 1990. À notre avis, il y a une explication ou une renonciation à l'égard d'une grande partie du délai qui a suivi le renvoi à procès, et le reste, attribuable au délai systémique, n'est pas déraisonnable.

Assuming, without deciding, that s.11(*b*) of the *Charter* applies to appellate proceedings, we are not satisfied that the delay in this case was unreasonable.

Accordingly, the appeal is dismissed.

À supposer, sans en décider, que l'al. 11*b*) s'applique aux procédures en appel, nous ne sommes pas convaincus que le délai était déraisonnable en l'espèce.

Par conséquent, le pourvoi est rejeté.

MAY 6, 1993 / LE 6 MAI 1993

22180 **DAYCO (CANADA) LTD. *v.* NATIONAL AUTOMOBILE AEROSPACE and AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA), (FORMERLY INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE and AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.)) and HOWARD D. BROWN, ARBITRATOR** (Ont.)

CORAM: The Chief Justice and La Forest, Sopinka, Gonthier, Cory, McLachlin and Iacobucci JJ.

The appeal is dismissed with costs in this Court and in the courts below. The cross-appeal is dismissed with costs.

Le pourvoi est rejeté avec dépens dans toutes les cours. Le pourvoi incident est rejeté avec dépens.

***Dayco (Canada) Ltd. v. National Automobile, Aerospace and Agricultural Implement Workers' Union of Canada (CAW-CANADA), et al* (Ont.) (22180)**

Indexed as: Dayco (Canada) Ltd. *v.* CAW-Canada / Répertorié: Dayco (Canada) Ltd. *c.* TCA-Canada

Judgment rendered May 6, 1993 / Jugement rendu le 6 mai 1993

Present: Lamer C.J. and La Forest, Sopinka, Gonthier, Cory, McLachlin and Iacobucci JJ.

Labour relations -- Grievance arbitration -- Company ending retired workers' benefits derived from expired collective agreement -- Union initiating grievance -- Whether or not grievance arbitrable -- Whether or not arbitrator correctly assumed jurisdiction.

Judicial review -- Labour Relations Board -- Grievance arbitration -- Company ending retired workers' benefits derived from expired collective agreement -- Union initiating grievance -- Whether or not grievance arbitrable -- Whether or not arbitrator correctly assumed jurisdiction -- Whether or not privative clause applicable -- Labour Relations Act, R.S.O. 1980, c. 228, s. 44.

Appellant shut down its Hamilton plant in 1983 and permanently closed it in 1985. The company provided certain group insurance benefits to its employees under former collective agreements, the last one of which was signed on April 27, 1983 and expired on April 21, 1985. Prior to the final closing, the company and the union negotiated a shutdown agreement, under which the group insurance benefits for active employees would be discontinued six months after the plant closed. The agreement did not mention the retirees' benefits. The collective agreement was formally terminated on May 29, 1985. The pension plan was wound up and an annuity was bought to satisfy the company's outstanding pension obligations.

The company advised all retirees that their benefits would be terminated when the benefits for active employees were to cease under the shutdown agreement. The union lodged a grievance on behalf of the retired workers, demanding reinstatement of the benefits. The company refused to acknowledge this grievance and objected to the arbitrator's jurisdiction. In its opinion, there was no collective agreement in place when the grievance was lodged and it had no obligations to the retired workers on any basis but the collective agreement.

At the arbitration hearing the company renewed its objection to the grievance, and argued that the arbitrator had no jurisdiction because the collective agreement had ended. The arbitrator heard submissions on this point only, and then adjourned the hearing. In a written award, he rejected the company's arguments on jurisdiction, found that the matter before him was arbitrable, and ordered the arbitration to proceed on the merits at a later date. The company applied for judicial review of the arbitrator's decision, and the Divisional Court set aside the award. An appeal to the Court of Appeal was allowed, thus reinstating the arbitrator's award. This appeal raises two issues. The first is the scope of judicial review of the arbitrator's decision. The remaining issue is the correctness of the arbitrator's finding that a promise to pay benefits to retired employees can survive the expiration of the collective agreement in which the promise is made.

