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**APPLICATIONS FOR LEAVE TO
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Price Waterhouse Ltd.

Walley P. Lightbody, Q.C.
Ray Connell

v. (23392)

Western Surety Co. (B.C.)

D. Geoffrey Cowper
Russell & DuMoulin

FILING DATE 25.2.1993

Her Majesty The Queen

A.G. of N.S.

v. (23385)

Melvin Lorne Mason (N.S.)

M. Jane McClure
Weldon, Beeler, Mont & Dexter

FILING DATE 19.2.1993

Charles Carrol Baroni

Edmund R. Saunders

v. (23439)

Her Majesty The Queen (N.S.)

Dept. of the A.G.

FILING DATE 16.2.1993

Malcolm King

E.R. Murray
Genest Murray DesBrisay Lamek

v. (23440)

Gulf Canada Ltd. (Ont.)

FILING DATE 16.2.1993

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

Buena Vista Developments Ltd. et al.

Michael Kim Anderson
Robertson Stromberg

v. (23443)

First City Trust Co. et al. (Sask.)

William Timothy Stodalka
MacLean Keith, Dutchak

FILING DATE 25.2.1993

**Service Employees' International Union, Local
336**

Boskie & Co.

v. (23437)

**Eastend Wolf Willow Health Centre et al.
(Sask.)**

FILING DATE 4.3.1993

Gelco Express Ltd.

Thomas R. Hawkins
Smith, Lyons, Torrance, Stevenson & Mayer

v. (23453)

The Toronto-Dominion Bank (Ont.)

Colin C. Taylor

FILING DATE 12.2.1993

**Performing Rights Organization of Canada
Limited and Composers, Authors and
Publishers Association**

Y.A. George Hynna
Gowling, Strathy & Henderson

v. (23455)

CTV Television Network Ltd. (F.C.A.)(Ont.)

Gordon Zimmerman
Borden & Elliott

FILING DATE 8.3.1993

**Performing Rights Organization of Canada
Limited and Composers, Authors and Publishers
Association**

Y.A. George Hynna
Gowling, Strathy & Henderson

v. (23456)

CTV Television Network Ltd. (F.C.A.)(Ont.)

Gordon Zimmerman
Borden & Elliott

FILING DATE 8.3.1993

Ignacio Villafranca

Walsh, Micay & Company

v. (23442)

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

Dept. of Justice

FILING DATE 22.2.1993

Sheila Jo-Anne Hayes et al.

Lawrence E. Pierce
Pierce, Van Loon

v. (23444)

**British Columbia Television Broadcasting
System Ltd. et al. (B.C.)**

Richard H. Hamilton
Owen, Bird

FILING DATE 19.2.1993

Rejean Gagnon et al.

William M. Davis
Williams, McEnery & Davis

v. (23445)

Tina Lucas et al. (Ont.)

Robert J. Reynolds
Reynolds, Kline, Selik

FILING DATE 15.2.1993

Robert George Wilson

Sidney Green, Q.C.

v. (23446)

Her Majesty The Queen (Man.)

Harry Ginter
Dept. of Justice

FILING DATE 15.2.1993

Salvatore Tozzo

Robert J. van Kessel
Lawrence, Lawrence, Stevenson

v. (23447)

Salvatore Zaffino (Ont.)

Alistair Riswick
Capo, Sgro, Delena, Hemsforth, Mendicino

FILING DATE 15.2.1993

Isahack Mohamed Ali

Annie Bélanger
Payette, Bélanger, Fiore

c. (23448)

**Ministre de l'emploi et de l'immigration du
Canada (C.A.F.)**

Joanne Granger
Min. de la Justice

DATE DE PRODUCTION 17.2.1993

Les services de béton universels Ltée

Pouliot Mercure

c. (23449)

Signalization de Montréal Inc. et al. (C.A.F.)

Ogilvy Renault

DATE DE PRODUCTION 17.2.1993

Ville de la Prairie

Alain-Claude Desforges

Bélanger Sauvé

c. (23458)

Gulf Canada Ltée et al. (Qué.)

Guy Lemay

Lavery, de Billy

DATE DE PRODUCTION 5.3.1993

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

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

FEBRUARY 25, 1993 / LE 25 FÉVRIER 1993

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

Giuseppe Arcangioli

v. (23380)

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

NATURE OF THE CASE

Criminal law - Trial - Defence - Whether the Ontario Court of Appeal erred in law in holding there was no misdirection with respect to the trial judge's failure to instruct the jury as to the process for drawing an inference of guilt from evidence of flight.

PROCEDURAL HISTORY

November 28, 1991
Ontario Court of Justice
(German J.)

Conviction: aggravated assault

January 15, 1993
Court of Appeal for Ontario
(Brooke, Galligan [dissenting] and Labrosse JJ.A.)

Appeal dismissed

January 18, 1993
Supreme Court of Canada

Notice of appeal as of right based on dissenting issue filed

February 4, 1993
Supreme Court of Canada

Application for leave to appeal filed

MARCH 3, 1993 / LE 3 MARS 1993

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

James Donald Williams

v. (23387)

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

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Right to retain and instruct counsel under s. 2(c)(ii) of the *Canadian Bill of Rights* and s. 10(b) of the *Charter* - Applicant charged with refusing without a reasonable excuse to provide a breath sample contrary to s. 254(5) of the *Criminal Code* - Whether the majority of the Court of Appeal erred in law in holding that the infringement of an accused person's right to retain and instruct counsel within s. 2(c)(ii) of the *Canadian Bill of Rights* and s. 10(b) of the *Charter* does not provide a "reasonable excuse" or a common law defence for failing or refusing to provide as breath sample under s. 254(5) of the *Criminal Code*.

PROCEDURAL HISTORY

June 15, 1990 Provincial Court, Criminal Division (DeMarco J.)	Conviction: refusing without reasonable excuse to provide a breath sample contrary to s. 254(5) of the <i>Criminal Code</i>
December 31, 1990 Ontario Court of Justice (General Division) (McMahon J.)	Appeal dismissed
November 26, 1992 Court of Appeal for Ontario (Morden A.C.J.O. [dissenting], Osborne and Weiler J.J.A.)	Appeal dismissed
January 20, 1993 Supreme Court of Canada	Application for leave to appeal filed

Mark Kenneth Dwernychuk

v. (23399)

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

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Right against unreasonable search and seizure - Whether the police officer had reasonable and probable grounds for making a demand for a breath sample - Whether the Court of Appeal erred in law in failing to find the obtaining of breath samples from the Applicant constituted an unreasonable search and seizure within the meaning of s. 8 of the *Canadian Charter of Rights and Freedoms* - Whether the Court of Appeal erred in law in failing to exclude the breath evidence pursuant to s. 24(2) of the *Canadian Charter of Rights and Freedoms* - Whether the Court of Appeal erred in establishing and applying any of its six rules for making *Charter* applications to exclude evidence - Whether *R. v. Rilling* enables breathalyser evidence to be used at trial even when there were no reasonable and probable grounds to seize it, given the enactment of the *Charter*.

