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| **APPLICATIONS FOR LEAVE TO APPEAL FILED** | **DEMANDES D'AUTORISATION D'APPEL PRODUITES** |

**Dauphin Plains Credit Union Ltd.**

John S. Lamont, Q.C.

Aikins, MacAulay & Thovaldson

v. (23375)

**The Toronto-Dominion Bank (Man.)**

Arthur J. Stacey

Thompson Dorfman Sweatman

FILING DATE 22.1.1993

**Red River Forest Products Inc.**

Antoine F. Hacault

Thompson, Dorfman, Sweatman

v. (23377)

**George Leslie Ferguson et al. (Man.)**

Gregory Rodin

Walsh, Pinx, Tapper, Scurfield

**FILING DATE** 25.1.1993

**Jean-Charles St-Onge**

c. (23370)

**Sa Majesté La Reine en chef du Gouvernement du Canada, ici représenté par la Commission de la Fonction publique (C.A.F.)(Ont.)**

Alain Préfontaine

Sous-procureur général du Canada

DATE DE PRODUCTION 26.1.1993

**Larry Carlston**

Ronald E. Morris

Roach & Morris

v. (23224)

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

Edmond P. Blanchard, Q.C.

A.G. of N.B.

FILING DATE 18.1.1993

**The Eastmain Band et al.**

James O'Reilly

O'Reilly & Assoc.

v. (23382)

**Raymond Robinson et al. (F.C.A.)**

Jean-Marc Aubry, Q.C.

Dep. A.G. of Canada

FILING DATE 19.1.1993

**James Donald Williams**

Bruce Duncan

Duncan, Fava, Schermbrucker

v. (23387)

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

A.G. of Ontario

FILING DATE 20.1.1993

|  |  |
| --- | --- |
| **APPLICATIONS FOR LEAVE**  **SUBMITTED TO COURT SINCE LAST ISSUE** | **REQUÊTES SOUMISES À LA COUR DEPUIS LA DERNIÈRE PARUTION** |

**JANUARY 25, 1993 / LE 25 JANVIER 1993**

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

**LE JUGE EN CHEF ET LES JUGES McLACHLIN ET MAJOR**

**Her Majesty The Queen**

**v. (23340)**

**John Chartrand (Crim.)(Ont.)**

**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.

**PROCEDURAL HISTORY**

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| --- | --- |
| August 28, 1991  Ontario Court of Justice  (Provincial Division)  (Beaulieu P.C.J.) | Acquittal: Abduction of a person under the age of 14 years (281 *Criminal Code*); |

|  |  |
| --- | --- |
| October 6, 1992  Court of Appeal for Ontario  (Houlden, Tarnopolsky and Austin JJ.A.) | Applicant's appeal dismissed |

|  |  |
| --- | --- |
| December 7, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**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. (23306)**

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

**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*?

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| March 8, 1990  Federal Court of Canada, Trial Division  (Rouleau J.) | Declaration that *Maintenance of Ports Operation Act* did not violate ss. 2(d) or 7 of the *Charter*; Further declaration that s. 13 *Act* violates s. 7 of the *Charter* and is of no force or effect |

|  |  |
| --- | --- |
| September 24, 1992  Federal Court of Appeal  (Heald, Décary and Létourneau JJ.A.) | Appeal dismissed and cross-appeal allowed |

|  |  |
| --- | --- |
| November 23, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**Placer Dome Inc.**

**v. (23247)**

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

**NATURE OF THE CASE**

Taxation - Applicant deducting from income amounts contributed to an employee stock purchase plan - Whether tax consequences of a transaction are based on its economic result rather than its legal characteristics.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| April 12, 1991  Federal Court of Canada, Trial Division  (Denault J.) | Appeal allowed: reassessment varied to allow deduction |

|  |  |
| --- | --- |
| July 20, 1992  Federal Court of Appeal  (Mahoney, Marceau and Linden JJ.A.) | Appeal allowed |

|  |  |
| --- | --- |
| October 30, 1992  Supreme Court of Canada  (Cory J.) | Application for extension of time to file application for leave granted |

|  |  |
| --- | --- |
| November 16, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**Edward Kita**

**v. (23240)**

**Florian G.A. Braig (B.C.)**

**NATURE OF THE CASE**

Torts - Intentional torts - Battery - Negligence - Physicians and surgeons - Professional negligence - Standard of care - Causation - Applicant suffering disabling stroke after undergoing arterial ligation performed by the Respondent - Whether the Court of Appeal erred in holding that the Applicant gave informed consent to the surgeon doing the operation - If the surgeon's failure to disclose his inexperience sounds in negligence, whether the Court of Appeal erred in applying *Reibl v. Hughes*, [1980] 2 S.C.R. 88 as to the patient's need to know and as to causation - Did the Court of Appeal err in applying the standard of care for a doctor with special knowledge?

**PROCEDURAL HISTORY**

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| January 10, 1991  Supreme Court of British Columbia  (Fraser J.) | Action for battery and negligence dismissed |

|  |  |
| --- | --- |
| August 26, 1992  Court of Appeal for British Columbia  (Southin, Taylor and Goldie JJ.A.) | Appeal dismissed |

|  |  |
| --- | --- |
| November 26, 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**

**Claude George Ramsay**

**v. (23337)**

**Her Majesty The Queen (Crim.)(P.E.I.)**

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Offences - Impaired driving - Right to silence - Detention within the meaning of s. 10(b) of the *Charter* - Whether the Supreme Court of Prince Edward Island, Appeal Division, erred in holding that a person should be informed of his or her right to remain silent only at that point when there is detention of the person within the meaning of section 10(b) of the *Charter* - Application of *R. v. Schmautz*, [1990] 1 S.C.R. 398.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| May 23, 1989  Provincial Court of Prince  Edward Island  (FitzGerald P.C.J.) | Acquittal: Operating a motor vehicle with a concentration of alcohol that exceeded 80 milligrams of alcohol in 100 millilitres, contrary to 253(b) and 255(1) of the *Criminal Code*;  Impaired driving, contrary to 253(a) and 255(1) of the *Criminal Code* |

|  |  |
| --- | --- |
| September 5, 1991  Supreme Court of Prince Edward  Island, Trial Division  (MacDonald C.J.) | Respondent's summary conviction appeal allowed; New trial ordered |

|  |  |
| --- | --- |
| October 6, 1992  Supreme Court of Prince Edward  Island, Appeal Division  (Carruthers C.J., Mitchell J.A.  and Mullaly J. [*ad hoc*]) | Applicant's appeal dismissed |

|  |  |
| --- | --- |
| December 7, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**Greater Edmonton Development Corporation**

**v. (23281)**

**BTK Holdings Ltd. (Alta.)**

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| September 27, 1991  Court of Queen's Bench of Alberta  (Master Funduk) | Application to compel the Respondent to produce its solicitor for examination for discovery dismissed |
| April 24, 1992  Court of Queen's Bench of Alberta  (Lefsrud J.) | Application to compel the Respondent to produce its solicitor for examination for discovery dismissed |

|  |  |
| --- | --- |
| September 3, 1992  Court of Appeal of Alberta  (Stratton J.A., Bielby J. and Major J.A.) | Appeal dismissed |

|  |  |
| --- | --- |
| November 2, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**Dodd Q. Chu**