The union sought to cross-appeal that portion of the Court of Appeal's order directing that the arbitration proceed before a different arbitrator. That order was made at the request of the company, in the belief that the arbitrator had in effect pre-judged the merits of the case in the course of determining his jurisdiction.

Held: The appeal and cross-appeal should be dismissed.

Per **La Forest**, Sopinka, Gonthier, McLachlin and Iacobucci JJ.: At this Court, the appellant only challenged the conclusion of the arbitrator on the general proposition that a promise in a collective agreement can survive the expiry of the collective agreement in which the promise is made. In answering the question the arbitrator was not acting within his jurisdiction in a strict sense. Rather he was deciding upon jurisdiction and as such was required to be correct.

Courts should, as a matter of policy, defer to the expertise of the arbitrator in questions relating to the interpretation of collective agreements. An arbitrator has jurisdiction *stricto sensu* to interpret the provisions of a

collective agreement in the course of determining the arbitrability -- i.e., the arbitrator's jurisdiction -- of matters under that agreement. But here the viability and subsistence of the collective agreement is challenged. The collective agreement is the foundation of the arbitrator's jurisdiction, and in determining that it exists or subsists, the arbitrator must be correct. If the issue is arbitrable, then the arbitrator has jurisdiction, at least in the limited sense of being empowered to decide that question. The more difficult problem is whether the arbitrator, in making that inquiry, has the right to be wrong. This requires a pragmatic and functional analysis of the appropriate standard of review.

The wording of the precise grant of power in s. 44 of the *Labour Relations Act* is not determinative of the scope of an arbitrator's jurisdiction. In viewing the text of s. 44(2) as a whole, the power to determine arbitrability will for many "matters" connote a grant of jurisdiction *stricto sensu*. When the "matter" must be measured against the collective agreement to determine if it is arbitrable, the arbitrator will have the right to be wrong. This takes account of the entire purpose of the provision, which is to empower the arbitrator to deal with differences between the parties relating to the agreement. Moreover, this is in accord with the arbitrator's core area of expertise. But when there is a dispute over whether the grievance pertains to some other agreement or no agreement at all, then the Board must determine its jurisdiction, and it must be correct in so doing.

The conclusions that emerge from the wording of the statute are confirmed by considering the role of the arbitrator within the arbitration scheme established by the Act. The phrase "final and binding upon the parties" in s. 44 has a limited privative effect on the issue in this appeal. Section 44 should be contrasted with the strong and explicit privative clause in s. 108 protecting decisions of the Labour Relations Board. If the legislature had intended to mandate the same judicial deference to an arbitrator as to the Board, it could simply have brought the arbitrator under the shelter of s. 108.

A consideration of the purpose of arbitration and the expertise of arbitrators indicates that an arbitration board falls towards the lower end of the spectrum of those administrative tribunals charged with policy deliberations to which the courts should defer. Tribunals vested with the responsibility to oversee and develop a statutory regime are more likely to be entitled to judicial deference. The *Labour Relations Act* clearly assigns a general supervisory role to the Ontario Labour Relations Board. In contrast, the arbitrator's role is confined to the resolution of grievances under a collective agreement. The relative expertise of Board members and arbitrators must be presumed to be commensurate with the scope of these divergent statutory mandates.

The extent to which the present case turns on questions falling within that area of expertise must be considered. Here, the question to be decided requires consideration of concepts that are analogous to certain common law notions -- "vesting" and accrued contractual rights -- that fall outside the tribunal's sphere of exclusive expertise. Arbitrators can apply common law concepts but in these matters the arbitrator has no exclusive or unique claim to expertise.

The functional analysis of the jurisdiction of the arbitrator in this case indicates that in deciding whether a collective agreement continues to determine the rights and obligations between the parties, the arbitrator is required to be correct.