PROCEDURAL HISTORY

February 13, 1991 Provincial Court, Criminal Division (Campbell P.C.J.)	Conviction: operation of a motor vehicle while the amount of alcohol in blood exceeded the legal limit contrary to s. 253(b) of the <i>Criminal Code</i>
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October 9, 1991 Court of Queen's Bench of Alberta (MacCallum J.)	Appeal dismissed
November 25, 1992 Court of Appeal for Alberta (McDonald, McClung and Bracco JJ.A.)	Appeal dismissed
January 22, 1993 Supreme Court of Canada	Application for leave to appeal filed

McCain Foods Limited

v. (23318)

**National Transportation Agency and
Canadian Pacific Limited (F.C.A.)(N.B.)**

NATURE OF THE CASE

Procedural law - Statutes - Railways - Interpretation - Evidence - Applicant appealing Orders issued by the Respondent Agency granting authorization to the Respondent C.P. Ltd. to abandon railway operations - Whether the Federal Court of Appeal erred in law by failing to interpret the word "shall" as found in s. 165(1) of the *National Transportation Act, 1987*, R.S.C. 1985, c. 28 (3rd Supp.), in its normal grammatical sense as outlined in the *Interpretation Act*, R.S.C. 1985, c. I-21, and thereby upheld the orders of the Respondent Agency even though the orders were not made within the mandatory time period of six months after the Application for Abandonment was received by the Respondent Agency - Whether the Federal Court of Appeal erred in law by not giving proper force and effect to a statutory obligation arising out of a long-term lease between the Respondent, Canadian Pacific Ltd. and the New Brunswick Railway Company to operate the lines, the lease having been ratified and confirmed by a Statute of the Parliament of Canada as well as an Act of the Legislature of the Province of New Brunswick - Whether the Federal Court of Appeal erred in law in upholding the Respondent Agency's refusal to consider relevant evidence and also denying counsel for the Applicant the right to cross-examine the Respondent C.P. Ltd.'s witnesses on certain material matters as well as denying the Applicant access to relevant documentation while compelling the Applicant to disclose confidential information all of which amounts to a denial of natural justice.

PROCEDURAL HISTORY

November 24, 1992 Federal Court of Appeal (Maloney J.A., Desjardins and Robertson JJ.A.)	Appeals dismissed
December 1, 1992 Supreme Court of Canada	Application for leave to appeal filed
December 4, 1992 Supreme Court of Canada	Application for a stay dismissed

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

Charles R. Bell Limited

v. (23287)

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

NATURE OF THE CASE

Taxation - Assessment - Applicant receiving \$300,000.00 following the termination of distributorship agreements - Applicant deducting amount as capital payment - Minister of National Revenue holding that amount is income payment - Federal Court, Trial Division dismissing Applicant's appeal - Federal Court of Appeal dismissing Applicant's appeal - Whether the Federal Court, Trial Division, and the Federal Court of Appeal erred in holding that the test in *Commissioners of Inland Revenue v. Fleming & Co. (Machinery) Ltd.* (1951), 33 T.C. 57 (Ct. of Sess.) applies to the entire business and undertaking of the Applicant rather than to the separate operating division of the Applicant which carried on the business of distributing products of Outboard Marine Corporation Ltd. and which was materially crippled and ultimately destroyed by the surrender of the rights and advantages on cancellation of the distributorship agreements granted to the Applicant by Outboard Marine Corporation Ltd.

PROCEDURAL HISTORY

August 20, 1990 Federal Court, Trial Division (Martin J.)	Applicant's appeal dismissed
September 9, 1992 Federal Court of Appeal (Isaac C.J.A., Heald and Létourneau JJ.A.)	Appeal dismissed
November 9, 1992 Supreme Court of Canada	Application for leave to appeal filed

Sa Majesté du chef du Québec

v. (23356)

**Ontario Securities Commission, Committee for the Equal Treatment of
Asbestos Minority Shareholders and Société Nationale de l'Amiante (Ont.)**

NATURE OF THE CASE

Procedural law - Administrative law - Actions - Jurisdiction - Crown - Respondent Securities Commission issuing Notice of Hearing to examine transactions entered into by the Applicant - Extent of jurisdiction of Ontario tribunal to inquire into and make orders in respect of conduct of Quebec government outside of Ontario that has only incidental effects within Ontario - Does Quebec have Crown immunity from the *Securities Act*, R.S.O. 1980, c. 466 in relation to this transaction?

PROCEDURAL HISTORY

January 9, 1991 Divisional Court (Montgomery, O'Brien, and Donnelly JJ.)	Appeal and application for judicial review dismissed
October 26, 1992 Court of Appeal for Ontario (Lacourrière, Krever and McKinlay JJ.A.)	Appeal dismissed
December 22, 1993 Supreme Court of Canada	Application for leave to appeal filed

David Murray-Audain

v. (23314)

Mary Jane Jackson (Ont.)

NATURE OF THE CASE

Property law - Constructive trust - Family law - Procedural law - Whether Court of Appeal erred in failing to consider or to follow precedents - Whether trial judge exhibited signs of bias - Whether Respondent converted Applicant's property - Whether there was a constructive trust, or in the alternative, an equitable mortgage - Whether Respondent discharged burden of proving defence of repayment.

PROCEDURAL HISTORY

April 19, 1989 District Court of Ontario (Herold D.C.J.)	Order that Respondent return mirror to Applicant; All other claims dismissed; Counterclaim dismissed
September 24, 1992 Court of Appeal for Ontario (Catzman, Abella, and Krever JJ.A.)	Appeal dismissed
November 24, 1992 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**

Sa Majesté la Reine

c. (23360)

Robert Peruta et Carl Brouillette (Qué.)

NATURE DE LA CAUSE

Droit criminel - Procédure - Législation - Procès - Preuve - Interprétation - Intimés déclarés coupables de meurtre au premier degré par la Cour Supérieure du Québec - Appel accueilli par la Cour d'appel du Québec - La Cour d'appel a-t-elle erré en décidant que la demanderesse n'avait pas accès aux déclarations antérieures des témoins de la défense? - La Cour d'appel a-t-elle erré en décidant que l'art. 10 de la *Loi sur la preuve*, L.R.C. (1985), c. C-5, n'était pas attributif de droit? - La Cour d'appel a-t-elle erré en décidant que les déclarations antérieures étaient privilégiées? - La Cour d'appel a-t-elle erré en décidant que le fait que la demanderesse se soit entretenu avec son témoin-expert en médecine légale entre le contre-interrogatoire et le ré-interrogatoire était inapproprié au point d'affecter l'équité du procès? - La Cour d'appel a-t-elle erré en n'accordant pas à la demanderesse le droit de répliquer aux propos des avocats de la défense qui avaient exprimés leurs opinions personnelles sur la crédibilité des témoins et affirmés que la demanderesse ne croyait pas ses propres témoins? - La Cour d'appel a-t-elle erré en omettant de considérer les mises en garde de la demanderesse à l'endroit des jurés quant au fait qu'ils n'étaient pas obligés de tenir compte des opinions personnelles exprimées, et des mises en garde du juge de première instance? - La Cour d'appel a-t-elle erré en décidant qu'il y avait eu violation du droit au silence de l'intimé Brouillette?

HISTORIQUE PROCÉDURAL

7 août 1989
Cour Supérieure du Québec
(Desjardins J.C.S.)

Intimés déclarés coupables de meurtre au premier degré

27 octobre 1992
Cour d'Appel du Québec
(Tyndale J.C.A., Proulx et Moisan [*ad hoc*] J.J.C.A.)

Appel accueilli

22 décembre 1992
Cour Suprême du Canada

Demande d'autorisation d'appel

Nick Bassile

v. (23327)

Her Majesty the Queen (Qué.)

NATURE OF THE CASE

Criminal law - Procedural law - Trial - Evidence - Court of Quebec convicting Applicant on one count of trafficking and one count of conspiracy to traffic in illegal substances - Court of Appeal for Quebec dismissing appeal - Whether the Court of Appeal erred by not addressing the Applicant's right to be given particulars at trial denying him a full answer and defense - Whether the Court of Appeal erred in misapplying the test required in conspiracy cases showing membership to that conspiracy - Whether the Court of Appeal erred in misdirecting itself on the lack of evidence associated to the Applicant.

