

CONTENTS**TABLE DES MATIÈRES**

Applications for leave to appeal filed	258 - 259	Demandes d'autorisation d'appels produites
Applications for leave submitted to Court since last issue	260 - 277	Demandes soumises à la Cour depuis la dernière parution
Oral hearing ordered	-	Audience ordonnée
Oral hearing on applications for leave	-	Audience sur les demandes d'autorisation d'autorisation
Judgments on applications for leave	278 - 280	Jugements rendus sur les demandes d'autorisation
Motions	281 - 289	Requêtes
Notices of appeal filed since last issue	290	Avis d'appel produits depuis la dernière parution
Notices of intervention filed since last issue	291 - 292	Avis d'intervention produits depuis la dernière parution
Notices of discontinuance filed since last issue	293	Avis de désistement produits depuis la dernière parution
Appeals heard since last issue and disposition	294	Appels entendus depuis la dernière parution et résultat
Pronouncements of appeals reserved	-	Jugements rendus sur les appels en délibéré
Headnotes of recent judgments	-	Sommaires des arrêts récents
Weekly agenda	295	Ordre du jour de la semaine
Summaries of the cases	-	Résumés des affaires
Cumulative Index - Leave	-	Index cumulatif - Autorisations
Cumulative Index - Appeals	-	Index cumulatif - Appels
Appeals inscribed - Session beginning	-	Pourvois inscrits - Session commençant le
Notices to the Profession and Press Release	-	Avis aux avocats et communiqué de presse
Schedule re Motions before the Court	296	Calendrier des requêtes à la Cour
Requirements for filing a case	297	Préalables en matière de production
Judgments reported in S.C.R.	298	Jugements publiés au R.C.S.

**APPLICATIONS FOR LEAVE TO
APPEAL FILED**

Mark Kenneth Dwernychuk

David J.M. Mochan
Clackson & Mochan

v. (23399)

Her Majesty The Queen (Alta.)

B.D. Rosborough
Agent of the A.G. of Alta.

FILING DATE 22.1.1993

Donald G. Burnley

Alan D. Reid, Q.C.
Gowling, Strathy & Henderson

v. (23400)

The University of New Brunswick (N.B.)

J. Gordon Petrie, Q.C.
Petrie Richmond Goss

FILING DATE 29.1.1993

Murray Weber

Stephen T. Goudge, Q.C.
Gowling, Strathy & Henderson

v. (23401)

Ontario Hydro (Ont.)

Joan M. Prior
L.E. Leonoff

FILING DATE 29.1.1993

Chevron Standard Ltd. et al.

Richard J. Handlon
Pitblado & Hoskin

v. (23402)

Gladys Demars (Man.)

John S. Lamont, Q.C.
Aikins, MacAulay, Thorvaldson

FILING DATE 29.1.1993

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

Canadian Broadcasting Corp.

W.Ian C. Binnie, Q.C.
McCarthy Tétrault

v. (23403)

Lucien Dagenais et al. (Ont.)

W.A. Kelly, Q.C.
Kelly, Affleck, Greene

FILING DATE 29.1.1993

Dr. André Ferland

Louis Terriault
McCarthy Tétrault

c. (23404)

Dr. Richard Lachance et al. (Qué.)

Richard Landry
Landry & Pouliot

DATE DE PRODUCTION 22.1.1993

Lois Cormier et al.

P. Lorrie Yerxa
Ashfield, DeWitt, LeBlanc & Yerxa

v. (23406)

Ian Robert Dixon et al. (N.B.)

Barry R. Morrison
Clark Drummie & Co.

FILING DATE 1.2.1993

Jack Joseph Locke

v. (23410)

The Calgary Local Board of Health et al. (Alta.)

James Polley
O'Brien, Devlin, Markey, MacLeod

FILING DATE 4.2.1993

Claudette Lussier

Louise Ricard
Desrosiers & Ricard

c. (23397)

Ville de Sept-Îles et al. (Qué.)

Hubert Besnier
Besnier, Parvu, Dion & Aubry

DATE DE PRODUCTION 4.2.1993

Michael Timothy Waite

J.D. Filliter, Q.C.

v. (23374)

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

Robert C. Hagell
Public Prosecution Service

FILING DATE 8.2.1993

Jean-Guy Savard

c. (22715)

Sa Majesté La Reine (Qué.)

Michel F. Denis
Subs. P.G. du Québec

DATE DE PRODUCTION 10.2.1993

François Beaudoin

Marc Labelle

c. (23412)

Sa Majesté La Reine (Qué.)

Luc Boucher

DATE DE PRODUCTION 8.2.1993

Wilmot Estates Ltd.

D.C.H. McCaffrey, Q.C.
Taylor, McCaffrey

v. (23414)

North American Life Assurance Co. (Man.)

Brian J. Meronek
D'Arcy and Deacon

FILING DATE 8.2.1993

Demetre Kiliaris

Lechter & Segal

c. (23416)

**Banque canadienne impériale de Commerce
(Qué.)**

Stikeman, Elliott

DATE DE PRODUCTION 9.2.1993

Ville de Laval et al.

Robert Cadieux
Allaire & Assoc.

c. (23417)

Ville de Montréal (Qué.)

DATE DE PRODUCTION 9.2.1993

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

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

JANUARY 29, 1993 / LE 29 JANVIER 1993

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

Dennis St. Jean

v. (23351)

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

NATURE OF THE CASE

Criminal law - Was Applicant given a fair hearing at trial and on appeal? - Did Court of Appeal err in rejecting application to adduce "fresh evidence"? - Whether trial judge erred in her determination of complainant's credibility - Was Applicant denied a fair trial because he was unrepresented?

PROCEDURAL HISTORY

August 27, 1992 Provincial Court of Saskatchewan (Morris P.C.J.)	Convictions: assault causing bodily harm; breach of recognizance Acquittal: common assault
October 21, 1992 Court of Appeal of Saskatchewan (Tallis, Gerwing and Jackson JJ.A.)	Appeal dismissed
December 18, 1992 Supreme Court of Canada	Application for leave to appeal filed

**Susan Jones, Gillian Anderson, John Proctor Kelsall and
Boundary Bay Conservation Committee**

v. (23230)

Boundary Shores Golf Course Ltd. and The Corporation of Delta (B.C.)

NATURE OF THE CASE

Municipal law - Administrative law - Procedural law - Statutes - Interpretation - *Audi alteram partem* - Public hearing held following Respondent's proposal to amend zoning Bylaw to build golf course - Council adopting Bylaw - Dispute over the Council's procedures following the public hearing on the Bylaw - Applicants petition to strike down bylaw granted by the Supreme Court of British Columbia - Court of Appeal for British Columbia allowing appeal - Extent to which a municipal council can receive submissions from a proponent of a zoning bylaw, the proponent's experts or an interest group speaking at the request of the proponent, after the public hearing on the bylaw and prior to its passage, without providing an

opportunity to the public to be heard further in response to those submissions - Whether the principles stated by the Supreme Court of Canada in *Old St. Boniface Residents Association Inc. v. City of Winnipeg*, [1990] 3 S.C.R. 1213, and *Save Richmond Farmland Society v. Township of Richmond*, [1990] 3 S.C.R. 1170, have varied the duty on municipal councils to provide to the public procedural fairness or the rights of natural justice with regard to both an opportunity to make submissions on all relevant information to be considered by Council, and to receive full disclosure of that information.