With respect to the substantive issue in this appeal, the arbitrator correctly found, as a general proposition, that it is possible for a promise of retirement benefits to survive the expiry of the collective agreement in which it is found. Guidance can be found by reference to certain analogous (and perhaps binding) concepts in the common law of contracts such as the common law notion of termination of a contract. A collective agreement is rather like a contract for a fixed term which expires by mutual agreement at the end of the term. It ceases to have prospective application, but the rights that have accrued under it continue to subsist.

Rights that have accrued under a collective agreement can remain enforceable. The new agreement "displaces" the old one, which is no longer in force. But this is with respect to the current employment relationship, and says nothing about the previously accrued rights of the parties. Nothing differentiates the promise to pay retirement health benefits from promises to pay regular wages or vacation pay. All of these can be enforced after the termination of the agreement.

The first step in analyzing the arbitrability of an expired collective agreement is to determine the general question of whether expiry forecloses the ability of parties to grieve matters that arose during the currency of the agreement. The proper focus is to examine when the rights being grieved had accrued, not the time of breach. The term "vested" must be taken to mean only that vested rights are not automatically extinguished by the expiry of the collective agreement. Vesting in this context says nothing of the ultimate indefeasibility or inviolability of the rights. This "weak form" of vesting is sufficient to determine the result in this case. Since the retirement benefits here were not withdrawn by any subsequent agreement between the parties, there was no opportunity for the retroactive extinguishment of the rights which accrued under the expired agreement. The second phase of the arbitrator's analysis was really just an application of the general principle to the specific case of retirees' benefits.

American and Canadian jurisprudence indicates that retirement benefits are in the nature of accrued rights and those may (depending on the terms of the agreement) vest. The time of retirement is the time when certain rights granted under a collective agreement vest. The vested rights can be enforced by union grievance on behalf of retirees.

Retired workers fall outside the bargaining unit and are thereby excluded from the collective bargaining process. Statutory vesting protections have been extended to pension plans, but not welfare plans. The question of vested welfare benefits is to be determined by the contracting parties. While the retirees are outside the collective bargaining process, unions can (and frequently do) bargain on behalf of retired workers. But this does not affect the status of vesting. The American notion of retirement benefits as a permissive subject of bargaining, which either party to the negotiations can refuse to discuss, is largely irrelevant to the status of vesting of retirees' benefits. Vesting is determined by the contractual agreement between the parties, not the subsequent bargaining between them. In practical terms, vested rights are protected by the right to grieve the expired collective agreement, not by control over the subsequent bargaining process. An intention to vest benefits can be inferred as the retirees would not have wanted their benefits to depend upon the goodwill of the parties during future collective bargaining. This inference, as one measure of the context in which bargaining took place between the parties, is a useful tool that can be employed by arbitrators in Canada on a case-by-case basis.

The range of remedial choices available to individual retired workers may be the one area where there may be a crucial difference in the nature (but not the existence) of vested retirement benefits in Ontario as compared to the United States. Canadian retirees may find themselves in possession of a right without a remedy. The grievance procedure may be foreclosed because retirees may not be entitled to bring a claim against the union for unfair representation, as such rights in Ontario appear to be limited to current members of the bargaining unit. Ontario's *Rights of Labour Act* may foreclose the possibility of a court action by the retirees. There may be means for retirees to surmount these remedial roadblocks, but these need not be determined here because the union has brought the grievance for the retirees. The arbitrator was correct that retirement rights can, if contemplated by the term of the collective agreement, survive the expiration of that agreement, and that such rights vest at the time of retirement. The arbitrator should proceed to determine whether the terms of the specific agreement create such a vested right.

The cross-appeal was not argued during oral submissions to this Court and, in the absence of on order granting leave to cross-appeal, the issue was not properly before the Court. The cross-appeal could not therefore be considered.

Per **Cory** J.: The three basic grounds for judicial review provide protection for the parties from decisions made without jurisdiction, from patently unreasonable decisions and from failure to provide procedural fairness. As a general rule, they allow the whole system for the resolution of labour disputes to function expeditiously, simply and as inexpensively as possible.