PROCEDURAL HISTORY

October 23, 1989 Court of Quebec (Coderre J.)	Applicant convicted on one count of trafficking and one count of conspiracy to traffic drugs
September 21, 1992 Court of Appeal for Quebec (McCarthy J.A., LeBel and Proulx JJ.A.)	Appeal dismissed
January 29, 1993 Supreme Court of Canada	Application for leave to appeal filed

D^f André Ferland

c. (23404)

**D^{fs} Richard Lachance, Pierre Lemelin et Serge Pigeon,
ès qualité de membres du Comité de discipline**

et

**D^{fs} Soheil Eid, Michel Dunberry, Ghassan Kiwan, Jean-Pierre Boucher,
Jean-Luc Ducharme, Jules Martin et M. Maurice Blais,
ès qualité de membres du Comité exécutif du Conseil
des médecins, dentistes et pharmaciens**

et

**Jacques Beaupré, Lucille Bienvenue, Maurice Bourassa, Martin Labrie,
Jacques Lefebvre, André Lessard, Germain Roberge, Pierre Boissonneau,
Jean-Paul Pelletier, Maurice Blais, D^f Soheil Eid et D^f Serge Pigeon,
ès qualité de membres du Conseil d'administration du
Centre hospitalier régional de Lanaudière
et
Centre hospitalier régional de Lanaudière (Qué.)**

NATURE DE LA CAUSE

Droit administratif - Procédure - Procédure civile - Droit des professions - Médecins et chirurgiens - Brefs de prérogative - Contrôle judiciaire - Compétence - *Charte des droits et libertés de la personne*, L.R.Q., ch. C-12 - La violation des règles de justice naturelle constitue-t-elle un défaut ou un excès de juridiction au sens du premier alinéa de l'article 846 du *Code de procédure civile*, compte tenu notamment de l'article 23 de la *Charte québécoise*? - La Cour d'appel du Québec a-t-elle commis une erreur en concluant que même si la violation des règles de justice naturelle constituait un défaut ou un excès de compétence, la Cour supérieure conservait le pouvoir discrétionnaire de refuser l'évocation lorsque le jugement entrepris était susceptible d'appel - L'appel qui ne suspend pas l'exécution de la décision d'un tribunal inférieur est-il un "recours approprié" justifiant la Cour supérieure d'user de son pouvoir discrétionnaire pour refuser l'évocation en cas de défaut ou d'excès de compétence?

HISTORIQUE PROCÉDURAL

Le 3 juin 1991
Cour supérieure du Québec
(Renaud J.)

Requête du demandeur pour l'obtention d'une ordonnance de sursis quant à la tenue de la réunion du 4 juin 1991 du conseil d'administration du CHRDL accueillie

Le 26 juin 1991
Cour supérieure
(Provost J.C.S.)

Requête en évocation présentée par le demandeur accueillie en partie

Le 13 septembre 1991
Cour d'appel du Québec
(Baudouin J.C.A.)

Requête du demandeur pour l'obtention d'une ordonnance de sursis accueillie

Le 25 novembre 1992
Cour d'appel du Québec
(Vallerand, Brossard
et Proulx J.J.C.A.)

Appel du demandeur rejeté

Le 22 janvier 1993
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

MARCH 4, 1993 / LE 4 MARS 1993

Donald Victor Butler - v. - Her Majesty the Queen (Man.)22191

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

The application by the intervenor Women's Legal Education and Action Fund for re-hearing on the question of costs is dismissed with costs, L'Heureux-Dubé J. dissenting.

La requête de l'intervenant le Fonds d'action et d'éducation juridiques pour les femmes, visant à obtenir une nouvelle audition sur la question des dépens, est rejetée avec dépens, le juge L'Heureux-Dubé étant dissidente.

MARCH 11, 1993 / LE 11 MARS 1993

23210 GRANVILLE SAVINGS AND MORTGAGE CORPORATION v. FRASER G. CAMPBELL, ET AL
(Man.)

CORAM: La Forest, Sopinka and Cory JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Torts - Negligence - Law of professions - Contracts - Land Titles - Mortgages - Professional negligence - Whether the Court of Appeal erred in finding that the Applicant and the Respondents did not have a special relationship giving rise to a duty of care - Whether the majority of the Court of Appeal erred in finding that the Applicant had not retained the Respondents - Whether the Court of Appeal erred in finding that the Respondents had not breached their fiduciary obligations owed to the Applicant.

23218 GRAY LYNCH - v. - HER MAJESTY THE QUEEN (Crim.) (Ont.)

CORAM: La Forest, Sopinka and Cory JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Procedural law - Pre-trial procedure - Courts - Jurisdiction - Trial - Bias - Did the trial judge err in failing to accede to the defence request that he disqualify himself from hearing the trial proper, having entertained an application under s. 598(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, and in the course of it having made adverse findings of credibility against the Applicant?

23231 LAURIER LIFE INSURANCE COMPANY - v. - WAGNER BROTHERS HOLDINGS INCORPORATED (Ont.)

CORAM:La Forest, Sopinka and Cory JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Commercial law - Contracts - Insurance - Applicant issuing life insurance policy with proceeds payable to Respondent - Person to be insured diagnosed with cancer following application for policy and final approval of policy - Effective date of policy - Change in the insurability of the life to be insured - Do either s. 157 (1) of the *Insurance Act*, R.S.O. 1980, c. 218, or the application for insurance apply to prevent the policy from coming into force where there is a change in the insurability of the person to be insured between the date of the application for the policy and the date the policy was issued? - Did Court of Appeal err in its interpretation of the provisions of the insurance contract?

23008 DAVID PEARLMAN, ET AL - v. - THE CITY OF WINNIPEG, ET AL (Man.)

CORAM:La Forest, Sopinka and Cory JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Administrative law - Procedural law - Municipal law - Does the law of Manitoba permit a City of Winnipeg inspector to effectively placard, remove tenants, and ultimately demolish the property of a citizen without notice to the property owner and without the property owner having any right to appeal? - Can the inspector validate his actions with the use of a rubber stamp bearing the stencilled signature of the Medical Officer of Health, whether or not the Medical Officer of Health had any involvement whatsoever in the decisions? - Should action have been taken under *Public Health Act* as opposed to the *City of Winnipeg Act*? - Can a notice which is demonstrably unlawful as not being authorized by the Medical Officer of Health form the basis for the demolition of property belonging to private citizens? - Can conduct of Respondent City and its officials be sanctioned by a court of law?

23208 THE FRIENDS OF THE ATHABASCA ENVIRONMENTAL ASSOCIATION, ET AL - v. - JERRY LACK, ET AL (Alta.)

CORAM:La Forest, Sopinka and Cory JJ.

The application for leave to appeal is dismissed with costs.

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

NATURE OF THE CASE

Administrative law - Constitutional law - Judicial review - Evidence - Does the principle of constitutional law enunciated in *Roncarelli v. Duplessis* apply to modern government in the environmental area - Rules of evidence for civil cases involving allegations of illegal government action - Should the Supreme Court of Canada reaffirm (a) the constitutional law principle that legislation reposing approval authority in a specific public official binds the cabinet, and (b) that the principle applies with full force and effect in applications for judicial review.

23139 337965 B.C. LTD., ET AL - v. - TACKAMA FOREST PRODUCTS LTD., ET AL (B.C.)

CORAM:La Forest, Sopinka and Cory JJ.

The application for leave to appeal is dismissed with costs. The cross-appeal is dismissed but without costs.

La demande d'autorisation d'appel est rejetée avec dépens. Le pourvoi incident est rejeté mais sans dépens.