PROCEDURAL HISTORY

January 21, 1991 Supreme Court of British Columbia (Donald J.)	Applicants petition to strike down bylaw granted
June 16, 1992 Court of Appeal for British Columbia (Southin J.A., Wood and Goldie JJ.A.)	Appeal allowed
October 16, 1992 Supreme Court of Canada	Application for leave to appeal filed

Keith Roger Leggett

v. (23332)

Insurance Corporation of British Columbia (B.C.)

NATURE OF THE CASE

Torts - Insurance - Negligence - Unidentified motorist coverage - Interpretation of s. 23 of the *Insurance (Motor Vehicle) Act*, R.S.B.C. 1979, c. 204 - Effect of interpretation of s. 23 by Court of Appeal - Is a claimant required to seek out the identity of the other driver even if he is unaware of facts which would provide a basis of a claim against the Corporation?

PROCEDURAL HISTORY

February 8, 1991 Supreme Court of British Columbia (Harvey J.)	Judgment for Applicant
October 5, 1992 Court of Appeal for British Columbia (Taylor, Proudfoot and Goldie JJ.A.)	Appeal allowed: action dismissed
December 2, 1992 Supreme Court of Canada	Application for leave to appeal filed

Ralph Paul McGreal and Patricia Aileen McGreal

v. (23307)

The Public Trustee of British Columbia (B.C.)

NATURE OF THE CASE

Property law - Estates - Executors and administrators - Estate with property protected by company - Applicants were directors of company and lived on property - Applicants refusing that the property be sold and allotting themselves shares to take control of the company - Ex-common law wife of the deceased appointed administratrix of the estate petitioning the Court to set aside the acquisition of shares - Supreme Court of British Columbia allowing action - Court of Appeal dismissing Applicants' appeal - Whether the judicial disregard and/or abrogation of all or portions of statutes constituted an infringement or deprivation of liberty and security of person contrary to the principles of fundamental justice as defined by s. 7 of the *Canadian Charter of Rights and Freedoms* - Whether such disregard and abrogation, if violating the rights guaranteed by the *Charter*, is a reasonable limit prescribed by law which can be demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*.

PROCEDURAL HISTORY

October 10, 1990 Supreme Court of British Columbia (Donald J.)	Respondent's action allowed
September 3, 1992 Court of Appeal for British Columbia (McEachern C.J.A., Macfarlane and Legg J.J.A.)	Appeal dismissed
November 3, 1992 Supreme Court of Canada	Application for leave to appeal filed

**Ralph Metna Munroe White and
Margaret Isabelle Francis White**

v. (23372)

The Royal Bank of Canada (Sask.)

NATURE OF THE CASE

Procedural law - Commercial law - Property law - Mortgages - Trial - Motion for non-suit - Applicants entering agreement to purchase lands in Colorado - Respondent granting loan to Applicants - Applicants granting mortgages to Respondent on Canadian lands - Respondent commencing action to recover amounts for unpaid mortgages and for judicial sale on mortgaged lands - Trial proceeding on Applicants' counterclaim for fraud, breach of fiduciary duty and breach of contract - Respondent's motion for non-suit dismissed - Mistrial declared and action allowed by the Court of Queen's Bench of Saskatchewan - Applicants' appeal against judicial order dismissed by the Court of Appeal for Saskatchewan - Respondent's cross-appeal allowed and order dismissing counterclaim issued - Whether motions for non-suit in a jury trial, denied by the trial judge, may be revisited after the case has been put to the jury - Whether the Court of Appeal's decision that there was no evidence of a fiduciary relationship between the Applicants and the Respondent is inconsistent with decisions of other appellate courts.

PROCEDURAL HISTORY

November 5, 1991 Court of Queen's Bench of Saskatchewan (Dielschneider J.)	Respondent's action for judicial sale of lands under mortgages allowed
November 18, 1992 Court of Appeal for Saskatchewan (Tallis J.A., Sherstobitoff and Lane JJ.A.)	Appeal against judicial order dismissed
January 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**

Robert Longchamps

v. (23309)

**Farm Credit Corporation an agent
of Her Majesty the Queen (Alta.)**

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.

PROCEDURAL HISTORY

August 7, 1990 Court of Queen's Bench of Alberta (McDonald J.)	Statement of claim struck out
September 11, 1992 Court of Appeal of Alberta (McClung, Harradence and Irving JJ.A.)	Appeal dismissed
November 23, 1992 Supreme Court of Canada	Application for leave to appeal and for an extension of time filed

The Honourable the Minister of Finance

for the Province of Newfoundland

v. (23329)

Hope Brook Gold Inc. (Nfld.)

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)(z) 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.

PROCEDURAL HISTORY

October 2, 1990 Supreme Court of Newfoundland, Trial Division (Soper J.)	Appeal from decision of the Applicant dismissing application for tax exemptions dismissed
September 30, 1992 Court of Appeal of Newfoundland (Gushue J.A., Mahoney and Marshall J.J.A.)	Appeal allowed
November 27, 1992 Supreme Court of Canada	Application for leave to appeal filed

Wendy Abdool, Ronald Atherley, Margaret Atherley, Slade E. Brett,
William Clark Margaret Clark, Lloyd Dean, Janet Dean, Jose Domingos,
Peter Elik, Marian Evason, Roy Fraser, Alan Good, Francis M. Good,
Harold Hicks, Fran Hicks, Robert Hirst, Carman R. Hughes, Marjorie M.
Hughes, George Johnston, Jack Evason, Gerald Jones, Margaret Jones,
Sandor Jager, Marvin Josaitis, Donna M. Josaitis, Lorrain Lemieux,
Frances Martin, Kevin G. McCanna, Heather A. Graham, Glenna Minaker,
Margaret Harper, Darshan Ram, Savitri Ram, Antonio Rea, Brenda Slater,
Neil Pinheiro, Michael S. Weston and Carlton Wong

v. (23347)

Somerset Place Developments of Georgetown Limited, Canterra
Developments Inc., 379059 Ontario Ltd., C.O.B. Retail Engineering and
Prenor Equity Inc. (Ont.)

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?

PROCEDURAL HISTORY

July 24, 1991 Ontario Court (General Division) (Wright J.)	Declaration that the Applicants' agreements of purchase and sale were not binding
October 13, 1992 Court of Appeal for Ontario (Morden A.C.J.O., Goodman and Robins JJ.A.)	Appeal allowed: application dismissed and trial judgment set aside
December 14, 1992 Supreme Court of Canada	Application for leave to appeal filed

Yonge-Esplanade Enterprises Limited

v. (23346)

Vernon Ackland, et al. (Ont.)