**v. (23286)**

**Laurentian Bank of Canada, formerly**

**Eaton Bay Trust Company,**

**formerly Commerce Capital Trust (Alta.)**

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

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| August 13, 1991  Court of Queen's Bench of Alberta  (Feehan J.) | Respondent's action in debt on the covenant for payment of mortgages allowed |

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| --- | --- |
| September 8, 1992  Court of Appeal for Alberta  (McClung J.A., Bracco and Irving JJ.A,) | Appeal dismissed |

|  |  |
| --- | --- |
| November 9, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**Garnet Lane Developments Ltd.**

**v. (23279)**

**Roger Samuel Webster and Lois Edith Webster (Ont.)**

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| September 27, 1991  Supreme Court of Ontario  (Carruthers J.) | Respondents' action for specific performance against Applicant allowed |

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| --- | --- |
| October 5, 1992  Court of Appeal for Ontario  (Krever J.A., Katzman and Abella JJ.A.) | Appeal dismissed; Cross-appeal allowed |

|  |  |
| --- | --- |
| November 9, 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**

**Ivan Penava and Katica Penava**

**v. (23319)**

**Crawford M. MacIntyre and**

**Michael J. Mitchell (Ont.)**

**NATURE OF THE CASE**

Procedural law - Appeal - Solicitors - Negligence - Applicants consulting Respondents following problems with mortgages on their properties - Action in breach of contract and negligence against the Respondents - Supreme Court of Ontario dismissing Applicants' action - Court of Appeal for Ontario dismissing Applicants' appeal - Whether the Court of Appeal erred in law in determining that, because the trial judge could refer to the evidence to support his findings and conclusions, the Court, as an appellate bench, had no basis to overrule his decision - Whether the Court of Appeal erred in law in determining that it was unable to conclude that the trial judge erred in any material respect.

**PROCEDURAL HISTORY**

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| --- | --- |
| June 14, 1989  Supreme Court of Ontario  (Steele J.) | Action for breach of contract and negligence dismissed |

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| --- | --- |
| October 1, 1992  Court of Appeal for Ontario  (Tarnopolsky J.A., Osborne and Austin JJ.A.) | Appeal dismissed |

|  |  |
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| November 30, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**Her Majesty the Queen in right of the Province of New Brunswick**

**as represented by the Board of Management**

**v. (23301)**

**Ronald Bond (N.B.)**

**NATURE OF THE CASE**

Administrative law - Labour law - Evidence - Respondent dismissed from employment following allegations he had sexually assaulted a patient - Patient not testifying at hearing -Whether Court of Appeal erred in finding that failure of complainant to testify was a denial of rules of natural justice or procedural fairness - Whether Court of Appeal erred in concluding that adjudicator's method of assessing evidence rendered his decision fallible - Whether Court of Appeal incorrectly appreciated law regarding use of hearsay evidence by an administrative tribunal.

**PROCEDURAL HISTORY**

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| February 6, 1992  Court of Queen's Bench  (Larlee J.) | Order made by adjudicator dismissing Respondent's grievance quashed |

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| --- | --- |
| September 16, 1992  Court of Appeal of New Brunswick  (Hoyt, Rice and Ryan JJ.A.) | Appeal allowed in part - order varied by remitting matter for adjudication before another adjudicator |

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| November 13, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**Vladislav Zlatic**

**v. (22793)**

**William A. Stannell and**

**Pioneer Rack Products Ltd.**

**- and -**

**Mildred Spragge and**

**Eleanora Spragge (Ont.)**

**NATURE OF THE CASE**

Torts - Damages - Measure of damages - Applicant suffering injuries following three motor vehicle accidents - Whether the trial judge erred in failing to apply the thin-skull rule, namely that tortfeasors must take their victims as they find them - Whether the trial judge erred in holding the Applicant's pre-disposition to injury limited the Respondent's liability for damages.

**PROCEDURAL HISTORY**

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| --- | --- |
| December 4, 1984  Supreme Court of Ontario  (Holland J.) | Action allowed |

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| --- | --- |
| July 18, 1989  Court of Appeal for Ontario  (Lacourcière, Holden and McKinlay JJ.A.) | Appeal dismissed |

|  |  |
| --- | --- |
| November 12, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**Canadian General Insurance Company**

**v. (23182)**

**132284 Canada Limited, carrying on business under the**

**firm name and style of Hanmax Investments and Gordon Jobson (Ont.)**

**NATURE OF THE CASE**

Torts - Negligence - Contract - Insurance - Procedural law - Whether principles in *Ross Southward Tire et al. v. Pyrotech Products et al.*, [1976] 2 S.C.R. 35 limited to loss by fire caused by negligence - Jurisdiction of a judge on a motion for summary judgment - Whether there was an arguable issue as to whether *Southward* covers claims based on breach of contract.

**PROCEDURAL HISTORY**

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| --- | --- |
| May 2, 1991  Ontario Court (General Division)  (Houston J.) | Claims against Respondent Jobson dismissed; Third party claim dismissed |

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| --- | --- |
| September 15, 1992  Court of Appeal for Ontario  (Brooke, Carthy and Osborne JJ.A.) | Appeal allowed; order set aside |

|  |  |
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| November 12, 1992  Supreme Court of Canada | Application for leave to appeal filed |

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| **JUDGMENTS ON APPLICATIONS**  **FOR LEAVE** | **JUGEMENTS RENDUS SUR LES DEMANDES D'AUTORISATION** |

**JANUARY 26, 1993 / LE 26 JANVIER 1993**

JAMES ALBERT SWEENEY -v- HER MAJESTY THE QUEEN (Ont.) (23166)

CORAM: La Forest, Sopinka and Cory JJ.

The application for re-hearing is dismissed.

La demande de nouvelle audition est rejetée.

**NATURE OF THE CASE**

Criminal law - Appeal - Following guilty plea and subsequent conviction, Applicant filing notice of appeal - Applicant abandoning conviction appeal, and then seeking to withdraw abandonment - Whether the Court of Appeal has the power to amend a judgment which has been drawn up and entered - Effect of guilty plea.

**JANUARY 28, 1993 / LE 28 JANVIER 1993**

**23124 CLAUDETTE ROY c. CLAUDE BÉGIN ET FRANCINE ROY** (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**

Code civil - Adoption - Interprétation - Action de la demanderesse en réclamation d'état (art. 589 *C.c.Q.*) - Toute personne a-t-elle le droit fondamental à une filiation complète, c'est-à-dire d'avoir un père et une mère légalement reconnus? - Le fait d'avoir été adopté par un de ses parents biologiques peut-il empêcher un enfant de demander que l'autre parent soit reconnu légalement? - Dans quelle mesure un tribunal peut-il, dans l'interprétation d'une loi faite en faveur et dans l'intérêt de l'enfant, parvenir à un résultat contraire à l'esprit de cette loi?

**23173 ABDULNABI RAISSI v. THE MINISTER OF EMPLOYMENT AND IMMIGRATION** (F.C.A.) (Ont.)

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

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Administrative law - Immigration - Natural justice - Procedure at hearing - Right to counsel before an administrative tribunal such as the Immigration and Refugee Board, Convention Refugee Determination Division - Applicant advised of his right to counsel - Applicant elected to proceed without counsel - Whether the Applicant's waiver of his right to counsel was invalid, and as such, whether the Board erred in law in proceeding with the hearing.