NATURE OF THE CASE

Commercial law - Partnership - Contracts - Loan - Limited partnership - Whether the majority of the Court of Appeal erred in concluding that the doctrine requiring a person in a fiduciary position to account for profits obtained without the informed consent of its beneficiary, per *Phipps v. Boardman*, [1964] 2 All. E.R. 187 (Ch.); aff'd [1967] 2 A.C. 46 (H.L.), has no application to a commercial contract between a fiduciary and its beneficiaries - Whether the majority of the Court of Appeal erred in concluding that contractual provisions which give a fiduciary discretionary powers to manage permit the fiduciary to profit without the consent of its beneficiaries - Whether the majority of the Court of Appeal erred in concluding that an obligation in a contract to act "in good faith" means simply an obligation of objective honesty.

23303 GRIGORI ZAHAROV - v. - HER MAJESTY THE QUEEN (Crim.) (Ont.)

CORAM:La Forest, Sopinka and Cory 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 - Search and seizure - Did the Court of Appeal err in holding that search of Applicant's car was authorized by consent - Did trial judge err in finding that Applicant's possession of stolen property was proof of the element of the unlawful purpose in possession of instruments?

23121 DONALD ROY NEAVES v. HER MAJESTY THE QUEEN (Crim.) (N.S.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

NATURE OF THE CASE

Criminal law - Evidence - Inculpatory statements given to police - Did trial judge err in holding that statements were made freely and voluntarily - Was there a sufficient record of the interviews to enable finding that statements were voluntary.

23193 JOHN HALE c. SA MAJESTÉ LA REINE (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

NATURE DE LA CAUSE

Droit fiscal - Droit international - Législation - Interprétation - Cotisation - La Cour d'appel fédérale a-t-elle erré en refusant de considérer que les sommes reçues par le contribuable constituaient des "salaires, traitements et autres rémunérations similaires" alors que la *Convention Canada - Royaume-Uni en matière d'impôt* renvoie à la définition qu'ont ces mots dans la *Loi de l'impôt sur le revenu*? - La Cour d'appel fédérale a-t-elle erré en considérant que la législation interne créait une présomption d'exercice d'emploi au Canada applicable au texte de la *Convention*?

23273 ARDEN ANTHONY MARZETTI v. JACQUELINE JEANNINE MARZETTI (Alta)

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

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Commercial law - Taxation - Statutes - Bankruptcy - Interpretation - Applicant not paying monthly child and spousal support to Respondent - Applicant ordered to make payments to Director of Maintenance Enforcement - Applicant filing for bankruptcy and executing "Agreement Letter" assigning "post-bankruptcy" tax refund to his Trustee - Garnishment Summons issued and income tax refund paid to Director - Master of Bankruptcy of Court of Queen's Bench of Alberta ordering that refund be given to Trustee - Court of Queen's Bench allowing Respondent's appeal - Court of Appeal for Alberta dismissing Applicant's appeal - Whether an income tax refund is a debt owed by the Crown to the taxpayer - Whether a "post-bankruptcy" income tax refund is "property" within the meaning of s. 67(c) of the *Bankruptcy Act*, R.S.C. 1985, c. B-3 - Whether a Garnishee Summons issued after bankruptcy to a Director of Maintenance Enforcement takes priority over the claim of a Trustee in Bankruptcy with respect to an assignment of a "post-bankruptcy" tax return to the Trustee - Whether s. 67(d) of the *Bankruptcy Act* expands the concept of property which is divisible among creditors as contained in s. 67(c) of the *Act* - Whether the assignment of an income tax refund to a trustee constitutes an assignment under "any other Act of Parliament" of s. 67 of the *Financial Administration Act*, R.S.C. 1985, c. F-11.

23113 THE BRITISH COLUMBIA SECURITIES COMMISSION - v. - MURRAY PEZIM, LAWRENCE PAGE AND JOHN IVANY (B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Administrative law - Law of Professions - Stockbrokers - Procedural law - Courts - Appeals - *Securities Act*, S.B.C. 1985, c. 83 - Appeal to Court of Appeal from decision of Applicant Commission - Appeal limited by judge granting leave - On a statutory appeal, what power does the Court of Appeal have to interfere with findings of fact, interpretations of law and opinions as to the public interest?

23107 THE SUPERINTENDENT OF BROKERS - v. - MURRAY PEZIM, LAWRENCE PAGE AND JOHN IVANY (B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Administrative law - Law of Professions - Stockbrokers - Procedural law - Courts - Appeals - *Securities Act*, S.B.C. 1985, c. 83 - Appeal to Court of Appeal from decision of Applicant Commission - Appeal limited by judge granting leave - On a statutory appeal, what power does the Court of Appeal have to interfere with findings of fact and interpretations of law? - Was Court of Appeal correct in its interpretation of s. 67 of the *Act* which requires timely disclosure of material changes in the affairs of a reporting issuer?

23194 THE MARITIME LIFE ASSURANCE COMPANY - v. - SASKATCHEWAN RIVER BUNGALOWS LTD. AND CONNIE DOREEN FIKOWSKI (Alta.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Commercial law - Insurance - Contracts - Remedies - Estoppel - Contracts of life insurance - Does lapse of a life insurance policy for non-payment of premiums constitute a forfeiture? - Do the comparable insurance statutes of each common law province create an exclusive statutory scheme governing insurance contracts defining all circumstances in which relief from forfeiture may be granted and thereby remove the court's jurisdiction to relieve from forfeiture under legislation comparable to the Alberta *Judicature Act*, R.S.A. 1980, c. J-1?

23220 WILLMOR DISCOUNT CORPORATION - v. - VILLE DE VAUDREUIL (Que.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Civil Code - Municipal law - Municipal corporations - Taxation - Property law - Real property - Sale - Remedies - Unjust enrichment - *Répétition de l'indu* - Immoveables belonging to the Applicant sold at auction for non-payment of taxes - City acquiring the immoveables and selling them to a third party - By-law pursuant to which the taxes had been assessed declared null and void and, in consequence, sale at auction of the immoveables declared null and void - Whether, by virtue of its ownership, the Applicant is entitled to receive the proceeds of the sale of its property - Whether the Applicant is entitled to receive the proceeds of the sale of its property by the application of the institution of *répétition de l'indu* or the institution of *remise en état* or the institution of unjustified enrichment.

23234 THE TSESHAHT, AN INDIAN BAND; ROBERT THOMAS, SUING ON HIS OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS OF THE TSESHAHT - v. - HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (B.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Taxation - Indians - Interpretation - Interpretation of taxing statutes - Sale of tobacco products and gasoline by Indian band to non-natives taxable under provincial *Tobacco Tax Act*, R.S.B.C. 1979, c. 404, and *Motor Fuel Tax Act*, S.B.C. 1985, c. 76 - *Indian Act*, s. 87, precluding taxation of sales of these products to Indians - Whether it is unlawful, being indirect taxation, for the provinces to require Indians or Indian bands to pre-pay "an amount equal to tax" on goods intended for re-sale, when it is not known what proportion of the goods will be sold tax free to other Indians on the reserve - Whether provincial administrative schemes for the advance collection of tax from Indians and Indian bands infringe on Parliament's exclusive jurisdiction over Indians, and are contrary to the *Indian Act*, when those schemes require prepayment of amounts "equal to tax" to wholesalers, in circumstances where the proportion of the goods which will eventually be re-sold to other Indians, free of tax, is unknown - Whether provincial administrative schemes for the advance collection of amounts "equal to tax" are illegal when they are not authorized by statute.

23283/84 STANLEY F. TRZOP - v. - HER MAJESTY THE QUEEN (F.C.A.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Taxation - Assessment - Statutes - Interpretation - Whether the Federal Court of Appeal erred in its interpretation and application of s. 20(14) of the *Income Tax Act*, R.S.C. 1952, c. 148, as amended.

23282 H. BORIS ANTOSKO - v. - HER MAJESTY THE QUEEN (F.C.A.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Taxation - Assessment - Statutes - Interpretation - Whether the Federal Court of Appeal erred in its interpretation and application of s. 20(14) of the *Income Tax Act*, R.S.C. 1952, c. 148, as amended.

