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FILING DATE 30.11.1992

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David Harris

Carter & Minden, for Lepine

James Lockyer

Pinkofsky, Lockyer, Kwinter, for Jeffreys

v. (23059 - 026 - 061)

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

A. G. of Canada

FILING DATE 1.12.1992

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

**DECEMBER 7, 1992 / LE 7 DÉCEMBRE 1992**

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

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

**Alain Robitaille**

**v. (23292)**

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

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Trial procedure - Charge to the jury - Did the Court of Appeal err in law in concluding that the exhortation to the jury did not amount to coercion of the jury and a usurpation of their function in infringement of s. 11(d) of the *Charter*? - Whether the Court of Appeal erred in law in concluding that the trial judge's comments on reasonable doubt in his charge and exhortation to the jury did not result in an unfair trial for the Applicant in violation of s. 11(d) of the *Charter* - Whether the Court of Appeal erred in law in concluding that the opinions expressed by the trial judge about the evidence of the defence witness in his charge to and answers to questions from the jury did not deprive the Applicant of a fair trial in infringement of s. 11(d) of the *Charter of Rights and Freedoms*.

**PROCEDURAL HISTORY**

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| --- | --- |
| May 4, 1990  County Court of Vancouver  (Wetmore J.) | Conviction: robbery and use of firearm in commission of an offence |

|  |  |
| --- | --- |
| April 28, 1992  Court of Appeal of British Columbia  (Locke, Proudfoot and Gibbs JJ.A.) | Appeal dismissed |

|  |  |
| --- | --- |
| November 13, 1992  Supreme Court of Canada | Application for leave to appeal and for an extension of time filed |

**Darryl Reginald Eyford**

**v. (23295)**

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

**NATURE OF THE CASE**

Criminal law - Evidence - Pre-trial procedure - Jury selection - Was the jury properly constituted pursuant to the *Criminal Code*? - Whether the Court of Appeal erred in holding that the trial judge had jurisdiction to enquire behind the record to determine whether the jury was properly constituted - Whether the Court of Appeal erred in holding that the trial judge did not err in failing to state the standard of proof in his determinations and that the Court of Appeal could substitute their determination for that of the trial judge on what may have been a different standard of proof - Whether the Court of Appeal erred in holding that the trial judge did not err in discussing matters of substance and credibility with a potential witness outside of the presence of the Applicant - Whether s. 686 of the *Criminal Code* could be applied.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| October 22, 1990  Supreme Court of British Columbia  (Murray J.) | Order: jury validly constituted |

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| --- | --- |
| September 14, 1992  Court of Appeal for British Columbia  (McEachern C.J.B.C., Wood and  Gibbs JJ.A.) | Appeal dismissed |

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

**Robert Perreault**

**c. (23285)**

**Sa Majesté la Reine (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

*Charte canadienne des droits et libertés* - Droit criminel - Police - Preuve - Arrestation sans mandat - Quels éléments la police doit-elle mettre en preuve lors du procès pour établir l'existence des motifs raisonnables et probables qui ont, selon elle, justifié l'arrestation sans mandat? - La Cour d'appel a-t-elle erré en droit en concluant que l'arrestation sans mandat du demandeur était légale? - Art. 1, 7, 9 et 24(2) de la *Charte*.

**HISTORIQUE PROCÉDURAL**

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| --- | --- |
| Le 18 mai 1990  Cour supérieure du Québec  (Steinberg j.c.s.) | Verdict: demandeur reconnu coupable de meurtre au premier degré |

|  |  |
| --- | --- |
| Le 10 août 1992  Cour d'appel du Québec  (Beauregard, Nichols et  Moisan [*ad hoc*], jj.c.a.) | Pourvoi rejeté |

|  |  |
| --- | --- |
| Le 2 novembre 1992  Cour suprême du Canada | Demande d'autorisation d'appel déposée |

**Wes Kirk**

**v. (23293)**

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

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms -* Evidence - Offences - Interpretation - Applicant police officer prohibited from possessing firearms - Whether s. 100(1) of the *Criminal Code* infringes s. 12 of the *Canadian Charter of Rights and Freedoms* - Whether if, as applied to the Applicant, section 100(1) violates s. 12 of the *Charter* and is not saved by virtue of s. 1 of the *Charter*.