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.

PROCEDURAL HISTORY

November 6, 1991 Ontario Court (General Division) (Keenan J.)	Respondents' application dismissed
October 16, 1992 Court of Appeal for Ontario (Morden A.C.J.O., Goodman and Robins JJ.A.)	Appeal allowed
December 14, 1992 Supreme Court of Canada	Application for leave to appeal filed

Susan White

v. (23328)

Lumbermen's Mutual Casualty Company (Ont.)

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.

PROCEDURAL HISTORY

November 4, 1988 District Court of Ontario (Warren J.)	Applicant's action for damages dismissed
September 25, 1992 Court of Appeal for Ontario (Krever J.A., Catzman and Abella J.J.A.)	Appeal dismissed
November 23, 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**

Victoria Henrietta Caratun

v. (23310)

Victor Caratun (Ont.)

NATURE OF THE CASE

Family law - Division of property - Divorce - Support - Whether the Court of Appeal erred in failing to hold that the Respondent's licence to practise dentistry is property within the meaning of s. 4(1) of the *Family Law Act* - Did the Court of Appeal err in failing to enter a judgment in favour of the petitioner in the amount of \$79,673.00 representing the equalization payment owing to the petitioner once it was determined that the petitioner's interest in the licence, prior to equalization, was \$30,000.00? - Did the Court of Appeal err in concluding that if it had determined that the professional licence was property, then it would have been appropriate to order an unequal division of net family property pursuant to s. 5(6) of the *Family Law Act*?

PROCEDURAL HISTORY

September 21, 1987 Supreme Court of Ontario (Van Camp J.)	<i>Decree nisi</i> granted: payment of \$30,000 to the Applicant to reimburse her for her contribution towards the Respondent's dental licence
September 25, 1992 Court of Appeal of Ontario (Robins, McKinlay and Catzman J.J.A.)	Appeal dismissed; compensatory support order made
November 25, 1992 Supreme Court of Canada	Application for leave to appeal filed

Farm Credit Corporation

v. (23330)

Martin Walter Dupuis and Ann Marie Dupuis (Sask.)

NATURE OF THE CASE

Administrative law - Commercial law - Statutes - Property law - Mortgage - Interpretation - Contractual relations between secured lenders and farmers - Whether the legislature intended to deny a secured lender of farm land the right to enforce a mortgage against the homestead when the mortgagee elects to proceed to the foreclosure order stage against the non-homestead land alone - Whether the Court of Appeal in the majority decision erred in law by holding that section 26(2) of *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S 17.1, does not apply unless the homestead land was included in the foreclosure action - Whether the Court of Appeal in the majority decision erred in law in giving no effect or meaning to an amendment to section 26(2) of *The Saskatchewan Farm Security Act* made on July 17, 1989 - Whether the Court of Appeal in the majority decision erred by referring or linking operationally section 44 of *The Saskatchewan Farm Security Act* in interpreting the meaning and effect of section 26 of the same Act - Whether the provisions of Part II of *The Saskatchewan Farm Security Act* are invalid or inoperative as they relate to Farm Credit Corporation on constitutional grounds.

PROCEDURAL HISTORY

October 31, 1990 Court of Queen's Bench (Wimmer C.Q.B.J. in chambers)	Final order for foreclosure granted
September 29, 1992 Court of Appeal of Saskatchewan (Tallis, Cameron and Jackson [dissenting], J.J.A.)	Respondents' appeal allowed
November 26, 1992 Supreme Court of Canada	Application for leave to appeal filed

Farm Credit Corporation

v. (23331)

Gilles Roger Dupuis and Roland Arthur Dupuis (Sask.)

NATURE OF THE CASE

Administrative law - Commercial law - Statutes - Property law - Mortgage - Interpretation - Contractual relations between secured lenders and farmers - Whether the legislature intended to deny a secured lender of farm land the right to enforce a mortgage against the homestead when the mortgagee elects to proceed to the foreclosure order stage against the non-homestead land alone - Whether the Court of Appeal in the majority decision erred in law by holding that section 26(2) of *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S 17.1, does not apply unless the homestead land was included in the foreclosure action - Whether the Court of Appeal in the majority decision erred in law in giving no effect or meaning to an amendment to section 26(2) of *The Saskatchewan Farm Security Act* made on July 17, 1989 - Whether the Court of Appeal in the majority decision erred by referring or linking operationally section 44 of *The Saskatchewan Farm Security Act* in interpreting the meaning and effect of section 26 of the same Act - Whether the provisions of Part II of *The Saskatchewan Farm Security Act* are invalid or inoperative as they relate to Farm Credit Corporation on constitutional grounds.

PROCEDURAL HISTORY

October 31, 1990 Court of Queen's Bench (Wimmer C.Q.B.J. in chambers)	Final order for foreclosure granted
September 29, 1992 Court of Appeal of Saskatchewan (Tallis, Cameron and Jackson [dissenting], J.J.A.)	Respondents' appeal allowed
November 26, 1992 Supreme Court of Canada	Application for leave to appeal filed

Pigott Project Management Limited

v. (23339)

**Central Reinforcing Steel Service Ltd. 465365 Alberta Ltd.
and 465261 Alberta Ltd. (Alta.)**

NATURE OF THE CASE

Commercial law - Contracts - Enforceability of escalation clause - Whether the escalation clause found in general contract was included by reference into the sub-contract entered into between the parties - Did the Court of Appeal of Alberta err in substituting its interpretation of the subject sub-contract for that of the trial judge? - Did the Court of Appeal apply an improper standard of review in reviewing and reversing the judgment of the trial judge?

PROCEDURAL HISTORY

January 16, 1992
Court of Queen's Bench of Alberta
(MacLeod J.)

Respondent's claim dismissed

October 9, 1992
Court of Appeal for Alberta
(Harradence, Kearns and Foisy JJ.A.)

Appeal allowed

December 7, 1992
Supreme Court of Canada

Application for leave to appeal filed

Louise Arbour et Richard Labelle

c. (23334)

**La Société Canadienne de la Croix Rouge,
Hôpital Général de Montréal (Qué.)**

NATURE DE LA CAUSE

Procédure - Procédure civile - Actions - Prescription - Intervention - Action en dommages-intérêts suivant l'art. 1056 du *Code civil du Bas-Canada* - Intervention de la demanderesse suivant l'article 208 du *Code de procédure civile* - Intervention rejetée par la Cour supérieure du Québec - Appel rejeté par la Cour d'appel du Québec - Intervention dans une action en dommages suivant l'article 1056 du *Code civil du Bas-Canada* est-elle de nature conservatoire ou agressive si le principe de l'indivisibilité de l'instance doit recevoir application - Droit à l'indemnité de l'art. 1056 C.c. est-il un droit indivisible entre le conjoint, les ascendants et descendants jusqu'au jugement final qui doit fixer la portion de l'indemnité due à chacune d'elles - Si le droit à l'indemnité de l'art. 1056 C.c. est indivisible, la prescription d'un an a-t-elle été interrompue en vertu de l'art. 2230 C.c. pour les personnes qui n'ont pas été parties à l'action intentée dans ce délai - Conséquences de l'absence de mise-en-cause de toutes les personnes ayant droit à l'indemnité de l'art. 1056 C.c. et cette irrégularité peut-elle empêcher l'interruption de la prescription, comme le prévoit l'art. 2226(1) C.c. - Règle prévoyant "une seule action" est-elle une simple exigence procédurale ayant pour but de limiter les frais à ceux d'une seule action.