**23254 SA MAJESTÉ LA REINE c. HORACIO CALLEJAS** (Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

**NATURE DE LA CAUSE**

Droit criminel - Infraction - Preuve - La Cour d'appel du Québec a-t-elle erré en droit en écartant le jugement de culpabilité rendu en première instance, au motif que le juge a tiré les mauvaises conclusions des faits établis? - La Cour d'appel du Québec a-t-elle erré en droit en substituant son appréciation de la preuve à celle du juge de première instance, sans déterminer si le jugement aurait pu raisonnablement être rendu en regard de la preuve et du droit applicable? - La Cour d'appel du Québec a-t-elle erré en droit en décidant virtuellement que le crime de tentative de meurtre requérait une preuve directe de l'intention de tuer?

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| **MOTIONS** | **REQUÊTES** |

20.1.1993

Before / Devant: L'HEUREUX-DUBÉ J.

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| --- | --- |
| **Motion to extend the time in which to serve and file an application for leave**  Lacombe Nurseries Ltd. et al.  v. (23297)  Farm Credit Corporation (Alta.) | **Requête en prorogation du délai de signification et de production de la demande d'autorisation**  With the consent of the parties. |

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**GRANTED / ACCORDÉE** Time extended to January 4, 1993

20.1.1993

Before / Devant: THE DEPUTY REGISTRAR

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| **Motion to extend the time in which to serve and file a factum**  Her Majesty The Queen  v. (22660)  D.O.L. (Man.) | **Requête en prorogation du délai de signification et de production d'un mémoire**  With the consnet of the parties. |

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**GRANTED / ACCORDÉE** Time extended to January 15, 1993

20.1.1993

Before / Devant: THE DEPUTY REGISTRAR

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| **Motion to extend the time in which to serve and file a response to the leave application**  Her Majesty The Queen  v. (23217)  Henry Arthur Johnson et al. (Ont.) | **Requête en prorogation du délai de signification et de production de la réponse à la demande d'autorisation**  With the consent of the parties. |

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**GRANTED / ACCORDÉE**

20.1.1993

Before / Devant: THE DEPUTY REGISTRAR

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| **Motion to extend the time in which to serve and file the applicant's reply**  Sa Majesté La Reine du chef du Québec  v. (23356)  Ontario Securities Commission et al. (Ont.) | **Requête en prorogation du délai de signification et de production de la réplique de la requérante**  With the consent of the parties. |
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**GRANTED / ACCORDÉE** Time extended to January 29, 1993

21.1.1993

Before / Devant: THE CHIEF JUSTICE LAMER

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| **Motion to extend the time in which to serve and file the appellant's factum; motion to inscribe notwithstanding the late filing of factum; motion for an order that this appeal is to be deemed not abandoned; and motion for an order permitting counsel to employ the same case on appeal as prepared in another file**  Norman Michael Koruz  v. (23077)  Her Majesty The Queen (Alta.) | **Requête en prorogation du délai de signification et de production du factum de l'appelant; requête en inscription malgré la production tardive du mémoire; requête en déclaration que le présent appel est censé ne pas avoir été abandonné; et requête visant à obtenir une ordonnance autorisant les avocats à utiliser le même dossier d'appel que celui proposé dans une autre affaire**  With the consent of the parties. |
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**GRANTED / ACCORDÉES**

21.1.1993

Before / Devant: THE CHIEF JUSTICE LAMER

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| **Motion to appoint counsel**  Norman Michael Koruz  v. (23077)  Her Majesty The Queen (Alta.) | **Requête en nomination d'un procureur**  With the consent of the parties. |
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**GRANTED / ACCORDÉE**

21.1.1993

Before / Devant: THE CHIEF JUSTICE LAMER

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| --- | --- |
| **Motion for an order that this appeal is to be deemed not abandoned**  Glen Ivor Jones  v. (22400)  Her Majesty The Queen (Sask.) | **Requête en déclaration que le présent appel est censé ne pas avoir été abandonné**  With the consent of the parties. |

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**GRANTED / ACCORDÉE**

21.1.1993

Before / Devant: THE CHIEF JUSTICE LAMER

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| **Motion for a special place on the list**  Barry James Evans  v. (22929)  Her Majesty The Queen (B.C.) | **Requête en obtention pour une place spéciale sur le rôle**  W.R. Meredith, Q.C. for the appellant.  W.G. Burke Robertson, Q.C, for the respondent. |

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**DISMISSED / REJETÉE**

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| **NOTICES OF INTERVENTION FILED SINCE LAST ISSUE** | **AVIS D'INTERVENTION PRODUITS DEPUIS LA DERNIÈRE PARUTION** |

BY/PAR: Attorney General of Ontario

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

v. (23075)

**David Angelo Grant (B.C.)**

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| **NOTICES OF DISCONTINUANCE FILED SINCE LAST ISSUE** | **AVIS DE DÉSISTEMENT PRODUITS DEPUIS LA DERNIÈRE PARUTION** |

27.01.1993

**Cyril Patrick Prosper**

v. (23178)

**Her Majesty The Queen (Crim.)(N.S.)**

(Appeal)

|  |  |
| --- | --- |
| **APPEALS HEARD SINCE LAST ISSUE AND DISPOSITION** | **APPELS ENTENDUS DEPUIS LA DERNIÈRE PARUTION ET RÉSULTAT** |

25.1.1993 to/au 26.1.1993

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

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| **Daniel Plouffe**  **v. (22296)**  **Christine Shea (Qué.)**  **and between / et entre**  **Irene Helen Young**  **v. (22227)**  **James Kam Chen Young et al. (B.C.)** | W. Glen How, Q.C. et Daniel G. Pole, pour Daniel Plouffe.  Isabelle Michaud, pour Christine Shea  Lorne N. MacLean and Fred C. Lowther, for Irene Young.  W. Glen How, Q.C. and Sarah E. Mott-Trille, for James K.C. Young.  Brian Evernden, for the intervener the A.G. of Canada.  Monique Rousseau et Isabelle Harnois, pour l'intervenant le Procureur général du Québec.  No one appearing for the intervener the A.G. of B.C.  Shawn Greenberg, for the intervener the A.G. of Manitoba. |

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**RESERVED / EN DÉLIBÉRÉ**

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| **Nature de la cause:**  *Charte canadienne des droits et libertés* - Droit de la famille - Garde et droit de visite - Liberté de religion.  *Canadian Charter of Rights and Freedom* - Family law - Statutes - Freedom of religion - Divorce - Custody - Access - Maintenance - Division of property. | **Nature of the case:**  *Canadian Charter of Rights and Freedoms* - Family law - Custody and visiting rights - Freedom of religion.  *Charte canadienne des droits et libertés* - Droit de la famille - Lois - Liberté de religion - Divorce - Garde - Droit de visite - Pension alimentaire - Partage des biens. |

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27.1.1993

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

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| **Janice Berg**  **v. (22638)**  **The University of B.C. and the School of Family and Nutritional Sciences, et al. (B.C.)**  **and between**  **B.C. Council of Human Rights**  **v. (22640)**  **University of B.C. and the School of Family and Nutritional Sciences et al. (B.C.)** | David W. Mossop, for the appellant/respondent Janice Berg.  William F. Pentney, for the intervener the Canadian Human Rights Commission.  George H. Copley, for the appellant/respondent B.C. Council of Human Rights.  Bruce F. Fraser, Q.C., for the respondents. |