The arbitrator here had to be correct in his decision as to whether or not he had jurisdiction to resolve the question before him and the court had to intervene if he erred in this respect. It was not necessary to consider the standard of review by the courts of an arbitrator's decision on the merits because this case turned on the jurisdictional issue. Given jurisdiction, a court can only intervene if the decision reached was patently unreasonable. This deference has also been accorded to arbitrators acting in the same field. Decisions whether made by tribunals, boards or arbitrators, should be

final and binding unless patently unreasonable. No distinction as to the deference given should be drawn between "final and conclusive" and "final and binding". Litigation as to whether a privative clause is more privative or less privative should not be encouraged. The rules as to court review should remain simple, straightforward and easy to follow.

Per **Lamer** C.J.: The reasons of La Forest J. were agreed with, except as regards the effect of "quasi-privative clauses"; the reasons of Cory J. were agreed with in that regard.

APPEAL AND CROSS-APPEAL from a judgment of the Ontario Court of Appeal allowing an appeal (with the direction that the matter be continued before another arbitrator) (1990), 74 O.R. (2d) 648, 40 O.A.C. 219, 73 D.L.R. (4th) 718, 90 C.L.L.C. 14,040, 47 Admin. L.R. 1, from a judgment of the Divisional Court (1987), 61 O.R. (2d) 207, 42 D.L.R. (4th) 456, quashing an arbitrator's award. Appeal and cross-appeal dismissed.

H. Lorne Morphy, Q.C., Geoffrey D. Creighton and *Mark E. Geiger*, for the appellant and *H. Lorne Morphy, Q.C.*, in response on the cross-appeal.

Lennox A. MacLean, Q.C., for the respondents and *G. James Fyshe* on the cross-appeal.

Blaney, McMurtry, Stapells, Toronto, for the appellant.

Pollit, Arnold, MacLean, Toronto, for the respondents.

Présents: Le juge en chef Lamer et les juges La Forest, Sopinka, Gonthier, Cory, McLachlin et Iacobucci.

Relations de travail -- Arbitrage de grief -- Cessation par une société du versement des avantages des employés retraités découlant d'une convention collective échue -- Dépôt d'un grief par le syndicat -- Le grief est-il arbitrable? -- L'arbitre a-t-il conclu à bon droit qu'il avait compétence?

Contrôle judiciaire -- Commission des relations de travail -- Arbitrage de grief -- Cessation par une société du versement des avantages des employés retraités découlant d'une convention collective échue -- Dépôt d'un grief par le syndicat -- Le grief est-il arbitrable? -- L'arbitre a-t-il conclu à bon droit qu'il avait compétence? -- La clause privative s'applique-t-elle? -- Loi sur les relations de travail, L.R.O. 1980, ch. 228, art. 44.

L'appelante a fermé temporairement son usine de Hamilton en 1983 et l'a fermée définitivement en 1985. La société a accordé à ses employés certains avantages en matière d'assurance collective aux termes d'anciennes conventions collectives, dont la dernière a été signée le 27 avril 1983 et a expiré le 21 avril 1985. Avant la fermeture définitive, la société et le syndicat ont négocié un accord de fermeture aux termes duquel les avantages en matière d'assurance collective destinés aux employés actifs cesseraient six mois après la fermeture de l'usine. L'accord ne mentionnait pas les avantages des retraités. La convention collective a été formellement révoquée le 29 mai 1985. Le régime de pension a été liquidé et une rente a été souscrite afin de permettre à la société de s'acquitter de ses obligations en cours en vertu du régime de pension.

La société a avisé tous les retraités que leurs avantages cesseraient à la date de cessation des avantages accordés aux employés actifs aux termes de l'accord de fermeture. Le syndicat a déposé un grief au nom des retraités, dans lequel il exigeait le rétablissement des avantages. La société a refusé de reconnaître ce grief et s'est opposée à la compétence de l'arbitre. À son avis, aucune convention collective n'était en vigueur au moment où le grief a été déposé et elle n'avait envers les travailleurs retraités aucune autre obligation que celles découlant de la convention collective.