HISTORIQUE PROCÉDURAL

Le 3 mai 1991
Cour Supérieure du Québec
(DeBlois J.C.S.)

Intervention rejetée

Le 5 octobre 1992
Cour d'Appel du Québec
(Tyndale J.C.A., Rothman et Moisan [dissident]
J.J.C.A.)

Appel rejeté

Le 25 novembre 1992
Cour Suprême du Canada

Demande d'autorisation d'appel

FEBRUARY 8, 1993 / LE 8 FÉVRIER 1993

CORAM: THE CHIEF JUSTICE LAMER AND McLACHLIN AND MAJOR JJ. /

LE JUGE EN CHEF LAMER ET LES JUGES McLACHLIN ET MAJOR

Michel Chouinard

c. (23341)

**L'Honorable juge Kevin Downs, ès qualité
de juge en matière d'extradition**

et

Les États-Unis d'Amérique

et

**Le procureur général du Canada et
le procureur général du Québec (Qué.)**

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit criminel - Droit international - Extradition - Preuve - Demandeur accusé - Extradition du demandeur ordonnée par la Cour supérieure du Québec - Requête du demandeur en *habeas corpus* rejetée par la Cour supérieure du Québec - Appel rejeté par la Cour d'appel du Québec - La Cour d'appel du Québec a-t-elle errée en droit en rejetant la requête pour autorisation de produire une preuve nouvelle en appel - La Cour d'appel a-t-elle errée en droit sur le fardeau de preuve qui doit être présenté dans le cadre d'une enquête en vue d'une extradition - La Cour d'appel a-t-elle errée en droit en ne décrétant pas qu'il y avait absence de preuve pouvant justifier une ordonnance d'extradition - La Cour d'appel a-t-elle errée en droit en décidant que le recours présenté par le demandeur en vertu de l'art. 24(1) de la *Charte canadienne des droits et libertés* était prématuré et ne pouvait s'exercer qu'après et à l'encontre de la décision de l'exécutif de permettre l'extradition du demandeur - La Cour d'appel a-t-elle errée en droit en rejetant la prétention de l'appelant à l'effet que la peine qui lui serait imposée aux États-Unis, s'il est déclaré coupable, constitue une atteinte aux principes de la justice fondamentale consacrée à l'art. 7 et une peine cruelle et inusitée en vertu de l'art. 12 de la *Charte*.

HISTORIQUE PROCÉDURAL

Le 17 décembre 1990
Cour supérieure du Québec
(Downs, J.C.S.)

Ordonnance d'extradition du demandeur

Le 1^{er} février 1991
Cour supérieure du Québec
(Pinard, J.C.S.)

Requête du demandeur en *habeas corpus* rejetée

Le 9 octobre 1992
Cour d'appel du Québec
(Dubé, Nichols et Fish, J.J.C.A.)

Appel du demandeur rejeté

Le 8 décembre 1992
Cour Suprême du Canada

Demande d'autorisation d'appel déposée

The United States of America

v. (23343)

Mr. Pierre Doyer (Qué.)

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - International law - Interpretation - Statutes - Extradition - Offenses - Respondent indicted in the United States on one count of engaging in a continuing criminal enterprise and fourteen counts relating to drug offenses - Superior Court of Quebec ordering extradition of the Respondent and issuing a warrant of committal - Respondent's application for a writ of *habeas corpus* with *certiorari* in aid and remedy pursuant to s. 24(1) of the *Charter* dismissed by the Superior Court - Court of Appeal of Quebec allowing appeal in part - Whether the Court of Appeal erred in holding that the committal of the Respondent for purposes of extradition in order that he might stand trial on a charge of continuing criminal enterprise should be quashed as that crime was not an extraditable crime.

PROCEDURAL HISTORY

December 17, 1990 Superior Court of Quebec (Downs J.)	Extradition ordered; warrant of committal issued
February 1, 1991 Superior Court of Quebec (Plnard J.)	Respondent's application for writ of <i>habeas corpus</i> with <i>certiorari</i> in aid and for remedy pursuant to s. 24(1) of the <i>Charter</i> dismissed
October 9, 1992 Court of Appeal of Quebec (Dubé J.A., Nichols and Fish JJ.A.)	Appeal allowed in part
December 7, 1992 Supreme Court of Canada	Application for leave to appeal filed

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

**Barbara Ann Billett and Alan T. Billett
and Douglas R. Lint, Administrator Ad Litem
of the Estate of Sheldon B. Jesson, Deceased**

v. (23348)

Bonita Joan Laframboise (Alta.)

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.

PROCEDURAL HISTORY

May 15, 1991
Court of Queen's Bench of Alberta
(MacLean J.)

Action allowed; general damage award of \$45,000 plus 10% loss of earnings

October 30, 1992
Alberta Court of Appeal
(Sulatycky, Conrad and Côté JJ.A.)

Appeal allowed; new trial ordered on the issue of quantum of damages

December 16, 1992
Supreme Court of Canada

Application for leave to appeal filed

Maurice Moloney

v. (23336)

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

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.

PROCEDURAL HISTORY

January 20, 1989 (Federal Court of Canada, Trial Division) (Joyal J.)	Appeal against assessment for 1983 dismissed
October 5, 1992 Federal Court of Appeal (Hugessen, MacGuigan, and Linden JJ.A.)	Appeal dismissed
December 4, 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**

Radoslav Marijon

c. (23291)

Sa Majesté La Reine (Crim.)(Qué.)

NATURE DE LA CAUSE

Charte canadienne des droits et libertés - Droit criminel - Interprétation - Fouille et perquisition - Articles 8 et 9 de la *Charte* - Paragraphes 24(1) et 24(2) de la *Charte* - Lorsqu'un tribunal compétent reconnaît que les droits constitutionnels d'un accusé ont été violés et que l'accusé demande à ce tribunal de lui accorder un remède en vertu de l'article 24(1) de la *Charte*, le tribunal a-t-il le choix d'accorder ou de refuser de lui accorder un remède? - Si le tribunal compétent doit accorder un remède en vertu de l'article 24(1) de la *Charte*, ne commet-il pas une erreur s'il ne se prononce pas sur la requête fondée sur l'article 24(1) de la *Charte* et ce, tant en première instance qu'en appel? - Dans les circonstances, la Cour suprême peut-elle être un tribunal compétent au sens de l'arrêt *Mills*, [1986] 1 R.C.S. 863, et accorder le remède demandé par l'accusé depuis la première instance et ignoré jusqu'à maintenant?