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**RESERVED / EN DÉLIBÉRÉ**

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| **Nature of the case:**  Administrative law - Statutes - Civil rights - Interpretation - Judicial review - Jurisdiction - Discrimination - Application of s. 3 of the *Human Rights Act*, S.B.C. 1984, c. 22 - Interpretation of "accommodation, service or facility customarily available to the public" - | **Nature de la cause:**  Droit administratif - Lois - Droits civils - Interprétation - Contrôle judiciaire - Compétence -Discrimination - Application de l'art. 3 de la *Human Rights Act*, S.B.C. 1984, ch. 22 - Interprétation de «installations, services ou établissements destinés au public». |

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**RE-HEARING / RÉAUDITION**

28.1.1993

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

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| **The Minister of Finance of Canada et al.**  **v. (22162)**  **Robert James Finlay (F.C.A.)(Man.)** | Eric A. Bowie, Q.C., Faye E. Campbell, Q.C. and Harry Glinter, for the appellant.  W. Glenn McFetridge, for the intervener the A.G. of Manitoba.  Louis Rochette et Dominique Rousseau, pour l'intervenant le procureur général du Québec.  Beverley Bauer, for the intervener the A.G. of Alberta.  G. Patrick S. Riley and John A. Myers, for the respondent.  Arne Peltz, for the intervener the National Anti-Poverty Organization. |

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**RESERVED / EN DÉLIBÉRÉ**

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| **Nature of the case:**  Crown law - Social welfare - Constitutional law - Whether contributions by the Minister of Finance and certificates from Minister of Health and Welfare pursuant to the *Canada Assistance Plan*, R.S.C., 1985, c. C-1, are illegal so long as the *Social Allowances Act*, R.S.M. 1987, c. S-160, continues to authorize the reduction of social assistance payments to persons in need in the province, to recover debts - Whether said contributions and certificates they are illegal as long as the Province of Manitoba permits municipalities to establish their own rates of assistance, independent of provincial authority. | **Nature de la cause:**  Couronne - Bien-être social - Droit constitutionnel - Les contributions effectuées par le ministre des Finances et les certificats délivrés par le ministre de la Santé et du Bien-être social en vertu du *Régime d'assistance publique du Canada*, L.R.C. (1985), ch. C-1, sont-ils illégaux tant que la *Loi sur l'aide sociale*, C.P.L.M. (1987), ch. S-160, continue de permettre la réduction des prestations d'assistance sociale versées aux personnes nécessiteuses de la province, pour le recouvrement de créances? - Ces contributions et certificats sont-ils illégaux tant que la province du Manitoba permet aux municipalités d'établir leurs propres montants d'assistance, indépendamment des autorités provinciales? |

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

**AGENDA for the week beginning February 1, 1993.**

**ORDRE DU JOUR pour la semaine commençant le 1 février 1993.**

Date of Hearing/ Case Number and Name/

Date d'audition NO. Numéro et nom de la cause

01/02/93 9:30 am Show Cause / Audience de justification

01/02/9329Mario Pouliot c. Sa Majesté La Reine (Crim.)(Qué.)(22960)

02/02/93 9Eugene Honish v. Her Majesty The Queen (Crim.)(Alta.)(22739)

02/02/93 17Glenn Ivor Jones v. Her Majesty The Queen (Crim.)(Sask.)(22400)

03/02/93 3Marc Creighton v. Her Majesty The Queen (Crim.)(Ont.)(22593)

04/02/93 23Her Majesty The Queen v. Henry Morgentaler (Crim.)(N.S.)(22578)

05/02/93 18J.J.M. v. Her Majesty The Queen (Crim.)(Man.n)(22790)

05/02/93 40Her Majesty The Queen v. Bernhard Hasselwander (Crim.)(Ont.)(22725)

**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.

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| **SUMMARIES OF THE CASES** | **RÉSUMÉS DES AFFAIRES** |

**22960MARIO POULIOT c. SA MAJESTÉ LA REINE**

Droit criminel - Procès - Meurtre au premier degré - Premier chapitre des directives du juge au jury prenant la forme d'une réplique à la plaidoirie de la défense et où le juge tente de rehausser la crédibilité du témoin principal de la poursuite - Quel est l'effet d'une erreur de droit commise par le juge du procès lorsque cette erreur affecte ou peut affecter l'équité du procès? - La Cour d'appel a-t-elle eu tort d'appliquer la disposition curative prévue à l'art. 686(1)(b)(iii) du *Code criminel*, L.R.C. (1985), ch. C-46?

Le 30 octobre 1985, l'appelant est reconnu coupable par un jury de quatre meurtres au premier degré. À son procès, l'appelant ne témoigne pas et ne fait entendre aucun témoin. La plaidoirie de son procureur est axée sur le caractère non fiable du témoin principal de la Couronne. Après les plaidoiries, le juge du procès commence ses directives par un premier chapitre qu'il intitule "Commentaires sur les plaidoiries des avocats". Dans ce chapitre qui couvre quinze des cent quatre-vingt-six pages de l'adresse au jury, le juge répond exclusivement à cinq arguments de la défense sans toucher à ceux de la Couronne. En appel du verdict de culpabilité devant la Cour d'appel, l'appelant plaide que l'ensemble des directives du juge au jury a constitué tant par sa forme que par sa substance une seconde plaidoirie de la poursuite. Il soutient que les commentaires du premier juge sur la plaidoirie de l'avocat de la défense ont donné l'impression aux jurés que la défense les avait trompés et induits en erreur. La suite des directives n'a pas dissipé cette impression défavorable et selon l'appelant, son droit à un procès juste et équitable a été violé. Dans un jugement majoritaire rendu le 26 mars 1992, la Cour d'appel confirme le verdict de culpabilité. L'appelant se pourvoit de plein droit devant cette Cour.

Cet appel soulève la question suivante:

La Cour d'appel a-t-elle eu tort de conclure qu'en l'espèce, il y a lieu d'appliquer la disposition curative prévue à l'art. 686(1)(b)(iii) du *Code criminel* puisque dans leur ensemble, les directives du juge au jury n'ont pas causé de tort important à l'accusé ni constitué d'erreur judiciaire grave?

Origine de la cause: Québec

No du dossier: 22960

Jugement de la Cour d'appel: 26 mars 1992

Procureurs: Pierre Girard pour l'appelant

Michel Ayotte pour l'intimée

Mémoire de l'appelant: 22 pages

Mémoire de l'intimée: 20 pages

22960**MARIO POULIOT v. HER MAJESTY THE QUEEN**

Criminal law -- Trial -- First-degree murder -- First heading of judge's charge to jury taking form of reply to defence pleading, in which judge sought to increase credibility of principal witness for prosecution -- Effect of error of law made by trial judge when that error affects or may affect fairness of trial -- Whether Court of Appeal wrong to apply remedial provision in s. 686(1)(*b*)(iii) of *Criminal Code*, R.S.C. 1985, c. C-46.