23248 LONDON MONENCO CONSULTANTS LIMITED, MONENCO ENGINEERS AND CONSTRUCTIONS INC., AND W.P. LONDON AND ASSOCIATES LIMITED - v. - THE ONTARIO HUMAN RIGHTS COMMISSION (Ont.)

CORAM: The Chief Justice and McLachlin 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

Civil rights - Applicant company providing travelling benefits to married employees - Complaints by single employees of the Applicants of discrimination in employment on the basis of marital status pursuant to Ontario *Human Rights Code*, S.O. 1981, c. 53, dismissed - Respondent's appeal to the Supreme Court of Ontario, Divisional Court, dismissed - Respondent's appeal to the Court of Appeal for Ontario allowed - Whether the Court of Appeal erred and failed to consider and properly apply the amendments to s. 23(1)(b) of the Ontario *Human Rights Code*, S.O. 1981, c. 53.

23253 HER MAJESTY THE QUEEN - v. - NATIVE WOMEN'S ASSOCIATION OF CANADA, GAIL STACEY-MOORE AND SHARON MCIVOR (F.C.)

CORAM: The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms, ss. 2(b) and 28 - Constitutional law - Indians - Respondents receiving 5% of funding provided under Aboriginal Constitutional Review Program - Respondents claiming that a constitutional resolution should provide for the application of the *Charter* to aboriginal self-governments - Federal Court of Canada, Trial Division, dismissing Respondents' application for an Order prohibiting the Government of Canada from making any further payments to designated aboriginal organizations - Federal Court of Appeal allowing Respondents' appeal - Whether the government, when it provides funding which may be used by private individuals or groups for expressive purposes, is obliged by ss. 2(b) and 28 of the *Charter* to supervise the ensuing expressive activity, in order to ensure that it produces the proper "male" or "female" point of view, or is constitutionally responsible for the actions of those individuals or groups - Whether the government, when it decides to consult with individuals or groups outside government in the course of developing policy, prior to determining the precise content of proposed legislation, is obliged by ss. 2(b) and 28 of the *Charter* to consult equally with those who espouse "male" and "female" points of view.

23306 INTERNATIONAL LONGSHOREMEN'S and WAREHOUSEMEN'S UNION - Canada area Locals 500, 502, 503, 504, 505, 506, 5015 and 519; Every person ordinarily employed in longshoring or related operations at a port on the west coast of Canada and who is subject to the provisions of the *Maintenance of Ports Operations Act, 1986* - v. - HER MAJESTY THE QUEEN (F.C.A.) (B.C.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Labour law - Right to strike - Freedom of association - Did Court of Appeal err in holding that *Maintenance of Ports Operations Act, 1986* did not violate the *Charter*?

23340 HER MAJESTY THE QUEEN - v. - JOHN CHARTRAND (Crim.) (Ont.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Offences - Interpretation of s. 281 of the *Criminal Code* - Abduction of a person under the age of 14 years, contrary to s. 281 of the *Criminal Code* - Whether the Court of Appeal for Ontario erred in law in affirming the trial judge's unduly restrictive interpretation of s. 281 of the *Criminal Code*, and in particular, of the fault requirement "with intent to deprive ... of the possession", and thereby affirming the directing of a verdict of acquittal by the trial judge.

23380 GIUSEPPE ARACANGIOLI - v. - HER MAJESTY THE QUEEN (Crim.) (Ont.)

CORAM: The Chief Justice and McLachlin and Major JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

NATURE OF THE CASE

Criminal law - Trial - Defence - Whether the Ontario Court of Appeal erred in law in holding there was no misdirection with respect to the trial judge's failure to instruct the jury as to the process for drawing an inference of guilt from evidence of flight.

MOTIONS

REQUÊTES

1.3.1993

Before / Devant: THE REGISTRAR

Motion to inscribe notwithstanding the late filing of the case and factum and motion to extend the time in which to serve and file the case on appeal

Lorna Stoddard

v. (22601)

Wanda Watson and Tilden Rent-A-Car (Ont.)

Requête en inscription malgré la production tardive du dossier et du mémoire et requête en prorogation du délai de signification et de production du dossier d'appel

With the consent of the parties.

GRANTED / ACCORDÉES

3.3.1993

Before / Devant: CORY J.

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

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

Earl Roderick Beaton

With the consent of the parties.

v. (23429)

Her Majesty The Queen (N.S.)

GRANTED / ACCORDÉE Time extended to Feb. 19, 1993

25.2.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to inscribe; motion to extend the time to file the respondent's factum; motion for acceptance of factum on appeal over 40 pages; motion for an order permitting to file a factum in reply to the cross-appeal exceeding 20 pages; and motion setting the time for hearing of the appeal

Requête en inscription; requête en prorogation du délai imparti pour produire le mémoire de l'intimée; requête en acceptation d'un mémoire d'appel de plus de 40 pages; requête en production d'un mémoire de plus de 20 pages en réponse au pourvoi incident; et requête en vue de fixer le moment de l'audition du pourvoi

Her Majesty The Queen

With the consent of the respondent.

v. (23023)

Imre Finta (Ont.)

IT IS ORDERED that:

1. The appeal herein shall be inscribed for the session commencing April 26th, 1993, and will be heard during the sitting weeks of this Court in May or June 1993.
2. The time for filing the respondent's factum is extended until March 29, 1993.
3. The relief requested in items 3 and 4 of the notice of motion relating to the length of facta are adjourned to be dealt with by the Rota Judge.
4. Item 5 in the notice of motion relating to setting the time for hearing of the appeal at one and a half days is adjourned until after the pending applications for intervention have been dealt with.

3.3.1993

Before / Devant: CORY J.

Motion for acceptance of factum on appeal over 40 pages and motion for an order permitting to file a factum in reply to the cross-appeal exceeding 20 pages

Her Majesty The Queen

v. (23023)

Imre Finta (Ont.)

Requête en acceptation d'un mémoire d'appel de plus de 40 pages et requête en production d'un mémoire de plus de 20 pages en réponse au pourvoi incident

With the consent of the respondent.

GRANTED / ACCORDÉES

The respondent may file a factum of 70 pages dealing with the appeal and a further 30 pages dealing with the cross-appeal.

The appellant may file a factum on the cross-appeal not exceeding 30 pages.

8.3.1993

Before / Devant: THE REGISTRAR

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

Marguerite Slattery

v. (22618)

Doane Raymond Limited (N.B.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to Feb. 25, 1993.

8.3.1993

Before / Devant: CORY J.

Motion for leave to intervene

BY/PAR:Coalition of Provincial Organization of the
Handicapped (COPOH)

IN/DANS:Philip Conway

v. (22633)

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

Requête en autorisation d'intervention

With the consent of the parties.

GRANTED / ACCORDÉE

8.3.1993

Before / Devant: CORY J.

**Motion to extend the time for leave to intervene
and for leave to intervene**

**Requête en prorogation du délai pour la
demande d'autorisation et demande
d'autorisation d'intervention**

BY/PAR:Minority Advocacy and Rights Council

With the consent of the parties.

IN/DANS:Philip Conway

v. (22633)

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

GRANTED / ACCORDÉE

8.3.1993

Before / Devant: CORY J.

**Motion to extend the time in which to serve and
file the notice of appeal**

**Requête en prorogation du délai de signification
et de production de l'avis d'appel**

Gregory William Pittman

With the consent of the parties.

v. (23436)

Her Majesty The Queen (N.S.)

GRANTED / ACCORDÉE

8.3.1993

Before / Devant: CORY J.

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

Central Investments & Development Corporation et al.

v. (23438)

Canada Mortgage and Housing Corp, a body corporate (P.E.I.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to March 8, 1993

9.3.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to extend the time in which to state a constitutional question and motion to state a constitutional question

The Corporation of the City of Peterborough

v. (22787)

Mr. Kenneth Ramsden (Ont.)