HISTORIQUE PROCÉDURAL

Le 30 mai 1989 Cour du Québec (chambre criminelle et pénale) (Dansereau J.C.Q.)	Culpabilité: 2 chefs d'accusation de possession de biens criminellement obtenus (art. 354(1)a) <i>Code criminel</i>) Peine de six mois d'emprisonnement sur chacun des chefs à être purgée concurremment
Le 4 novembre 1992 Cour d'appel du Québec (Tyndale, Chevalier [<i>ad hoc</i>] et Moisan [<i>ad hoc</i>], J.J.C.A.)	Appel du demandeur contre la déclaration de culpabilité et la peine rejeté
Le 31 décembre 1992 Cour suprême du Canada	Demande d'autorisation d'appel déposée

J. Robert Boulanger, Louis Faucher et Conrad Gagnon

c. (23333)

**Commission scolaire régionale de l'Estrie
J.W. Roy Ltée, Cératec Inc. et E.T. Terrazzo Tuile Marbre Ltée (Qué.)**

NATURE DE LA CAUSE

Code civil - Droit commercial - Louage d'ouvrage - Contrats - Dommages-intérêts - Procédure - Actions - Prescription - Responsabilité contractuelle sous l'art. 1065 C.c.B.C. - Construction d'une école - Dommages subis en raison de la détérioration des planchers de tuile - Matériau utilisé de mauvaise qualité - La Cour d'appel a-t-elle erré en décidant que l'action en dommages-intérêts de la Commission n'était pas tardive? - La Cour d'appel a-t-elle erré en retenant la responsabilité des architectes demandeurs et en refusant leur défense qu'ils pouvaient se fier sur la réputation et les représentations des intervenants qui ont effectué les travaux ou fourni les matériaux? - La Cour d'appel a-t-elle erré en décidant que l'acceptation finale des travaux ne libérait pas les demandeurs? - Responsabilité de l'entrepreneur, du sous-entrepreneur et du fournisseur de matériaux.

HISTORIQUE PROCÉDURAL

Le 16 septembre 1985
Cour supérieure du Québec
(Tôth j.c.s.)

Action en dommages-intérêts accueillie quant aux demandeurs et rejetée quant à J.W. Roy Ltée

Le 7 octobre 1992
Cour d'appel du Québec
(Chouinard, Rousseau-Houle
et Chevalier [*ad hoc*] j.c.a.)

Pourvoi rejeté

Le 4 décembre 1992
Cour suprême du Canada

Demande d'autorisation d'appel déposée

Albert Poulin, Jean-Paul Audet et Denis Tremblay

c. (23333)

**Commission scolaire régionale de l'Estrie
J.W. Roy Ltée, Cératec Inc. et E.T. Terrazzo Tuile Marbre Ltée (Qué.)**

NATURE DE LA CAUSE

Code civil - Droit commercial - Louage d'ouvrage - Contrats - Dommages-intérêts - Procédure - Actions - Prescription - Responsabilité contractuelle sous l'art. 1065 C.c.B.C. - Construction d'une école - Dommages subis en raison de la détérioration des planchers de tuile - Matériau utilisé de mauvaise qualité - La Cour d'appel a-t-elle erré en décidant que l'action en dommages-intérêts de la Commission n'était pas tardive? - La Cour d'appel a-t-elle erré en retenant la

responsabilité des architectes demandeurs et en refusant leur défense qu'ils pouvaient se fier sur la réputation et les représentations des intervenants qui ont effectué les travaux ou fourni les matériaux? - Responsabilité de l'entrepreneur, du sous-entrepreneur et du fournisseur de matériaux.

HISTORIQUE PROCÉDURAL

Le 16 septembre 1985 Cour supérieure du Québec (Tôth j.c.s.)	Action en dommages-intérêts accueillie quant aux demandeurs et rejetée quant à J.W. Roy Ltée
Le 7 octobre 1992 Cour d'appel du Québec (Chouinard, Rousseau-Houle et Chevalier [<i>ad hoc</i>] j.j.c.a.)	Pourvoi rejeté
Le 4 décembre 1992 Cour suprême du Canada	Demande d'autorisation d'appel déposée

Edward Bawolak

c. (23342)

**Exroy Resources Ltd. et le Ministre délégué aux mines
et au développement régional (Qué.)**

NATURE DE LA CAUSE

Droit administratif - Législation - Mines et minéraux - Contrôle judiciaire - Compétence - Interprétation - Devoir d'agir équitablement - Requête en révocation fondée sur les art. 281 et 285 de la *Loi sur les mines*, L.R.Q. ch. M-13.1 - La Cour d'appel du Québec a-t-elle erré en concluant que la non-conformité des demandes de renouvellement de claims de l'intimée Exroy Resources Ltd. relevait de l'erreur et de la responsabilité de l'administration publique - La Cour d'appel a-t-elle erré en décidant que l'agent du ministre avait agi à l'intérieur de sa compétence dans l'établissement des calculs dans le traitement de la demande de l'intimée.

HISTORIQUE PROCÉDURAL

Le 14 mai 1990 Ministère des Mines et du Développement régional (Le Ministre délégué)	Requête en révocation fondée sur les art. 281 et 285 de la <i>Loi sur les mines</i> , L.R.Q. ch. M-13.1 rejetée
Le 28 novembre 1990 Cour du Québec (Chassé, J.C.Q.)	Appel du demandeur rejeté

APPLICATIONS FOR LEAVE
SUBMITTED TO COURT SINCE LAST ISSUE

REQUÊTES SOUMISES À LA COUR DEPUIS
LA DERNIÈRE PARUTION

Le 8 octobre 1992
Cour d'appel du Québec
(Gendreau, Brossard et
Moisan [*ad hoc*], J.J.C.A.

Appel du demandeur rejeté

Le 7 décembre 1992
Cour suprême du Canada

Demande d'autorisation d'appel déposée

**JUDGMENTS ON APPLICATIONS
FOR LEAVE**

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

FEBRUARY 11, 1993 / LE 11 FÉVRIER 1993

23241 ERNEST WALTER KEHLER AND ANNETTE KEHLER v. THE CORPORATION OF THE DISTRICT OF SURREY AND WAYNE VOLLRATH (B.C.)

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

Municipal law - Highways - *Municipal Act*, R.S.B.C. 1979, c. 290 - Validity of by-laws - Did Court of Appeal err in concluding that compliance with the form of by-law required by s. 578 of the *Municipal Act* validated by-law even though the substance of the by-laws were illegal - Did the Court of Appeal err in its interpretation of an earlier decision by not recognizing the difference under the *Municipal Act* between a footpath and a paved roadway.