**PROCEDURAL HISTORY**

|  |  |
| --- | --- |
| January 15, 1992  Provincial Court, Criminal Division  (Laing, Prov. Ct. J.) | Conviction: S. 267(1) of the *Criminal Code*, assault causing bodily harm. S. 100(1) order prohibiting Applicant from possessing any firearm, ammunition or other explosive device |
| March 20, 1992  Court of Appeal for Ontario  (Krever, Galligan and Doherty JJ.A.) | S. 100(1) order stayed pending determination of the appeal |
|  |  |
|  |  |
| October 7, 1992  Court of Appeal for Ontario  (Houlden, Tarnopolsky and Austin JJ.A.) | Appeal dismissed |

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

**Willmor Discount Corporation**

**v. (23220)**

**Ville de Vaudreuil (Qué.)**

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

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| --- | --- |
| March 8, 1988  Superior Court of Quebec  (Vaillancourt J.) | Action dismissed |

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| --- | --- |
| June 15, 1992  Court of Appeal of Quebec  (McCarthy, Vallerand and  Rousseau-Houle JJ.A.) | Appeal dismissed |

|  |  |
| --- | --- |
| October 15, 1992  Supreme Court of Canada | Application for leave to appeal filed |

**CORAM: LA FOREST, SOPINKA AND CORY JJ. /**

**LES JUGES LA FOREST, SOPINKA ET CORY**

**Her Majesty the Queen**

**v. (23202)**

**John James Baker (Crim.)(Nfld.)**

NATURE OF THE CASE

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Procedural law - Trials - Whether the Court of Appeal erred in concluding that a second trial after the ordering of a mistrial would violate s. 7 of the *Canadian Charter of Rights & Freedoms* - Whether the Court of Appeal erred in holding that a proper determination of whether a stay of proceedings should be entered could be made at the beginning of the trial and prior to any evidence of possible prejudice being considered - Whether the Court of Appeal erred in holding that a stay of proceedings was an appropriate remedy considering that the mistrial was caused solely by the trial judge's error, there was no evidence of any prejudice to the Respondent and there were a number of other remedies that would have been appropriate.

**PROCEDURAL HISTORY**

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| --- | --- |
| January 18, 1991  Supreme Court of Newfoundland,  Trial Division  (Lang J.) | Mistrial declared; new trial ordered |

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| --- | --- |
| April 30, 1991  Supreme Court of Newfoundland,  Trial Division  (Aylward J.) | Order: stay of proceedings |

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| --- | --- |
| June 25, 1992  Court of Appeal of Newfoundland  (Goodridge C.J.N., Gushue and  O'Neill JJ.A.) | Appeal dismissed |

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

**David Pearlman and Esther Pearlman**

**v. (23008)**

**The City of Winnipeg, Dr. Roper G. Cadham and Edward Grabinski and**

**R.A. Harris and The City of Winnipeg (Man.)**

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

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| --- | --- |
| November 1, 1989  Court of Queen's Bench  (Hirschfield J.) | Applicants' actions dismissed |

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| February 21, 1992  Court of Appeal for Manitoba  (O'Sullivan [dissenting] and Huband and Helper JJ.A.) | Appeal dismissed |

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| --- | --- |
| May 19, 1992  Supreme Court of Canada | Application for leave to appeal filed |

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| --- | --- |
| October 16, 1992  Court of Appeal for Manitoba  (O'Sullivan, Huband and Helper JJ.A.) | Application for leave to appeal to the Supreme Court of Canada dismissed |

|  |  |
| --- | --- |
| December 1, 1992  Supreme Court of Canada  (Iacobucci J.) | Application for extension of time for leave to appeal to the Supreme Court of Canada granted |

**The Friends of the Athabasca Environmental Association**

**and the Prosperity Environmental Association**

**v. (23208)**

**Jerry Lack, Director of Standards and Approvals, Her Majesty the**

**Queen in right of Alberta and Alberta-Pacific Forest Industries Inc. (Alta.)**

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

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| June 25, 1991  Court of Queen's Bench  (Agrios J.) | Application for judicial review dismissed |

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| --- | --- |
| June 17, 1992  Court of Appeal of Alberta  (Kerans, Hetherington and Irving JJ.A.) | Appeal dismissed |

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

**337965 B.C. Ltd., #90 Sail View Ventures Limited Partnership, Mary Hall, 337964 B.C. Ltd., Jeanette Florence Athey, 338168 B.C. Ltd., 338372 B.C. Ltd., 337963 B.C. Ltd., Norman S. Elliott, 338226 B.C. Ltd., 336493 B.C. Ltd., 324183 B.C. Ltd., Norman C. Franz, K. Lyndsay Fukushima, Kurt Gagel, Yvonne Marie Hilliard, Helen Houle, Shirley J. Houle, Nancy Margaret Houle, Gordon C. Hunter, Carmyn L. James, James L. Janes, Myriam Paquin, Elaine F. Kuwica, Bessie Lashin, Rolf Maijer, Susan McMillan, Henfrey Samson Belair Ltd. Trustee in Bankruptcy of the Estate of Robert G. Mercer, Carolyn Millar, Aline C. Pighin, 338370 B.C. Ltd., Staulo Management Ltd., Lorraine Marie Ritchie, 338371 B.C. Ltd., Marilyn Elizabeth Snelgrove, J. Desmond Devlin, Peter Fluckiger, Lorraine M. Helmer, John S. McKercher, William S. Swanson**