Requête en prorogation du délai pour énoncer une question constitutionnelle et requête pour énoncer une question constitutionnelle

GRANTED / ACCORDÉE

1. Do sections 1 and 2 of the Corporation of the City of Peterborough By-law 3270 (as amended by By-law 1982-147) limit the right guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*?

2. If the answer to question 1 is yes, are such limits demonstrably justified pursuant to s. 1 of the *Charter*?

1. Les articles 1 et 2 du règlement 3270 de la corporation municipale de Peterborough (modifié par le règlement 1982-147) limitent-ils le droit garanti par l'al. 2b) de la *Charte canadienne des droits et libertés*?

2. Si la réponse à la première question est affirmative, la justification de ces limites peut-elle se démontrer conformément à l'article premier de la *Charte*?

**NOTICES OF APPEAL FILED SINCE
LAST ISSUE**

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

1.3.1993

Roman Swietlinski

v. (23100)

Attorney General of Ontario (Crim.)(Ont.)

4.3.1993

Richard B. et al.

v. (23298)

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

6.3.1993

Le Syndicat de l'enseignement de Champlain et al.

c. (23188)

**La Commission scolaire régionale de Chambly
(Qué.)**

**NOTICES OF INTERVENTION
FILED SINCE LAST ISSUE**

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

BY/PAR:Attorney General of Ontario
Attorney General of B.C.

IN/DANS: **Bruce Douglas Branch et al.**

v. (22978)

British Columbia Securities Commission (B.C.)

BY/PAR: Attorney General of Canada

IN/DANS: **Artell Developments Ltd.**

v. (23116)

677950 Ontario Ltd. et al. (Ont.)

BY/PAR:Attorney General of B.C.

IN/DANS:**Her Majesty The Queen**

v. (22962)

Walter Stanley Belczowski (F.C.A.)

BY/PAR:Attorney General of B.C.

IN/DANS:**Attorney General of Canada et al.**

v. (22961)

Richard Sauvé (Ont.)

BY/PAR: Attorney General for Ontario
Attorney General of British Columbia
Women's Legal Education and Action Fund
Coalition of Provincial Organizations of the Handicapped (COPOH)

IN/DANS:**Philip Conway**

v. (22633)

Her Majesty The Queen (Crim.)(F.C.A.)(Ont.)

**NOTICES OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

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

8.3.1993

Communauté urbaine de Montréal

c. (23278)

L.G. Plaza Inc. et al. (Qué.)

(requête)

NOTICES OF DISCONTINUANCE FILED SINCE
LAST ISSUE

AVIS DE DÉSISTEMENT PRODUITS DEPUIS
LA DERNIÈRE PARUTION

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

05.03.1993

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

Edward Albert Thomas Bevan

v. (22366)

Her Majesty the Queen

and between

Barry Gerald Griffith

v. (22389)

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

Clayton C. Ruby and Shaun Nakatsuru, for the appellant B.G. Griffith.

Michelle Fuerst, for the appellant E.A.T. Bevan.

Scott C. Hutchison and Karen Manarin, for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Procedural law - Evidence - Defence - Appeal - Charge to the jury - Did the majority of the Court of Appeal for Ontario err in law in holding that the trial judge did not err by failing to give the jury a clear sharp warning with respect to the evidence of Crown witnesses Dietrich and Belmont - Did the majority of the Court of Appeal err by holding that although the trial judge erred by failing to instruct the jury with respect to the use that can be made of prior inconsistent statements, no substantial wrong or miscarriage of justice occurred? - Whether the Court of Appeal erred in finding that it was permissible to file a written letter by a witness as an exhibit to go to the jury.

Nature de la cause:

Droit criminel - Droit de la procédure - Preuve - Défense - Appel - Exposé au jury - La Cour d'appel de l'Ontario a-t-elle commis une erreur de droit en statuant à la majorité que le juge du procès n'a pas commis d'erreur en ne mettant pas le jury clairement en garde contre les dépositions des témoins à charge Dietrich et Belmont? - La Cour d'appel a-t-elle commis une erreur en statuant à la majorité que, bien que le juge du procès ait commis une erreur en ne donnant pas de directives au jury relativement à l'usage qu'il peut être fait de déclarations antérieures présentant des contradictions, il n'en résultait aucun préjudice grave ou erreur judiciaire fondamentale? - La Cour d'appel a-t-elle commis une erreur en concluant qu'il était permis de produire une lettre écrite par un témoin en tant que pièce à soumettre à l'appréciation du jury?

**PRONOUNCEMENTS OF APPEALS
RESERVED**

**JUGEMENTS RENDUS SUR LES
APPELS EN DÉLIBÉRÉ**

Reasons for judgment are available

Les motifs de jugement sont disponibles

MARCH 11, 1993 / LE 11 MARS 1993

22358 SURINDER HUNDAL v. HER MAJESTY THE QUEEN (Crim.) (B.C.)

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

The appeal is dismissed.

L'appel est rejeté.

* Stevenson J. took no part in the judgment.

HEADNOTES OF RECENT JUDGMENTS

SOMMAIRES DE JUGEMENTS RÉCENTS

Surinder Hundal v. Her Majesty the Queen (Crim.) (B.C.) (22358)

Judgment rendered March 11, 1993 / Jugement rendu le 11 mars 1993

Indexed as: R. v. Hundal / Répertoire: R. c. Hundal

Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Stevenson** and Iacobucci JJ.

Criminal law -- Dangerous driving -- Mens rea -- Objective or subjective standard -- Motorist killed by truck driving through intersection as light turned red -- Trucker thinking not possible to stop -- Evidence that trucker's driving outside the norm -- Whether objective or subjective standard should apply -- Criminal Code, R.S.C. 1970, c. C-34, s. 233(1), (4), as am. by S.C. 1985, c. 19, s. 36 (now R.S.C., 1985, c. C-46, s. 249(1), (4)).

Appellant was involved in a fatal motor accident and charged with dangerous driving under s. 233 (now s. 249) of the *Criminal Code*. The accident occurred in heavy afternoon traffic on a wet four lane street in downtown Vancouver. The deceased had waited at the intersection for a red light and was proceeding through it on a green light. He had crossed the cross-walk and the two west-bound lanes when his car was struck broadsides by the appellant's overloaded truck in the east-bound passing lane.

The appellant testified that he thought he could not stop when the light turned amber, sounded his horn and proceeded through the intersection. Several witnesses testified that appellant's truck entered the intersection after the traffic light had turned red and police testimony established that the light was timed to provide a significant delay between one direction's receiving an amber light and the other's receiving a green light. One witness, who had driven behind the truck for some distance, testified that the appellant had gone through another intersection as the light turned red and estimated the truck's speed at the time of the collision to be between 50 to 60 km/h.

The trial judge found that the appellant's actions represented a gross departure from the standard of care to be expected from a prudent driver and found him guilty of dangerous driving causing death. That decision was upheld on appeal. At issue here is whether there is a subjective element in the requisite *mens rea* which must be established by the Crown in order to prove the offence of dangerous driving described in s. 233 (now s. 249) of the *Criminal Code*.

Held: The appeal should be dismissed.

Per L'Heureux-Dubé, Sopinka, Gonthier, Cory and Iacobucci JJ.: The *mens rea* for the offence of dangerous driving should be assessed objectively but in the context of all the events surrounding the incident. The objective test meets the requirements of s. 7 of the *Canadian Charter of Rights and Freedoms* and was properly applied here.

Negligent driving can be thought of as a continuum that progresses, or regresses, from momentary lack of attention giving rise to civil responsibility through careless driving under a provincial Highway Traffic Act to dangerous driving under the *Criminal Code*.