23239 THE CORPORATION OF THE DISTRICT OF MAPLE RIDGE v. DARIN JAMES ANDERSON (B.C.)

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

Procedural law - Trial - Evidence - Respondent alleging that Applicant was negligent in its placement of a stop sign and seeking to adduce evidence that the Applicant municipality had moved the stop sign following his accident - Court of Appeal ruling that evidence would be admissible - Was Court of Appeal correct in so ruling.

22941 PAUL SAUVÉ v. HER MAJESTY THE QUEEN (Que.)

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 - Evidence - *Canadian Charter of Rights and Freedoms* - Admissibility of evidence - Interception of private communications - Authorization - Allegation that police officer and informer conspired to traffic in narcotics - Police obtaining authorization to intercept their private communications - Trial judge refusing to open packet containing affidavit

in support of authorization - Packet opened on appeal - Accused given opportunity to cross-examine affiant - Power of Court of Appeal to gather "fresh evidence" - Procedure before the "designated judge" - Procedure before the Court of Appeal - "Police informer" privilege - Test to be applied in review of authorization for wiretap - Editing of aide-mémoire and denial of the right to cross-examine - Right to be tried within a reasonable time.

22933 GERALD HARVEY HISCOCK v. HER MAJESTY THE QUEEN (Que.)

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 - Evidence - *Canadian Charter of Rights and Freedoms* - Admissibility of evidence - Interception of private communications - Authorization - Allegation that police officer and informer conspired to traffic in narcotics - Police obtaining authorization to intercept their private communications - Trial judge refusing to open packet containing affidavit in support of authorization - Packet opened on appeal - Accused given opportunity to cross-examine affiant - Power of Court of Appeal to gather "fresh evidence" - Procedure before the "designated judge" - Procedure before the Court of Appeal - "Police informer" privilege - Test to be applied in review of authorization for wiretap - Editing of aide-mémoire and denial of the right to cross-examine - Right to be tried within a reasonable time.

23198 DAVID JOHN KONETZKA v. DAWN M. DAVIES AND CAROLL HINTON, PAUL R. LESLIE, INSURANCE CORPORATION OF BRITISH COLUMBIA, DENIS LUTARD, CHIEF GOLD COMMISSIONER, MINISTER OF ENERGY MINES AND RESOURCES, PROVINCE OF BRITISH COLUMBIA (B.C.)

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

Procedural law - Appeals - Applicant's appeal to Court of Appeal for British Columbia dismissed as abandoned - Whether Court of Appeal erred in dismissing appeal.

23250 STANDARD TRUST COMPANY v. THE CORPORATION OF THE CITY OF NEPEAN (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

Property Law - Real Property - Municipal law - Whether the Court of Appeal erred in stating that a person who acquires property with notice of a third party's right of reconveyance in the event of failure of a covenant takes subject to that option
- Whether the Court of Appeal erred in distinguishing the case of *Canadian Long Islands Petroleum Ltd. v. Irving Industries*, [1975] 2 S.C.R. 715.

MOTIONS

REQUÊTES

28.1.1993

Before / Devant: L'HEUREUX-DUBÉ J.

Motion to extend the time in which to file a factum

Her Majesty The Queen

v. (22660)

Don Odilon Laramée (Man.)

Requête en prorogation du délai de production d'un mémoire

With the consent of the parties.

GRANTED / ACCORDÉE

28.1.1993

Before / Devant: L'HEUREUX-DUBÉ J.

Motion to file factum in its present form

Ronald Nathaniel Alkerton

v. (23071)

Her Majesty The Queen (Ont.)

Requête en production d'un mémoire dans sa forme actuelle

With the consent of the parties.

GRANTED / ACCORDÉE

29.1.1993

Before / Devant: L'HEUREUX-DUBÉ J.

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

BY/PAR: Canadian Bar Association

IN/DANS: Elizabeth C. Symes

v. (22659)

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

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

Patricia Wilson, for the motion.

Sandra Philips, contra.

GRANTED / ACCORDÉE

29.1.1993

Before / Devant: L'HEUREUX-DUBÉ J.

Motion to extend the time in which to serve and file the case on appeal

Dimitros Levogiannis

v. (22953)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE

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

With the consent of the parties.

29.1.1993

Before / Devant: L'HEUREUX-DUBÉ J.

Motion to extend the time in which to serve and file the case on appeal

Richard Potvin

v. (23110)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE

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

With the consent of the parties.

27.1.1993

Before / Devant: L'HEUREUX-DUBÉ J.

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

Clemence Roles

v. (23389)

306972 Saskatchewan Ltd., Bruno F. Reimer et al. (Sask.)

GRANTED / ACCORDÉE

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

With the consent of the parties.

1.2.1993

Before / Devant: THE CHIEF JUSTICE LAMER

Motion to extend the time in which to serve and file the case on appeal and the factum; motion for an order that this appeal is to be deemed not abandoned

Her Majesty The Queen

v. (23060)

Helder Manuel Goncalves (Alta.)

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

GRANTED / ACCORDÉE

2.2.1993

Before / Devant: THE REGISTRAR

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

The Law Society of Newfoundland

v. (23274)

Gordon Nixon (Nfld.)

Requête en prorogation du délai de signification et de production de la réponse de l'intimé

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to Feb. 12, 1993

2.2.1993

Before / Devant: THE REGISTRAR

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

Her Majesty The Queen

v. (23123)

Duarte Tortone (Ont.)

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

With the consent of the parties.

GRANTED / ACCORDÉE Time extended to Feb. 1, 1993

2.2.1993

Before / Devant: THE REGISTRAR

Motion to file a reply factum

Edgeworth Construction Ltd.

v. (22429)

N.D. Lea & Assoc. et al. (B.C.)

GRANTED / ACCORDÉE

Requête en production d'un mémoire en réplique

With the consent of the parties.

2.2.1993

Before / Devant: THE REGISTRAR

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

John O. Miron et al.

v. (22744)

Richard Trudel et al. (Ont.)

GRANTED / ACCORDÉE

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

With the consent of the parties.

2.2.1993

Before / Devant: LE REGISTRAIRE

Requête en prorogation du délai imparti pour déposer et signifier la réponse de l'intimé

The United States of America

c. (23343)

Mr. Pierre Doyer (Qué.)

ACCORDÉE / GRANTED

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

Avec le consentement des parties.

2. 2.1993

Before / Devant: SOPINKA J.

Motion to prohibit the arguing of new issues

BY/PAR: Canadian Abortion Rights Action League

Her Majesty The Queen

v. (22578)

Henry Morgentaler (Crim.) (N.S.)

The motion brought by the appellant Attorney General of Nova Scotia to prohibit the intervener (respondent on the motion) Canadian Abortion Rights Action League (C.A.R.A.L.) from presenting argument on the federal peace, order and good government power (P.O.G.G.) is granted. The purpose of an intervention is to present the court with submissions which are useful and different from the perspective of a non-party who has a special interest or particular expertise in the subject matter of the appeal. See *Reference Re Workers' Compensation Act, 1983 (Nfld.)*, [1989] 2 S.C.R. 335.