Lors de l'audience d'arbitrage, la société a réitéré son opposition au grief et a fait valoir que l'arbitre n'avait pas compétence à cause de l'expiration de la convention collective. L'arbitre n'a entendu des arguments que sur ce point, puis a ajourné l'audience. Dans une sentence écrite, il a rejeté les arguments de la société sur la compétence, a jugé arbitrable la question dont il était saisi et a ordonné que l'arbitrage sur le fond ait lieu à une date ultérieure. La société a demandé le

contrôle judiciaire de la décision de l'arbitre et la Cour divisionnaire a annulé la sentence. Un appel devant la Cour d'appel a été accueilli, la sentence arbitrale étant ainsi rétablie. Le présent pourvoi soulève deux questions. La première est la portée du contrôle judiciaire de la décision de l'arbitre. La deuxième est la justesse de la conclusion de l'arbitre selon laquelle la promesse de verser des prestations aux employés à la retraite peut survivre à la convention collective qui la contient.

Le syndicat a formé un pourvoi incident contre la partie de l'ordonnance de la Cour d'appel enjoignant de confier l'arbitrage à un arbitre différent. Cette ordonnance a été rendue à la demande de la société parce qu'on croyait que l'arbitre avait préjugé du fond de l'affaire en statuant sur sa compétence.

Arrêt: Le pourvoi principal et le pourvoi incident sont rejetés.

Les juges La Forest, Sopinka, Gonthier, McLachlin et Iacobucci: Devant nous, l'appelante n'a contesté que la conclusion tirée par l'arbitre au sujet de la proposition générale selon laquelle une promesse peut survivre à la convention collective qui la contient. En répondant à la question, l'arbitre n'a pas agi conformément à sa compétence au sens strict. Il a statué plutôt sur sa compétence et il ne devait donc pas commettre d'erreur.

Les tribunaux doivent, en principe, s'en remettre à l'expertise de l'arbitre pour ce qui est des questions concernant l'interprétation des conventions collectives. Un arbitre a compétence *stricto sensu* pour interpréter les dispositions d'une convention collective lorsqu'il s'agit de décider si des questions sont arbitrables -- c.-à-d., la compétence de l'arbitre -- sous le régime de cette convention. Mais, en l'espèce, ce sont la viabilité et la survie de la convention collective qui sont mises en doute. La convention collective est le fondement de la compétence de l'arbitre et celui-ci ne doit pas commettre d'erreur en décidant qu'elle existe ou qu'elle subsiste. Si la question est arbitrable, alors l'arbitre est compétent tout au moins dans le sens restreint qu'il est habilité à trancher cette question. La plus grande difficulté est de savoir si, en faisant cet examen, l'arbitre a le droit de se tromper. Cela exige une analyse pragmatique et fonctionnelle de la norme d'examen appropriée.

La formulation de l'attribution précise de pouvoir à l'art. 44 de la *Loi sur les relations de travail* n'est pas déterminante quant à l'étendue de la compétence d'un arbitre. Compte tenu de l'ensemble du texte du par. 44(2), le pouvoir de statuer sur l'arbitrabilité signifiera, pour bien des questions, l'attribution d'une compétence *stricto sensu*. S'il doit apprécier la question en fonction de la convention collective pour décider si elle est arbitrable, l'arbitre aura le droit de se tromper. Cela tient compte de tout l'objectif de la disposition qui est d'habiliter l'arbitre à régler les différends entre les parties relativement à la convention. De plus, cela correspond au domaine d'expertise fondamental de l'arbitre. Mais en cas de conflit quant à la question de savoir si le grief se rapporte à une autre convention ou s'il ne se rapporte à aucune convention, la Commission doit alors décider si elle est compétente et elle doit le faire sans commettre d'erreur.