On October 30, 1985 the appellant was found guilty by a jury on four counts of first degree murder. At his trial the appellant did not testify and he did not call any witnesses. His counsel's argument was essentially that the evidence given by the Crown's main witness was not reliable. After the argument, the trial judge began his charge with a first heading which he titled "Comments on Counsel's Argument". Under this heading, which took up 15 of the 186 pages of the charge to the jury, the judge responded exclusively to five defence arguments without dealing with those of the Crown. In appealing the guilty verdict to the Court of Appeal, the appellant maintained that the judge's charge to the jury as a whole was both in form and substance a second argument for the prosecution. He contended that the trial judge's comments on the arguments of defence counsel gave the jurors the impression that the defence had been misleading and deceitful. The rest of the charge did not alter that unfavourable impression and in the appellant's submission his right to a fair trial was denied. In a majority judgment on March 26, 1982, the Court of Appeal affirmed the guilty verdict. The appellant appealed to this Court as of right.

This appeal raises the following question:

Was the Court of Appeal wrong in concluding that in the case at bar the remedial provision contained in s. 686(1)(*b*)(iii) of the *Criminal Code* should be applied since the judge's charge to the jury as a whole caused no significant injury to the accused and did not constitute a serious judicial error?

Origin of case:Quebec

File No.:22960

Court of Appeal judgment:March 26, 1992

Counsel:Pierre Girard for the appellant

Michel Ayotte for the respondent

Appellant's factum:22 pages

Respondent's factum:20 pages

22739**EUGENE HONISH v. HER MAJESTY THE QUEEN**

Criminal law - Evidence - Food and drugs - Offences - Defenses - Drunkenness - Automatism - *Mens rea* - Whether the trial judge misdirected herself with respect to how extreme intoxication causing unconscious behaviour can in certain circumstances act as a defence or, alternatively, negative the mental requirement for the offence of impaired driving causing bodily harm.

The Appellant was charged with impaired driving following an accident where he struck another vehicle, injuring three of its occupants. The Appellant was depressed having recently separated from his wife. His physician had prescribed an anti-depressant. The Appellant went to his wife's house where he drank three to four drinks totalling 4 to 6 ounces of alcohol. Learning that his wife had spent the night with another man, he left his wife at her house, went to the motel where he had been staying and decided to commit suicide. He took 45 tablets of his anti-depressant and 15 sleeping pills. He sat down on a bed for five minutes and the next thing he remembered was waking up in the hospital the afternoon of the following day. Within one hour following the Appellant's consumption of drugs, he was the driver of a car involved in a motor vehicle accident, a few blocks from the motel where he had been staying. He failed to yield the right of way at a yield sign and collided with another vehicle. After the collision, his vehicle passed on through the intersection and struck another parked vehicle finally coming to a stop. Prior to the collision, the Appellant had been observed driving through two stop signs. The police arrived shortly after the accident. The Appellant was in the driver's seat and could not be roused. He was taken to hospital by which time he was unconscious. The Appellant was convicted as charged. His appeal to the Court of Appeal was dismissed. Harradence J.A. dissented on the issue of automatism.

The following is the issue raised in this appeal:

1.Whether the trial judge misdirected herself with respect to how extreme intoxication causing unconscious behaviour, such as occurred in this case, can in certain circumstances act as a defence or, alternatively, negative the mental requirement for the offence of impaired driving causing bodily harm.

Origin of the case:Alberta

File No:22739

Judgment of the Court of Appeal:November 16, 1991

Counsel:Alexander D. Pringle Q.C. for the Appellant

Jack Watson, Agent for the Attorney General for the Respondent

Factum of the Appellant:27 pages

22739 **EUGENE HONISH c. SA MAJESTÉ LA REINE**

Droit criminel - Preuve - Aliments et drogues - Infractions - Moyens de défense - État d'ébriété - Automatisme - *Mens rea* - La juge du procès a‑t‑elle tenu compte de considérations erronées quant à la manière dont l'intoxication extrême provoquant un comportement inconscient peut, dans certaines circonstances, offrir une défense ou, subsidiairement, effacer l'élément moral de l'infraction de conduite avec facultés affaiblies causant des lésions corporelles?

À la suite d'un accident au cours duquel son véhicule en a heurté un autre, blessant trois de ses occupants, l'appelant a été accusé de conduite avec facultés affaiblies. Récemment séparé de son épouse, il était déprimé. Son médecin lui avait prescrit un antidépresseur. L'appelant s'est rendu à la résidence de son épouse où il a bu trois ou quatre verres d'alcool totalisant 4 à 6 onces. Mis au courant qu'elle avait passé la nuit avec un autre homme, il a quitté la résidence, s'est rendu au motel où il logeait et il a décidé de se suicider. Il a absorbé 45 antidépresseurs et 15 somnifères. Il s'est assis sur un lit pendant cinq minutes, et il se souvient ensuite s'être réveillé à l'hôpital l'après‑midi du jour suivant. Dans l'heure qui a suivi sa consommation de médicaments, l'appelant a conduit une automobile impliquée dans un accident de véhicule moteur, à quelques pâtés du motel où il logeait. N'ayant pas cédé la priorité au signal, il est entré en collision avec un véhicule. Son véhicule a ensuite traversé une intersection avant de heurter un véhicule stationné et de s'immobiliser. Avant la collision, des personnes avaient vu l'appelant traverser deux signaux d'arrêt sans s'immobiliser. La police est arrivée peu après l'accident. L'appelant occupait le siège du conducteur et il était impossible de le réveiller. Il a été conduit à l'hôpital et, à son arrivée, il était inconscient. L'appelant a été déclaré coupable relativement aux accusations portées. La Cour d'appel a rejeté son appel, le juge Harradence étant dissident sur la question de l'automatisme.

Le présent pourvoi soulève la question suivante :

1.La juge du procès a‑t‑elle tenu compte de considérations erronées quant à la manière dont l'intoxication extrême provoquant un comportement inconscient, comme dans le cas en l'espèce, peut, dans certaines circonstances, offrir une défense ou, subsidiairement, effacer l'élément moral de l'infraction de conduite avec facultés affaiblies causant des lésions corporelles?

Origine :Alberta

No du greffe :22739

Arrêt de la Cour d'appel le 16 novembre 1991

Avocats :Alexander D. Pringle, c.r., pour l'appelant

Jack Watson, représentant du procureur général pour l'intimée

Mémoire de l'appelant 27 pages

22400 **GLEN IVOR JONES v. HER MAJESTY THE QUEEN**

*Canadian Charter of Rights and Freedoms* - Criminal law - Narcotics - Search and seizure - Was information for search warrant sufficient? - Validity of search warrant - Was search unreasonable? - Should evidence have been admitted under s. 24 of the *Charter*?

The Appellant was convicted of possession of a narcotic, Pentazocine (Talwin), for the purpose of trafficking. On February 15, 1990, a search warrant was issued, pursuant to s. 12 of the *Narcotic Control Act*, R.S.C., 1985, c. N-1, permitting the search of the Appellant's home, based on information received from a confidential, previously reliable, informant. The Information to Obtain Warrant recited this fact, as well as information that a person who had been charged with possession of narcotics, including Talwin, on February 8, 1990, in Saskatoon, had the Appellant's telephone number and name in his wallet.