Section 233 (now s. 249) of the *Criminal Code* requires an objective standard. This standard is quite appropriate given the need to reduce highway carnage. A consideration of the personal factors essential to determining subjective intent is generally not necessary given the fixed standards of physical and mental well-being coupled with the basic knowledge of the standard of care required of licensed drivers. A driver, whose conduct was objectively dangerous, should not be acquitted because he or she was not thinking of his or her manner of driving at the time of the accident. The nature of driving itself is often so routine and automatic that it is almost impossible to determine a particular state of mind of a driver at any given moment. The question to be asked, therefore, given that liability for dangerous driving is based on negligence, is whether, viewed objectively, the accused exercised the appropriate standard of care--not whether the accused subjectively intended the consequences of his or her action. The accused can still raise a reasonable doubt that a

** Stevenson J. took no part in the judgment.

reasonable person would have been aware of the risks of his or her conduct. The test must be applied flexibly in the context of the events surrounding the incident.

The trier of fact must be satisfied that the conduct amounted to a marked departure from the standard of care that a reasonable person would observe in the accused's situation. If the accused offers an explanation, such as a sudden and unexpected onset of illness, the trier of fact, in order to convict, must be satisfied that a reasonable person in similar circumstances ought to have been aware of the risk and of the danger involved in the conduct manifested by the accused. A charge to the jury need only follow this reasoning. It need not be long or complex. Neither the section nor the offence requires it.

Per Lamer C.J. and **McLachlin J.**: The reasons of Cory J. were agreed with, subject to certain observations on the concept of fault and the "modified objective test". An objective test applied here; the question is not what was in the accused's mind but the absence of the mental state of care inferred from conduct of the accused. The fault is established if that conduct evinces a want of care judged by the standard of a reasonable person in similar circumstances. The relevant circumstances may include circumstances personal to the accused relating to whether the accused lacked the capacities or powers necessary to attain the mental state of care required in the circumstances.

Either the objective or the subjective test is capable of establishing the *mens rea* of a criminal offence. A dangerous or repugnant act, coupled with want of care representing a marked departure from the standard of a reasonable person in all the circumstances, may constitute a criminal offence. A clear distinction, however, must be made between subjective and objective *mens rea*. The phrase "modified objective test" was introduced to ensure that jurists applying the objective test take into account all relevant circumstances in the events surrounding the alleged offence and give the accused an opportunity to raise a reasonable doubt as to what a reasonable person would have thought in the particular situation in which the accused found himself or herself. This phrase, if it is taken to suggest an amalgam of objective and subjective factors and looks at what ought to have been in the accused's mind, but goes on to consider what was actually there or not there, blurs the distinction between subjective and objective *mens rea*. On the objective test, the Crown is not required to establish what was in the accused's mind as a matter of fact. Under the objective test, only an honest and reasonably held belief can exonerate the accused. It is no defence that the accused thought he or she was being careful. Circumstances may arise where the accused's action was involuntary, with the result that there was not *actus reus*.

Per La Forest J.: Substantial agreement was expressed for the comments of Cory J. on the *mens rea* required for the offence of dangerous driving. It was noted, however, that this provision (a quasi-regulatory offence) differs in both its wording and object from the general offence of criminal negligence which requires a subjective *mens rea*.

APPEAL from a judgment of the British Columbia Court of Appeal (1991), 63 C.C.C. (3d) 214, 6 C.R. (4th) 215, 29 M.V.R. (2d) 108, dismissing an appeal from conviction by Preston Co. Ct. J. Appeal dismissed.

S. R. Chamberlain, Q.C., for the appellant.

Alexander Budlovsky, for the respondent.

Solicitors for the appellant: Giusti, Chamberlain & Ellan, Vancouver.

Solicitor for the respondent: Ministry of the Attorney General, Vancouver.

Présents: Le juge en chef Lamer et les juges La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Stevenson *** et Iacobucci.

*** Le juge Stevenson n'a pas pris part au jugement.

Droit criminel -- Conduite dangereuse -- Mens rea -- Norme objective ou norme subjective -- Automobiliste tué par un camion qui traversait une intersection au moment où le feu est devenu rouge -- Camionneur se croyant dans l'impossibilité d'arrêter -- Éléments de preuve établissant que la façon de conduire du camionneur s'écartait de la norme -- Y a-t-il lieu d'appliquer une norme objective ou subjective? -- Code criminel, S.R.C. 1970, ch. C-34, art. 233(1), (4), mod. par S.C. 1985, ch. 19, art. 36 (maintenant L.R.C. (1985), ch. C-46, art. 249(1), (4)).

À la suite d'un accident de la route qui a coûté la vie à une personne, l'appelant a été accusé de conduite dangereuse, infraction prévue à l'art. 233 (maintenant l'art. 249) du *Code criminel*. L'accident est survenu en après-midi dans la circulation dense d'une rue à quatre voies au centre-ville de Vancouver, alors que la chaussée était humide. La victime s'était arrêtée pour un feu rouge et, ayant eu le feu vert, traversait l'intersection. Il avait franchi le passage pour piétons et les deux voies réservées à la circulation allant vers l'ouest alors que le camion surchargé de l'appelant est venu percuter sa voiture par le travers dans la voie de dépassement pour la circulation se dirigeant vers l'est.

D'après son témoignage, l'appelant, croyant ne pas pouvoir s'arrêter quand le feu est devenu jaune, a donné un coup d'avertisseur et s'est engagé dans l'intersection. Plusieurs témoins ont dit que le camion de l'appelant était entré dans l'intersection après que le feu de circulation était devenu rouge. De plus, le témoignage d'un policier établissait que le feu en question était réglé de manière à ce qu'il y ait un décalage appréciable entre le feu jaune dans un sens et le feu vert dans l'autre. Selon un témoin, qui avait suivi le camion sur une bonne distance, l'appelant avait traversé une autre intersection au moment où le feu devenait rouge. Ce témoin a estimé à 50 ou 60 km/h la vitesse du camion au moment de la collision.

Le juge du procès a conclu que les actes de l'appelant s'écartaient de façon flagrante de la norme de diligence à laquelle on peut s'attendre que se conforment les conducteurs prudents et l'a reconnu coupable de conduite dangereuse causant la mort. Cette décision a été confirmée en appel. Il s'agit en l'espèce de déterminer s'il existe un élément subjectif dans la *mens rea* devant être établie par le ministère public afin de prouver l'infraction de conduite dangereuse prévue à l'art. 233 (maintenant l'art. 249) du *Code criminel*.

Arrêt: Le pourvoi est rejeté.

Les juges L'Heureux-Dubé, Sopinka, Gonthier, Cory et Iacobucci: La *mens rea* dans le cas de l'infraction de conduite dangereuse devrait être appréciée objectivement mais dans le contexte de tous les événements entourant l'incident. Le critère objectif satisfait aux exigences de l'art. 7 de la *Charte canadienne des droits et libertés* et a été correctement appliqué en l'espèce.

La conduite négligente d'un véhicule automobile peut être considérée comme un continuum où l'on va de l'inattention momentanée qui entraîne la responsabilité civile, en passant par la conduite imprudente prévue au code de la route d'une province, jusqu'à la conduite dangereuse sanctionnée par le *Code criminel*.