Les conclusions qui ressortent du texte de la Loi sont confirmées par l'examen du rôle de l'arbitre dans le régime d'arbitrage établi par la Loi. Les mots «a force de chose jugée et lie les parties» que l'on trouve à l'art. 44 ont un effet privatif limité sur la question soulevée en l'espèce. Il y a lieu de mettre l'art. 44 en contraste avec la clause privative stricte et explicite de l'art. 108 qui protège les décisions de la Commission des relations de travail. Si le législateur avait voulu prescrire la même retenue judiciaire envers un arbitre qu'envers la Commission, il aurait pu simplement faire bénéficier l'arbitre de la protection de l'art. 108.

Un examen de l'objet de l'arbitrage et de l'expertise des arbitres montre qu'un conseil d'arbitrage se situe au bas de l'échelle des tribunaux administratifs chargés de procéder à des délibérations de principe auxquelles les cours de justice devraient s'en remettre. Les tribunaux chargés de surveiller et de développer un régime légal sont plus susceptibles d'avoir droit à la retenue judiciaire. La *Loi sur les relations de travail* attribue clairement un rôle général de surveillance à la Commission des relations de travail de l'Ontario. Par contre, le rôle de l'arbitre est limité au règlement des griefs fondés sur une convention collective. Il faut présumer que l'expertise relative des membres de la Commission et des arbitres est proportionnelle à la portée de ces mandats divergents attribués par la Loi.

Il faut examiner la mesure dans laquelle l'issue de la présente affaire dépend de questions ressortissant à ce domaine d'expertise. Ici, la question à trancher exige l'examen de notions qui sont analogues à certaines notions de common law -- «droits acquis» et droits accumulés par contrat -- qui sortent du champ d'expertise exclusif du tribunal. Les arbitres peuvent appliquer les notions de common law, mais pour ces questions, l'arbitre ne saurait revendiquer une expertise exclusive ou unique.

L'analyse fonctionnelle de la compétence de l'arbitre en l'espèce indique que l'arbitre ne doit pas commettre d'erreur en décidant si une convention collective continue de déterminer les droits et les obligations des parties.

En ce qui concerne la question de fond en l'espèce, l'arbitre a conclu à bon droit que, d'une façon générale, il est possible que la promesse de prestations de retraite survive à la convention collective dans laquelle elle figure. On peut s'inspirer de certaines notions analogues (qui nous lient peut-être) tirées des règles de common law en matière contractuelle comme la notion de common law de l'expiration du contrat. Une convention collective ressemble plutôt à un contrat à durée déterminée qui, à l'échéance, expire par consentement mutuel. Ce contrat n'est plus susceptible d'application future, mais les droits qui se sont accumulés sous son régime subsistent.

Les droits accumulés en vertu d'une convention collective peuvent demeurer exécutoires. La nouvelle convention «remplace» l'ancienne qui n'est plus en vigueur. Mais cela concerne les relations de travail actuelles et ne dit rien au sujet des droits déjà accumulés par les parties. Rien ne différencie la promesse de verser des prestations-maladie aux retraités des promesses de verser un salaire régulier ou d'accorder des vacances payées. Elles peuvent toutes être mises à exécution après la fin de la convention.

La première étape de l'analyse de l'arbitrabilité d'une convention collective expirée consiste à trancher la question générale de savoir si cette expiration empêche les parties de déposer un grief relatif à des faits qui se sont produits pendant la durée de la convention. Il convient de se concentrer sur le moment où les droits qui font l'objet du grief ont été accumulés et non sur le moment de la violation. Il faut considérer que le mot «acquis» signifie seulement que les droits acquis ne sont pas automatiquement éteints à l'expiration de la convention collective. L'acquisition de droits dans ce contexte n'a aucun rapport avec leur irrévocabilité ou leur inviolabilité ultime. Cette «forme diluée» de droits acquis est suffisante pour déterminer le résultat dans la présente affaire. Puisque les parties en l'espèce n'ont pas supprimé les prestations de retraite dans une convention ultérieure, les droits accumulés en vertu de la convention expirée n'ont pu être éteints rétroactivement. Le deuxième volet de l'analyse de l'arbitre n'était en réalité qu'une application du principe général au cas particulier des prestations de retraite.