An intervener is not entitled, however, to widen or add to the points in issue. Although it was brought to my attention that Dr. Morgentaler (the respondent in the appeal) raised the peace, order and good government issue in the Nova Scotia Provincial Court, the issue was not considered in the Provincial Court's decision nor did it arise in the Court of Appeal. Counsel for Dr. Morgentaler conceded at the hearing of this motion that the issue was not raised in the Court of Appeal or in this Court. It is not contested that the evidence in the case was culled for incorporation into the case on appeal on the basis that the federal criminal law power was the basis on which it was alleged that the impugned legislation is *ultra vires*.

The basis on which C.A.R.A.L. applied to intervene and on which its application was granted was that it would argue that the *Medical Services Act*, S.N.S. 1989, c. 9, and regulations made thereunder are in the nature of criminal law and therefore *ultra vires* the province. This is made very clear in the affidavit

Requête interdisant de débattre des nouvelles questions

Marian Tyson and Louise Walsh Poirier, for the motion.

Mary Eberts and Ian Godfrey, for the Canadian Abortion Rights.

Anne S. Derrick, for the respondent.

La requête que l'appelant le procureur général de la Nouvelle-Écosse a présentée en vue d'interdire à l'intervenante (intimée dans la requête) l'Association canadienne pour le droit à l'avortement (A.C.D.A.) d'avancer l'argument de la compétence fédérale en matière de paix, d'ordre et de bon gouvernement est accueillie. Une intervention vise à saisir la cour d'allégations utiles et différentes du point de vue d'un tiers qui a un intérêt spécial ou une connaissance particulière de la question visée par la procédure d'appel. Voir *Renvoi: Workers' Compensation Act, 1983 (T.-N.)*, [1989] 2 R.C.S. 335.

Toutefois, un intervenant n'a pas le droit d'élargir la portée des questions en litige ou d'y ajouter quoi que ce soit. Même si l'on m'a fait remarquer que le D^r Morgentaler (l'intimé dans le pourvoi) a soulevé l'argument de la paix, de l'ordre et du bon gouvernement devant la Cour provinciale de la Nouvelle-Écosse, cette question n'a pas été considérée dans la décision de la Cour provinciale et ne s'est pas non plus posée en Cour d'appel. Lors de l'audition de la présente requête, l'avocate du D^r Morgentaler a reconnu que la question n'a été soulevée ni en Cour d'appel ni en notre Cour. On ne conteste pas que les éléments de preuve qui ont été incorporés dans le dossier d'appel en l'espèce ont été choisis en tenant pour acquis que c'était en fonction de la compétence fédérale en matière de droit criminel qu'on alléguait que la mesure législative attaquée est inconstitutionnelle.

La raison pour laquelle l'A.C.D.A. a demandé et obtenu l'autorisation d'intervenir est qu'elle ferait valoir que la *Medical Services Act*, S.N.S. 1989, ch. 9, et ses règlements d'application participent du droit criminel et excèdent donc la compétence de la province. Cela ressort très

of Jane Holmes, sworn on June 11, 1992, filed in support of C.A.R.A.L.'s application for leave to intervene. The constitutional questions framed by the Chief Justice in this case are restricted to the federal criminal law power and there is nothing in the constitutional questions that would give notice that P.O.G.G. would be in issue. It can be assumed that the various Attorneys General based their decisions to intervene or not to intervene on the constitutional questions as framed. It is possible that their decisions would have been different had the P.O.G.G. been put in issue in the constitutional questions. In any event, to introduce the issue without amending the constitutional questions would contravene this Court's rules with respect to constitutional questions, the main purpose of which is to give notice to Attorneys General as to the constitutional issue which the Court is asked to decide.

C.A.R.A.L. alleges that the challenged arguments are responsive to arguments raised by the appellant. The appellant argues (at paragraphs 77-78 of its factum in the appeal) that the impugned legislation is *intra vires* the province pursuant to the province's jurisdiction over health as a purely local and private matter. C.A.R.A.L. responds to this argument by saying that abortion as a health issue is not purely local and private but has a national dimension bringing it within P.O.G.G. The respondent, however, addresses this issue. He also disputes that the matter relates to a purely local and private matter and says that it is of national proportions. He has not, however, invoked P.O.G.G. and does not attack the legislation on this basis. An intervener cannot introduce a new issue on the ground that it is a response to an argument made by the appellant if the respondent has chosen not to raise the issue.

There will be no costs on the motion.

clairement de l'affidavit de Jane Holmes, en date du 11 juin 1992, qui a été produit à l'appui de la demande d'intervention de l'A.C.D.A. Les questions constitutionnelles que le Juge en chef a formulées en l'espèce se limitent à la compétence fédérale en matière de droit criminel et rien n'y indique que la question de la compétence en matière de paix, d'ordre et de bon gouvernement sera soulevée. On peut présumer que les divers procureurs généraux ont fondé leur décision d'intervenir ou non sur la question constitutionnelle telle que formulée. Ils auraient peut-être pris une décision différente si la compétence en matière de paix, d'ordre et de bon gouvernement avait été soulevée dans les questions constitutionnelles. De toute façon, soulever cette question sans modifier les questions constitutionnelles contreviendrait aux règles de notre Cour en la matière, dont l'objet principal est d'aviser les procureurs généraux de la question constitutionnelle qu'on demande à la Cour de trancher.

L'A.C.D.A. soutient que les arguments contestés répondent aux arguments de l'appellant. L'appellant fait valoir (aux paragraphes 77 et 78 du mémoire qu'il a produit dans le cadre du présent pourvoi) que la mesure législative attaquée relève des pouvoirs de la province, en vertu de la compétence qu'elle possède dans le domaine de la santé en tant que matière d'une nature purement locale et privée. L'A.C.D.A. répond à cela que l'avortement, en tant que question touchant à la santé, n'est pas une question de nature purement locale et privée, mais comporte une dimension nationale qui la fait relever de la compétence en matière de paix, d'ordre et de bon gouvernement. Cependant, l'intimé aborde cette question. Il conteste également que la question touche à une matière de nature purement locale et privée, en affirmant qu'elle a une dimension nationale. Cependant, il n'a pas invoqué la compétence en matière de paix, d'ordre et de bon gouvernement et il ne s'en sert pas pour attaquer la mesure législative en cause. Un intervenant se saurait soulever une nouvelle question pour le motif qu'elle constitue une réponse à un argument de l'appellant, si l'intimé n'a pas choisi de soulever cette question.

Il n'y aura pas d'adjudication de dépens relativement à cette requête.

3.2.1993

Before / Devant: LE JUGE EN CHEF LAMER

Requête pour fixer une date d'audition de l'appel

Roland Lapointe

c. (22717)

Domtar Inc. et al. (Qué.)

Motion to fix a date for the hearing of the appeal

Laurent Roy, pour la requête.