The warrant was executed on February 19, 1990. The Appellant, following a demand, handed over a balloon containing 18 Talwin tablets, which had been hidden underneath his underwear. Police also found a briefcase containing cash and a notebook which contained entries consistent with records of drug sales. At his trial, an agreed statement of facts was filed, which indicates that, on July 29, 1989, the Appellant had filled a prescription for 24 Talwin tablets which had been authorized by a physician. The Appellant brought an application before the trial judge to have the warrant quashed and to have the evidence of the items seized excluded. This application was dismissed. The Appellant appealed to the Court of Appeal for Saskatchewan, which dismissed his appeal, Sherstobitoff J.A. dissenting. The Appellant appeals as of right on the issue forming the basis of the dissent.

Origin of the case: Saskatchewan

File No.: 22400

Judgment of the Court of Appeal: June 17, 1992

Counsel: William H. Roe for the Appellant

Bruce MacFarlane for the Respondent

Factum of the Appellant: 23 pages

22400**GLEN IVOR JONES c. SA MAJESTÉ LA REINE**

*Charte canadienne des droits et libertés* - Droit criminel - Stupéfiants - Fouille, perquisition et saisie - La dénonciation pour obtenir le mandat de perquisition était-elle suffisante? - Validité du mandat de perquisition - La perquisition était-elle abusive? - La preuve aurait-elle du être utilisée en vertu de l'art. 24 de la *Charte*?

L'appelant a été reconnu coupable de possession d'un stupéfiant, de la pentazocine (talwin), en vue d'en faire le trafic. Le 15 février 1990, un mandat de perquisition a été décerné en application de l'art. 12 de la *Loi sur les stupéfiants*, L.R.C. (1985), ch. N-1, autorisant la perquisition de la maison de l'appelant, sur la base de renseignements d'un informateur confidentiel qui s'était révélé fiable dans le passé. La dénonciation exposait ce fait et disait qu'une personne accusée de possession de stupéfiants, dont la talwin, le 8 février 1990 à Saskatoon, avait le nom et le numéro de téléphone de l'appelant dans son portefeuille.

Le mandat a été exécuté le 19 février 1990. Sur demande, l'appelant a remis un ballon caché dans son sous-vêtement, qui contenait 18 comprimés de talwin. La police a aussi trouvé une mallette contenant de l'argent et un carnet contenant des inscriptions compatibles avec des ventes de drogue. À son procès, un exposé conjoint des faits a été déposé, qui indique que, le 29 juillet 1989, l'appelant s'était procuré 24 comprimés de talwin sur ordonnance d'un médecin. L'appelant a demandé au juge du procès l'annulation du mandat et l'exclusion de la preuve des articles saisis. Sa demande a été rejetée. Il a interjeté appel à la Cour d'appel de la Saskatchewan qui a rejeté son appel, le juge Sherstobitoff étant dissident. L'appelant se pourvoit de plein droit sur la question qui est à la base de la dissidence.

Origine: Saskatchewan

No du greffe: 22400

Arrêt de la Cour d'appel: le 17 juin 1992

Avocats: William H. Roe pour l'appelant

Bruce MacFarlane pour l'intimée

Mémoire de l'appelant: 23 pages

22593**MARC CREIGHTON v. HER MAJESTY THE QUEEN**

*Canadian Charter of Rights and Freedoms* - Criminal law - Interpretation - Evidence - Manslaughter - Death caused by an unlawful act - Criminal negligence - Interpretation of s. 222(5)(a) of the *Criminal Code*.

Over a period of approximately 18 hours, beginning in the evening of October 26, 1989, the Appellant, a companion (Frank Cadeddu) and the victim shared a quantity of cocaine while together at the victim's apartment. The cocaine was consumed by means of intravenous injection using a syringe. At approximately 1:30 p.m., on October 27, 1989, the victim collapsed and suffered cardiac arrest after being injected with cocaine by the Appellant. The latter was charged with manslaughter.

It was conceded by the defence that the injection of the drug amounted to "trafficking" within the meaning of s. 4(1) of the *Narcotic Control Act*, R.S.C. 1985, c. N-1. The theory of the Crown was that the Appellant was guilty of manslaughter in that he caused the death of the victim by an unlawful act, contrary to s. 222(5)(a) of the *Criminal Code*.

The trial judge found him guilty of manslaughter and sentenced him to four years imprisonment. The Court of Appeal dismissed the Appellant's appeal. The Appellant was granted leave to appeal to the Supreme Court. On February 11, 1992, the Chief Justice stated the following constitutional question:

1.Does the common law definition of unlawful act manslaughter contravene section 7 of the *Canadian Charter of Rights and Freedoms*?

The Appellant raises the following issue:

2.Did the Court of Appeal for Ontario err in holding that the conviction could be supported on the alternative basis of criminal negligence?

Origin of the case: Ont.

File No.: 22593

Judgment of the Court of Appeal: June 12, 1991

Counsel: Rosen, Fleming, for the Appellant

The Attorney General for the

Province of Ontario for the Respondent

Factum of the Appellant: 25 pages

22593  **MARC CREIGHTON c. SA MAJESTÉ LA REINE**

*Charte canadienne des droits et libertés* - Droit criminel - Interprétation - Preuve - Homicide involontaire coupable - La mort causée par un acte illégal - Négligence criminelle - Interprétation de l'art. 222(5)*a*) du *Code criminel*.

Sur une période d'environ 18 heures commençant le 26 octobre 1989 en soirée, l'appelant, un compagnon (Frank Cadeddu) et la victime ont partagé une certaine quantité de cocaïne dans l'appartement de la victime. Ils ont consommé la cocaïne par injection intraveineuse au moyen d'une seringue. Vers 13 h 30, le 27 octobre 1989, la victime s'est affaissée et a subi un arrêt cardiaque après que l'appelant lui eut injecté de la cocaïne. L'appelant a été accusé d'homicide involontaire coupable.

La défense a reconnu que l'injection de la drogue constituait un «trafic» au sens du par. 4(1) de la *Loi sur les stupéfiants*, L.R.C. (1985), ch. N-1. Selon la thèse du ministère public, l'appelant était coupable d'homicide involontaire coupable du fait d'avoir causé la mort de la victime par un acte illégal, contrevenant ainsi à l'al. 222(5)*a*) du *Code criminel*.

Le juge du procès a déclaré l'appelant coupable d'homicide involontaire coupable et l'a condamné à quatre ans de prison. La Cour d'appel a rejeté l'appel interjeté par l'appelant. Celui-ci a reçu l'autorisation de se pourvoir devant la Cour suprême. Le 11 février 1992, le Juge en chef a formulé la question constitutionnelle suivante :

1.La définition en common law de l'homicide involontaire coupable résultant d'un acte illégal enfreint-elle l'art. 7 de la *Charte canadienne des droits et libertés*?

L'appelant soulève la question suivante :

2.Est-ce à tort que la Cour d'appel de l'Ontario a conclu que la déclaration de culpabilité pouvait se fonder à titre subsidiaire sur la négligence criminelle?

Origine : Ontario

No du greffe : 22593

Arrêt de la Cour d'appel : Le 12 juin 1991

Avocats : Rosen, Fleming pour l'appelant

Le procureur général de la

province d'Ontario pour l'intimée

Mémoire de l'appelant : 25 pages

22578**HER MAJESTY THE QUEEN v. HENRY MORGENTALER**

Constitutional Law - Criminal Law - Division of powers - Interpretation - Abortion.