La jurisprudence américaine et canadienne indique que les prestations de retraite participent de droits accumulés et que le droit à ces prestations (Tout dépendant des conditions de la convention) peut devenir acquis. La date de la retraite est la date à laquelle certains droits accordés par une convention collective deviennent acquis. Les droits acquis peuvent être exécutés au moyen d'un grief déposé par le syndicat au nom des retraités.

Les retraités ne font pas partie de l'unité de négociation et sont donc exclus du processus de la négociation collective. Les régimes de pension mais non les régimes de prestations sociales sont protégés par des dispositions législatives en matière de droits acquis. Ce sont les parties contractantes qui doivent trancher la question du droit acquis à des prestations sociales. Même si les retraités sont exclus du processus de la négociation collective, les syndicats peuvent négocier en leur nom (et ils le font souvent). Toutefois, cela n'influe pas sur la question des droits acquis. La notion américaine selon laquelle les prestations de retraite sont des sujets de négociation facultatifs dont chaque partie aux négociations peut refuser de discuter, n'a dans une large mesure rien à voir avec la question des droits acquis en matière d'avantages accordés aux retraités. L'acquisition de droits est fonction de la convention contractuelle conclue par les parties et non des négociations ultérieures auxquelles elles se sont livrées. En pratique, les droits acquis sont protégés par le droit de déposer un grief relatif à la convention collective expirée, et non par un droit de regard sur le processus de négociation ultérieur. L'intention que des avantages soient acquis peut être inférée parce que les retraités n'auraient pas voulu que leurs avantages dépendent de la bonne volonté des parties lors de négociations collectives ultérieures. Cette inférence, comme moyen d'apprécier le contexte dans lequel les parties ont négocié, est un outil utile que les arbitres peuvent utiliser au Canada de façon ponctuelle.

La gamme de recours dont disposent les retraités pris individuellement peut constituer le seul domaine où il peut y avoir une différence cruciale dans la nature (mais non l'existence) du droit acquis à des prestations de retraite en Ontario et aux États-Unis. Il est possible que les retraités canadiens se trouvent en possession d'un droit qu'ils ne peuvent faire exécuter. La procédure des griefs peut leur être interdite parce qu'ils risquent de ne pas avoir le droit de porter contre le syndicat une plainte de représentation inéquitable, puisque ce droit semble être réservé, en Ontario, aux membres actuels de l'unité de négociation. La *Loi sur les droits syndicaux* de l'Ontario peut écarter la possibilité pour les retraités d'intenter une action en justice. Il peut y avoir des moyens pour les retraités de surmonter ces obstacles qui les empêchent d'obtenir réparation, mais il n'est pas nécessaire de les déterminer ici parce que le syndicat a déposé le grief au nom des retraités. L'arbitre a eu raison de conclure que les droits accordés aux retraités peuvent, si les conditions d'une convention collective le stipulent, survivre à cette convention, et que ces droits deviennent acquis à la date où l'employé prend sa retraite. L'arbitre devrait déterminer si les conditions de la convention particulière créent un tel droit acquis.

Le pourvoi incident n'a pas été débattu durant les plaidoiries devant notre Cour et, en l'absence d'une ordonnance accordant l'autorisation de former un pourvoi incident, la Cour n'a pas été saisie régulièrement de la question. Par conséquent, le pourvoi incident ne pouvait pas être examiné.

Le juge Cory: Les trois justifications fondamentales du contrôle judiciaire protègent les parties contre les décisions rendues en l'absence de compétence, contre les décisions manifestement déraisonnables et contre le défaut d'assurer l'équité en matière de procédure. En règle générale, ils permettent à l'ensemble du système de règlement des conflits de travail de fonctionner aussi expéditivement, simplement et économiquement que possible.