Sylvie Roussel, pour l'intimé et les mises en cause.

ACCORDÉE / GRANTED Audition du présent appel est fixée au 1 avril 1993.

3.2.1993

Before / Devant: SOPINKA J.

Motion for a stay of execution

Larry Bell et al.

v. (23395)

Greenhills Worker's Assoc. et al. (B.C.)

Requête en vue de surseoir à l'exécution

Jack Giles, Q.C., for the motion.

F.G. Potts and Angela E. Thiele, for Greenhills Workers'.

Anne MacTavish, for Three Hundred Non-Union Employees.

Gwen K. Randall, Q.C., for United Mine Workers of America International Union and United Mine Workers of America, Local 7292.

GRANTED / ACCORDÉE

4.2.1993

Before / Devant: THE REGISTRAR

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

Marc Creighton

v. (22593)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE

Requête en prorogation du délai de signification et de production d'un mémoire

With the consent of the parties.

4.2.1993

Before / Devant: THE REGISTRAR

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

Eugene Honish

v. (22739)

Her Majesty The Queen (Alta.)

GRANTED / ACCORDÉE

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

With the consent of the parties.

4.2.1993

Before / Devant: THE REGISTRAR

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

Marc Creighton

v. (22593)

Her Majesty The Queen (Ont.)

GRANTED / ACCORDÉE

Requête en prorogation du délai de signification et de production d'un mémoire

With the consent of the parties.

4.2.1993

Before / Devant: THE REGISTRAR

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

Her Majesty The Queen

v. (22578)

Henry Morgentaler (Crim.)(N.S.)

GRANTED / ACCORDÉE

Requête en prorogation du délai de signification et de production d'un mémoire

With the consent of the parties.

4.2.1993

Before / Devant: THE REGISTRAR

Motion to permit the filing of the appellant's reply factum

J.J.M.

v. (22790)

Her Majesty The Queen (Man.)

GRANTED / ACCORDÉE

Requête en autorisation de produire le mémoire déposé en réplique par l'appelant

With the consent of the parties.

5.2.1993

Before / Devant: SOPINKA J.

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

Imperial Oil Ltd. and its subdivision Paramins

v. (23409)

The Lubrizol Corp. and Lubrizol Canada Ltd.
(F.C.A.)(Ont.)

GRANTED / ACCORDÉE

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

With the consent of the parties.

**NOTICES OF APPEAL FILED SINCE
LAST ISSUE**

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

5.2.1993

The United States of America

v. (23125)

John Lepine (Crim.)(Ont.)

8.2.1993

Comité paritaire de l'industrie de la chemise et al.

c. (23083)

Jonathan Potash et al. (Qué.)

8.2.1993

Viateur Richardson

c. (23413)

Sa Majesté La Reine (Crim.)(N.-B.)

DE PLEIN DROIT

**NOTICES OF INTERVENTION
FILED SINCE LAST ISSUE**

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

BY/PAR:Canadian Abortion Rights Action League (CARAL)

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

v. (22578)

Henry Morgentaler (Crim.)(N.S.)

BY/PAR:Canadian Bar Association

IN/DANS:**Elizabeth C. Symes**

v. (22659)

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

BY/PAR:Confederation Life Insurance Company
The Great-West Life Assurance Company
London Life Insurance Company

IN/DANS:**John Earl Miller**

v. (22860)

Mariea Cooper

and between

Thomas Harry McNee et al.

v.

Samuel H. Shanks (B.C.)

BY/PAR:The Great-West Life Assurance Company
London Life Insurance Company

IN/DANS:**Samuel H. Shanks et al.**

v. (22863)

Thomas Harry McNee et al. (B.C.)

BY/PAR:Confederation Life Insurance Company
The Great-West Life Assurance Company
London Life Insurance Company

IN/DANS:**Bradwell Henry Cunningham**

v. (22867)

Cherylee Lyn Wheeler et al. (B.C.)

**NOTICES OF DISCONTINUANCE
FILED SINCE LAST ISSUE**

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

05.02.1993

Carlos Chavez Alfaro

c. (23137)

The Warden of the Centre de Prévention de Montréal et al (Crim.)(Qué.)

(requête)

**APPEALS HEARD SINCE LAST ISSUE
AND DISPOSITION**

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

05.02.1993

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

J.J.M.

Michael O. Walker, for the appellant.

v. (22790)

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

Don Slough, for the respondent.

THE CHIEF JUSTICE (orally) --

LE JUGE EN CHEF (oralement) --

While there are very important issues here which have been discussed about which we will be writing to clarify the situation in the country in view of the conflicting decisions of various Courts of Appeal, we will dispose of this matter by saying that the appeal is dismissed with reasons to follow.

Même s'il y a, en l'espèce, des questions très importantes qui ont été analysées et au sujet desquelles nous écrivons afin de clarifier la situation au pays compte tenu des arrêts contradictoires de diverses cours d'appel, nous statuons sur cette question en affirmant que le pourvoi est rejeté avec motifs à suivre.

05.02.1993

CORAM: The Chief Justice Lamer and La Forest, Gonthier, Cory and Major JJ.

Her Majesty The Queen

Brian McNeely, for the appellant.

v. (22725)

Bernhard Hasselwander (Crim.)(Ont.)

Calvin Martin, Q.C., for the respondent.

RESERVED / EN DÉLIBÉRÉ

Nature of the case:

Criminal law - Offences - Statutes - Interpretation - Whether a firearm which could easily be converted into a fully automatic form is a prohibited weapon within the meaning of s. 84(1)(c) of the *Criminal Code*, R.S.C. 1985, c. C-46 - Effect of the *Criminal Law Amendment Act*, S.C. 1991, c. 40.

Nature de la cause:

Droit criminel - Infractions - Lois - Interprétation - Une arme à feu qui peut facilement être transformée en arme entièrement automatique constitue-t-elle une arme prohibée au sens de l'al. 84(1)c) du *Code criminel*, L.R.C. (1985), ch. C-46? - Incidence de la *Loi modifiant le Code criminel*, L.C. 1991, ch. 40.

WEEKLY AGENDA

**ORDRE DU JOUR DE LA
SEMAINE**

AGENDA for the week beginning February 15, 1993.
ORDRE DU JOUR pour la semaine commençant le 15 février 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>
---	------------	--

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.

**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 : March 1, 1993

Service of motion : February 8, 1993
Filing of motion : February 15, 1993
Response : February 22, 1993

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: 1 mars 1993

Signification: 8 février 1993
Dépôt: 15 février 1993
Réponse: 22 février 1993

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] 2 S.C.R., Part 7

Jugements publiés dans [1992] 2 R.C.S., partie 7

Dickason v. University of Alberta, [1992] 2 S.C.R. 1103

Dickason c. Université de l'Alberta, [1992] 2 R.C.S. 1103

Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc., [1992] 2 S.C.R. 1065

Vidéotron Ltée c. Industries Microlec Produits Électroniques Inc., [1992] 2 R.C.S. 1065