The Respondent was charged with performing 14 therapeutic abortions, other than in a hospital approved as a hospital pursuant to the *Hospital Act*, contrary to the *Medical Services Act*, R.S.N.S. 1989, c. 281, and regulations made thereunder.

The Respondent argued that the pith and substance of the Act was to prevent him from opening an abortion clinic in Nova Scotia and that the Act was a disguised attempt to encroach on the exclusive jurisdiction of the Federal Parliament to enact legislation regulating abortion, a matter considered to be criminal law. The Appellant argued that, despite its incidental criminal aspect, the pith and substance of the law was about management of hospitals because it ensured the delivery of services therein, about civil rights because it dictated the use of property in the province, and about matters of local nature because it addressed matters that were peculiar to Nova Scotia.

The Provincial Court found that the *Medical Services Act* and the regulations made under it were invalid as *ultra vires* the government of Nova Scotia. The Appellant appealed the decision. The Supreme Court of Nova Scotia, Appeal Division, dismissed the appeal, Jones J.A. dissenting. The Appellant was granted leave to appeal to the Supreme Court. On February 18, 1992, the Chief Justice stated the following constitutional questions.

1.Is the *Medical Services Act*, R.S.N.S. 1989, c. 281, *ultra vires* the Legislature of the Province of Nova Scotia on the ground that the Act is legislation in relation to criminal law falling within the exclusive legislative jurisdiction of the Parliament of Canada under s. 91 (27) of the *Constitution Act, 1867*?

2.Is the *Medical Services Designation Regulation*, N.S. Reg. 152/89, made on the 20th day of July, 1989, pursuant to s. 8 of the *Medical Services Act*, R.S.N.S. 1989, c. 281, *ultra vires* the Lieutenant Governor in Council on the ground the Regulation was made pursuant to legislation in relation to criminal law falling within the exclusive legislative jurisdiction of the Parliament of Canada under s. 91 (27) of the *Constitution Act, 1867*?

Origin of the case: Nova Scotia

File No.: 22578

Judgment of the Court of Appeal: July 5, 1991

Counsel: Marian F.H. Tyson and Louise Walsh Poirier

for the Appellant

Anne S. Derrick for the Respondent

Appellant's factum: 40 pages

22578 **SA MAJESTÉ LA REINE c. HENRY MORGENTALER**

Droit constitutionnel - Droit criminel - Partage des pouvoirs - Interprétation - Avortement.

L'intimé a été accusé d'avoir pratiqué 14 avortements thérapeutiques dans un endroit autre qu'un hôpital approuvé en vertu de la *Hospital Act* et d'avoir ainsi violé la *Medical Services Act*, R.S.N.S. 1989, ch. 281, et un règlement pris sous son régime.

L'intimé a fait valoir que de par son caractère véritable la Loi visait à l'empêcher d'ouvrir une clinique d'avortement en Nouvelle-Écosse et qu'elle constituait une tentative déguisée d'empiéter sur la compétence exclusive du Parlement du Canada de légiférer en matière d'avortement, domaine qui est considéré comme relevant du droit criminel. L'appelante a soutenu que, malgré son aspect accessoirement pénal, la loi portait, selon son caractère véritable, sur l'administration d'hôpitaux parce qu'elle assurait la prestation de services dans ces institutions, sur les droits civils parce qu'elle concernait l'affectation de biens dans la province, et sur des matières de nature locale parce qu'elle traitait de sujets intéressant proprement la Nouvelle‑Écosse.

La Cour provinciale a conclu à l'invalidité de la *Medical Services Act* et du règlement pris sous son régime parce qu'ils excédaient la compétence du gouvernement de la Nouvelle‑Écosse. L'appelante a interjeté appel de cette décision, mais a été déboutée par la Section d'appel de la Cour suprême de la Nouvelle‑Écosse, le juge Jones étant dissident. L'appelante a obtenu l'autorisation de se pourvoir devant la Cour suprême du Canada. Le 18 février 1992, le Juge en chef a formulé les questions constitutionnelles suivantes :

1.La *Medical Services Act*, R.S.N.S. 1989, ch. 182, excède-t-elle la compétence de la législature de la province de la Nouvelle‑Écosse pour le motif que cette loi touche au droit criminel, une matière qui relève de la compétence législative exclusive du Parlement du Canada, en vertu du par. 91(27) de la *Loi constitutionnelle de 1867*?

2.Le *Medical Services Designation Regulation*, N.S. Reg. 152/89, pris le 20 juillet 1989, conformément à l'art. 8 de la *Medical Services Act*, R.S.N.S. 1989, ch. 281, excède-t-il la compétence du lieutenant-gouverneur en conseil pour le motif que ce règlement a été pris conformément à une loi touchant au droit criminel, une matière qui relève de la compétence législative exclusive du Parlement du Canada, en vertu du par. 91(27) de la *Loi constitutionnelle de 1867*?

Origine : Nouvelle-Écosse

No du greffe : 22578

Arrêt de la Cour d'appel : Le 5 juillet 1991

Avocats : Marian F.H. Tyson et Louise Walsh Poirier

pour l'appelante

Anne S. Derrick pour l'intimé

Mémoire de l'appelante : 40 pages

22790 **J.J.M. v. HER MAJESTY THE QUEEN**

Criminal law ‑ Statutes ‑ Young offenders ‑ Sentencing ‑ Interpretation ‑ Appellant pleading guilty to three counts of break, enter and theft ‑ Provincial Court of Manitoba sentencing the Appellant to two years of open custody concurrent on all counts ‑ Whether the Court of Appeal erred in their interpretation and application of the principles of sentencing of young offenders, as governed by the *Young Offenders Act*, R.S.C. 1985, c. Y‑1.

The Appellant was charged with three separate counts of break, enter and theft. At the time of the offenses, the Appellant was 14 years old and on probation for similar offenses committed in 1990. The offenses, involving vandalism, were committed in offices or community buildings by the Appellant accompanied by others. The Appellant pleaded guilty to all charges and Gyles J. of the Provincial Court for Manitoba sentenced him to two years of open custody concurrent on all charges. The Appellant appealed his sentence to the Court of Appeal which dismissed the appeal. Helper J.A. dissented.

Origin of the case: Manitoba

File No.: 22790

Judgment of the Court of Appeal: October 28, 1991

Counsel: M.O. Walker for the Appellant

D. Slough for the Respondent

22790 **J.J.M. c. SA MAJESTÉ LA REINE**

Droit criminel - Lois - Jeunes contrevenants - Détermination de la peine - Interprétation -L'appelant a plaidé coupable relativement à trois chefs d'accusation d'introduction par effraction et de vol - La Cour provinciale du Manitoba a condamné l'appelant à deux ans de garde en milieu ouvert à purger de façon concurrente relativement à tous les chefs - La Cour d'appel a-t-elle commis une erreur dans son interprétation et son application des principes de détermination de la peine des jeunes contrevenants, selon la *Loi sur les jeunes contrevenants*, L.R.C. (1985), ch. Y-1?

L'appelant a été accusé relativement à trois chefs distincts d'introduction par effraction et de vol. Lors de la perpétration des infractions, l'appelant était âgé de 14 ans et était visé par une ordonnance de probation relativement à des infractions similaires commises en 1990. L'appelant et ses acolytes ont commis les infractions en question, y compris du vandalisme, dans des bureaux ou des édifices publics. L'appelant a plaidé coupable relativement à toutes les accusations et le juge Gyles de la Cour provinciale du Manitoba l'a condamné à deux ans de garde en milieu ouvert relativement à toutes les accusations. L'appelant a interjeté appel de la peine à la Cour d'appel qui a rejeté l'appel; le juge Helper était dissident.