En l'espèce, l'arbitre devait juger correctement s'il était compétent pour trancher la question dont il était saisi et la cour devait intervenir s'il commettait une erreur à cet égard. Il n'était pas nécessaire d'examiner la norme qui s'applique au contrôle par les cours de justice de la décision d'un arbitre sur le fond parce que l'issue de l'affaire dépendait de la question de compétence. S'il y a compétence, une cour de justice ne peut intervenir que si la décision rendue est manifestement déraisonnable. On a également fait preuve de cette retenue envers les arbitres qui oeuvrent dans le même domaine. Les décisions rendues par des tribunaux, des commissions ou des arbitres devraient être finales et exécutoires à moins d'être manifestement déraisonnables. Aucune distinction quant à la retenue dont il faut faire preuve ne devrait être établie entre les termes «définitives» et «a force de chose jugée et lie les parties». Il n'y a pas lieu d'encourager les litiges qui portent sur la question de savoir si une clause privative est plus ou moins privative. Les règles applicables au contrôle judiciaire devraient être simples, directes et faciles à suivre.

Le juge en chef Lamer: Les motifs du juge La Forest sont acceptés sauf en ce qui concerne l'effet des «clauses quasi privatives»; les motifs du juge Cory sont acceptés à cet égard.

POURVOI PRINCIPAL ET POURVOI INCIDENT contre un arrêt de la Cour d'appel de l'Ontario qui a accueilli un appel (et ordonné que l'affaire se poursuive devant un autre arbitre) (1990), 74 O.R. (2d) 648, 40 O.A.C. 219, 73 D.L.R. (4th) 718, 90 C.L.L.C. 14,040, 47 Admin. L.R. 1, interjeté contre un jugement de la Cour divisionnaire (1987), 61 O.R. (2d) 207, 42 D.L.R. (4th) 456, qui avait annulé une sentence arbitrale. Pourvoi principal et pourvoi incident rejetés.

H. Lorne Morphy, c.r., Geoffrey D. Creighton et *Mark E. Geiger*, pour l'appelante, et *H. Lorne Morphy, c.r.*, en réponse lors du pourvoi incident.

Lennox A. MacLean, c.r., pour les intimés, et *G. James Fyshe* lors du pourvoi incident.

Blaney, McMurtry, Stapells, Toronto, pour l'appelante.

Pollit, Arnold, MacLean, Toronto, pour les intimés.

WEEKLY AGENDA **ORDRE DU JOUR DE LA SEMAINE**

AGENDA for the week beginning May 10, 1993.
ORDRE DU JOUR pour la semaine commençant le 10 mai 1993.

Date of Hearing/ Date d'audition	NO.	Case Number and Name/ Numéro et nom de la cause

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.

APPEALS INSCRIBED FOR HEARING AT THE SESSION OF THE SUPREME COURT OF CANADA, BEGINNING MONDAY, APRIL 26, 1993

REVISED APRIL 26, 1993

APPELS INSCRITS POUR AUDITION À LA SESSION DE LA COUR SUPRÊME DU CANADA COMMENÇANT LE LUNDI 26 AVRIL 1993

RÉVISÉ LE 26 AVRIL 1993

DEADLINES: MOTIONS 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	**:**	**June 7, 1993**
Service	:	May 17, 1993
Filing	:	May 25, 1993
Respondent	:	May 31, 1993

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.

DÉLAIS: REQUÊTES 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	**:**	**7 juin 1993**
Signification	:	17 mai 1993
Dépot	:	25 mai 1993
Intimé	:	31 mai 1993

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

The next session of the Supreme Court of Canada commences on April 26, 1993.

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 1993 Session on August 4, 1993.

DÉLAIS: APPELS

La prochaine session de la Cour suprême du Canada débute le 26 avril 1993.

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'appelant 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'appelant.

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 août 1993, le registraire met au rôle de la session d'octobre 1993 tous les appels inscrits pour audition.