L'article 233 (maintenant l'art. 249) du *Code criminel* commande l'application d'une norme objective. Cette norme est tout à fait indiquée étant donné la nécessité de réduire le carnage sur les routes. La prise en considération des facteurs personnels, essentielle pour la détermination de l'intention subjective, n'est, en général, pas nécessaire compte tenu des normes fixes en ce qui concerne la santé physique et mentale ainsi que de la connaissance de base de la norme de diligence que doivent avoir les titulaires de permis de conduire. Un conducteur qui a agi d'une manière objectivement dangereuse ne devrait pas être acquitté au motif qu'il ne pensait pas lors de l'accident à sa façon de conduire. De par sa nature même, la conduite d'un véhicule automobile présente souvent un aspect habituel et automatique, à tel point en fait qu'il est presque impossible de déterminer quel pouvait être l'état d'esprit d'un conducteur à un moment donné. Comme c'est sur la négligence que repose un verdict de culpabilité de conduite dangereuse, la question à se poser est donc de savoir si, du point de vue objectif, l'accusé a satisfait à la norme appropriée de diligence, et non pas de savoir si, subjectivement, il a voulu les conséquences de son acte. Il reste tout de même loisible à l'accusé de faire naître un doute raisonnable quant à savoir si une personne raisonnable aurait été consciente des risques inhérents à son comportement. Le critère est à appliquer avec souplesse dans le contexte des événements entourant l'incident en question.

Le juge des faits doit être convaincu qu'il s'agit d'un comportement qui représentait un écart marqué par rapport à la norme de diligence que respecterait une personne raisonnable dans la situation de l'accusé. Si l'accusé offre une explication, par exemple, une maladie soudaine et imprévue, il faut alors pour qu'il y ait déclaration de culpabilité que le juge des faits soit convaincu qu'une personne raisonnable dans des circonstances analogues aurait dû être consciente du risque et du danger inhérents au comportement de l'accusé. Les directives au jury n'ont qu'à suivre ce raisonnement. Il n'est pas nécessaire qu'elles soient longues ou compliquées, car ni l'article en cause ni l'infraction ne le commandent.

Le juge en chef Lamer et le juge McLachlin: Les motifs du juge Cory sont acceptés sous réserve de certaines observations concernant la notion de faute et le «critère objectif modifié». C'est un critère objectif qui s'applique en l'espèce; la question ne porte pas sur ce qui s'est passé dans l'esprit de l'accusé mais sur l'absence d'un état mental de diligence qui se déduit de la conduite de l'accusé. L'existence de la faute est prouvée si cette conduite manifeste un manque de diligence jugé selon la norme d'une personne raisonnable dans des circonstances analogues. Les circonstances pertinentes peuvent comprendre des circonstances qui sont personnelles à l'accusé, à savoir s'il avait ou non les aptitudes ou les pouvoirs nécessaires pour atteindre l'état mental de diligence requis.

La *mens rea* d'une infraction criminelle peut être établie soit au moyen du critère objectif, soit au moyen du critère subjectif. Un acte dangereux ou répugnant, accompagné d'un manque de diligence représentant un écart marqué par rapport à la norme d'une personne raisonnable dans toutes les circonstances, peut constituer une infraction criminelle. Il faut toutefois faire une distinction nette entre la *mens rea* subjective et la *mens rea* objective. L'expression «critère objectif modifié» a été introduite dans le but de s'assurer que les juristes qui appliquent le critère objectif tiennent compte de toutes les circonstances pertinentes dans les événements entourant l'infraction reprochée et donnent à l'accusé la possibilité de faire naître un doute raisonnable au sujet de ce qu'une personne raisonnable aurait pensé dans la situation particulière dans laquelle se trouvait lui-même l'accusé. Cette expression, si elle est interprétée comme signifiant un amalgame de facteurs objectifs et subjectifs et si elle considère ce qui aurait dû se passer dans l'esprit de l'accusé, mais tient ensuite compte de ce qui s'y est réellement passé ou non, efface la distinction entre la *mens rea* subjective et la *mens rea* objective. Dans le cas du critère objectif, le ministère public n'est pas tenu de prouver comme un fait ce qui se passait dans l'esprit de l'accusé.

D'après le critère objectif, seule une croyance sincère et raisonnablement entretenue peut exonérer l'accusé. L'accusé ne saurait alléguer pour sa défense qu'il croyait être prudent. Dans certaines circonstances, l'acte de l'accusé peut avoir été involontaire, de sorte qu'il n'y a pas d'*actus reus*.

Le juge La Forest: L'opinion du juge Cory en ce qui concerne la *mens rea* requise pour l'infraction de conduite dangereuse est, pour l'essentiel, approuvée. Il est toutefois noté que cette disposition (il s'agit d'une infraction quasi réglementaire) diffère tant par sa formulation que par son objet de l'infraction générale de négligence criminelle, qui commande une *mens rea* subjective.

POURVOI contre un arrêt de la Cour d'appel de la Colombie-Britannique (1991), 63 C.C.C. (3d) 214, 6 C.R. (4th) 215, 29 M.V.R. (2d) 108, qui a rejeté l'appel interjeté contre un verdict de culpabilité rendu par le juge Preston de la Cour de comté. Pourvoi rejeté.

S. R. Chamberlain, c.r., pour l'appelant.

A. Budlovsky, pour l'intimée.

Procureurs de l'appelant: Giusti, Chamberlain & Ellan, Vancouver.

Procureur de l'intimée: Ministère du Procureur général, Vancouver.

WEEKLY AGENDA

ORDRE DU JOUR DE LA SEMAINE

AGENDA for the week beginning March 15, 1993.
ORDRE DU JOUR pour la semaine commençant le 15 mars 1993.

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

La Cour ne siège pas cette semaine

SCHEDULE RE MOTIONS BEFORE THE COURT

CALENDRIER DES REQUÊTES À LA COUR

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 : **April 5, 1993**

Service of motion : March 15, 1993

Filing of motion : March 22, 1993

Response : March 29, 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.

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

Audience du: 5 avril 1993

Signification: 15 mars 1993

Dépôt: 22 mars 1993

Réponse: 29 mars 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.

REQUIREMENTS FOR FILING A CASE

PRÉALABLES EN MATIÈRE DE PRODUCTION

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

On March 2, 1993, the Registrar shall enter on a list all appeals inscribed for hearing at the Spring Session, which commences on April 26, 1993.

For appeals which fall under the provisions of the *Rules of the Supreme Court of Canada* prior to their amendment on June 19, 1991, please contact the Process Registry at (613) 996-8666 for information regarding the applicable time limits.

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

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

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

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

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

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

Le 2 mars 1993, le registraire met au rôle de la session du printemps, qui débutera le 26 avril 1993, tous les appels inscrits pour audition.

En ce qui concerne les délais applicables aux appels visés par les anciennes *Règles de la Cour suprême du Canada*, c'est-à-dire avant l'entrée en vigueur des modifications le 19 juin 1991, veuillez contacter le greffe au (613) 996 8666.

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

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

Judgments reported in [1992] 3 S.C.R., Part 2

Jugements publiés dans [1992] 3 R.C.S., partie 2

Haig v. Canada (Chief Electoral Officer), [1992] 3 S.C.R. 163

Haig c. Canada (Directeur général des élections), [1992] 3 R.C.S. 163

Kelvin Energy Ltd. v. Lee, [1992] 3 S.C.R. 235

Kelvin Energy Ltd. c. Lee, [1992] 3 R.C.S. 235

Lakeside Colony of Hutterian Brethren v. Hofer, [1992] 3 S.C.R. 165

Lakeside Colony of Hutterian Brethren c. Hofer, [1992] 3 R.C.S. 165

Lalonde v. Sun Life Assurance Co. of Canada, [1992] 3 S.C.R. 261

Lalonde c. Sun Life Du Canada, Cie d'assurance-vie, [1992] 3 R.C.S. 261

R. v. Ewert, [1992] 3 S.C.R. 161

R. c. Ewert, [1992] 3 R.C.S. 161

R. v. Morin, [1992] 3 S.C.R. 286

R. c. Morin, [1992] 3 R.C.S. 286

R. v. Rube, [1992] 3 S.C.R. 159

R. c. Rube, [1992] 3 R.C.S. 159