Origine: Manitoba

No du greffe: 22790

Arrêt de la Cour d'appel: Le 28 octobre 1991

Avocats: M.O. Walker pour l'appelant

D. Slough pour l'intimée

**22725HER MAJESTY THE QUEEN v. BERNHARD HASSELWANDER**

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.

The Respondent applied to the local registrar of firearms to register his Mini-Uzi submachine gun as a restricted weapon. After examining the weapon, the local registrar determined that it was a prohibited weapon under the *Criminal Code* and he seized it. The local registrar of firearms then applied to the Ontario Provincial Court for a declaration under s. 102(3) of the *Criminal Code* that the seized Mini-Uzi be forfeited to the Appellant. Payne P.C.J. ruled that the Mini-Uzi was a prohibited weapon within the meaning of s. 84(1) of the *Criminal Code* and he ordered the said weapon be forfeited to the Appellant for disposition as the Attorney General may direct. The Respondent appealed to the District Court of Ontario, which dismissed the appeal. The Respondent's further appeal to the Court of Appeal for Ontario was allowed. The Appellant appeals to this Court by leave.

The following are the issues raised in this appeal:

1.Did the Court of Appeal for Ontario err in principle when, in the course of determining the meaning of the phrase "capable of firing bullets in rapid succession during one pressure of the trigger" in s. 84(1) of the *Criminal Code*, it refused to consider the mischief the firearms control provisions were enacted to suppress?

2.Did the Court of Appeal for Ontario err when it disregarded a cardinal rule of statutory interpretation requiring ambiguity in a statute to be resolved in favour of carrying out the purpose of the legislation in favour of a subordinate rule which says that a difference in the language of a statute raises a presumption of a change in intention?

3.Did the Court of Appeal for Ontario err in law when it held that the word "capable" in s. 84(1) referred to the "present capacity" of a weapon rather than that weapon's "inherent and readily accessible capacity"?

4.What is the effect on this problem of the recent amendments to the *Criminal Code* which became law on August 1, 1992?

Origin of the case: Ontario

File No.: 22725

Judgment of the Court of Appeal: August 21, 1991

Counsel: Brian McNeely for the Appellant

Calvin Martin, Q.C., for the Respondent

Factum of the Appellant: 20 pages

Factum of the Respondent: 13 pages

22725 **SA MAJESTÉ LA REINE c. BERNHARD HASSELWANDER**

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.

L'intimé a présenté au registraire local d'armes à feu une demande pour l'enregistrement de sa mitraillette Mini-Uzi comme arme à autorisation restreinte. Après avoir examiné l'arme, le registraire local a déterminé qu'il s'agissait d'une arme prohibée en vertu du *Code criminel* et l'a saisie. Le registraire local a ensuite présenté une demande auprès de la Cour provinciale de l'Ontario pour qu'elle déclare, en vertu du par. 102(3) du *Code criminel*, la Mini-Uzi confisquée au profit de l'appelante. Le juge Payne de la Cour provinciale a conclu que la Mini-Uzi constituait une arme prohibée au sens du par. 84(1) du *Code criminel* et il a ordonné que ladite arme soit confisquée au profit de l'appelante pour qu'elle en dispose ainsi que l'ordonne le procureur général. L'intimé a interjeté appel à la Cour de district de l'Ontario, qui a rejeté l'appel. Il a ensuite interjeté un autre appel auprès de la Cour d'appel de l'Ontario qui l'a accueilli. L'appelante a reçu l'autorisation de se pourvoir devant notre Cour.

Voici les questions soulevées par le présent pourvoi:

1.Dans son interprétation de l'expression «pouvant tirer rapidement plusieurs balles pendant la durée d'une pression sur la détente» du par. 84(1) du *Code criminel*, la Cour d'appel de l'Ontario a-t-elle commis une erreur de principe en refusant de tenir compte du méfait que les dispositions sur le contrôle des armes à feu visaient à supprimer?

2.La Cour d'appel de l'Ontario a-t-elle commis une erreur lorsqu'elle n'a pas tenu compte d'une règle d'interprétation fondamentale selon laquelle une ambiguïté dans une loi doit être interprétée de façon à favoriser l'objet de la loi, et a plutôt appliqué une règle accessoire selon laquelle une différence dans le texte d'une loi laisse présumer un changement d'intention?

3.La Cour d'appel de l'Ontario a-t-elle commis une erreur de droit lorsqu'elle a conclu que le terme «pouvant» mentionné au paragraphe 84(1) porte sur la [TRADUCTION] «capacité actuelle» d'une arme plutôt que sur la [TRADUCTION} «capacité inhérente et possible» de l'arme?

4.Quelle est l'incidence des récentes modifications apportées au *Code criminel*, entrées en vigueur le 1er août 1992, sur le problème soulevé?

Origine: Ontario

No du greffe: 22725

Arrêt de la Cour d'appel: Le 21 août 1991

Avocats: Brian McNeely pour l'appelante

Calvin Martin, c.r., pour l'intimé

Mémoire de l'appelante: 20 pages

Mémoire de l'intimé: 13 pages

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| **SCHEDULE RE MOTIONS BEFORE THE COURT** | **CALENDRIER DES REQUÊTES À LA COUR** |

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| 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: | 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: |
| **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 | **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 |
| **BEFORE A JUDGE OR THE REGISTRAR:** | **DEVANT UN JUGE OU LE REGISTRAIRE:** |

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| 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 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. |

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| **REQUIREMENTS FOR FILING A CASE** | **PRÉALABLES EN MATIÈRE DE PRODUCTION** |

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| Pursuant to the *Supreme Court Act* and *Rules*, the following requirements for filing must be complied with before an appeal will be inscribed and set down for hearing: | Conformément à la *Loi sur la Cour suprême* et aux *Règles*, il faut se conformer aux exigences suivantes avant qu'un appel puisse être inscrit pour audition: |

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| **Case on appeal** must be filed within three months of the filing of the notice of appeal. | **Le dossier d'appel** doit être déposé dans les trois mois du dépôt de l'avis d'appel. |

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| **Appellant's factum** must be filed within five months of the filing of the notice of appeal. | **Le mémoire de l'appelant** doit être déposé dans les cinq mois du dépôt de l'avis d'appel. |

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| **Respondent's factum** must be filed within eight weeks of the date of service of the appellant's factum. | **Le mémoire de l'intimé** doit être déposé dans les huit semaines suivant la signification de celui de l'appelant. |

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| **Intervener's factum** must be filed within two weeks of the date of service of the respondent's factum. | **Le mémoire de l'intervenant** doit être déposé dans les deux semaines suivant la signification de celui de l'intimé. |
| The Registrar shall inscribe the appeal for hearing upon the filing of the respondent's factum or after the expiry of the time for filing the respondent's factum | Le registraire inscrit l'appel pour audition après le dépôt du mémoire de l'intimé ou à l'expiration du délai de signification du mémoire de l'intimé. |

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| 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. | 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. |

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| 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. | 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. |