**v. (23139)**

**Tackama Forest Products Ltd., Tackama Plywood Corporation, Royal Bank of Canada, Alfor II Forest Products Limited Partnership (B.C.)**

**NATURE OF THE CASE**

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

**PROCEDURAL HISTORY**

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| --- | --- |
| June 10, 1991  British Columbia Supreme Court  (Hood J.) | Action allowed: Respondent Tackama liable to account for profits |
| May 11, 1992  Court of Appeal for British Columbia  (Toy [dissenting], Southin and  Gibbs JJ.A.) | Appeal allowed |
|  |  |
| September 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**

REVISED / RÉVISÉE

**Sa Majesté La Reine**

**c. (23254)**

**Horacio Callejas (Crim.)(Qué.)**

**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?

**HISTORIQUE PROCÉDURAL**

|  |  |
| --- | --- |
| Le 10 avril 1989  Cour du Québec, chambre  criminelle et pénale  (Vincent J.C.Q.) | Culpabilité: Tentative de meurtre; possession d'arme en vue de commettre une infraction; |

|  |  |
| --- | --- |
| Le 11 août 1992  Cour d'appel du Québec  (Tyndale, Mailhot et  Rousseau-Houle, JJ.A. | Appel accueilli;  Culpabilité: voies de fait graves |

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| --- | --- |
| Le 30 octobre 1992  Cour suprême du Canada | Demande d'autorisation d'appel déposée |

**Michel Hardouin**

**c. (23261)**

**Commission d'appel en matière de lésions professionnelles et Réal Brassard**

**et**

**Canadair Ltd. (Qué.)**

**NATURE DE LA CAUSE**

Droit du travail - Compétence - Appel - Contrôle judiciaire - Preuve - Accidents du travail et maladies professionnelles - Lésions professionnelles - Présomption - Condition personnelle préexistante - Événement imprévu et soudain - Cas d'application - La limite du pouvoir d'intervention des tribunaux judiciaires dans les décisions de la Commission d'appel en matière de lésions professionnelles et de ses commissaires - La notion d'erreur déraisonnable, particulièrement dans la détermination de ce que sont un accident du travail et une lésion professionnelle, par application des définitions données à l'article 2 de la *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., ch. A-3.001 - La portée de la présomption édictée à l'article 28 de la *Loi*, cette disposition étant de droit nouveau.

**HISTORIQUE PROCÉDURAL**

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| --- | --- |
| Le 2 mai 1986  Commission de la santé et de la sécurité du travail | Réclamation du demandeur accordée |

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| --- | --- |
| Le 17 septembre 1986  Bureau de révision paritaire | Décision de la C.S.S.T. cassée |

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| --- | --- |
| Le 26 juin 1987  Commission d'appel en matière de lésions professionnelles | Appel du demandeur rejeté |

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| Le 1 octobre 1987  Cour supérieure du Québec  (Piché j.c.s.) | Requête en évocation rejetée |

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| --- | --- |
| Le 2 juillet 1992  Cour d'appel du Québec  (Bisson, j.c.Q., et Dubé, Gendreau, Mailhot, Fish, jj.c.a.) | Appel rejeté |

|  |  |
| --- | --- |
| Le 29 octobre 1992  Cour suprême du Canada | Demande d'autorisation d'appel déposée |

**Hydro-Québec**

**c. (23263)**

**Jean Desrochers**

**et**

**Commission d'appel en matière de lésions professionnelles et Jean-Marc Dubois et Commission de la santé et de la sécurité du travail (Qué.)**

**NATURE DE LA CAUSE**

Droit du travail - Compétence - Appel - Contrôle judiciaire - Preuve - Accidents du travail et maladies professionnelles - Lésions professionnelles - Présomption - Condition personnelle préexistante - Événement imprévu et soudain - Cas d'application - La limite du pouvoir d'intervention des tribunaux judiciaires dans les décisions de la Commission d'appel en matière de lésions professionnelles et de ses commissaires - La notion d'erreur déraisonnable, particulièrement dans la détermination de ce que sont un accident du travail et une lésion professionnelle, par application des définitions données à l'article 2 de la *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., ch. A-3.001 - La portée de la présomption édictée à l'article 28 de la *Loi*, cette disposition étant de droit nouveau.

**HISTORIQUE PROCÉDURAL**

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| --- | --- |
| Le 29 janvier 1987  Commission de la santé et de la sécurité du travail | Réclamation de l'intimé accordée |

|  |  |
| --- | --- |
| Le 14 avril 1987  Bureau de révision paritaire | Décision de la C.S.S.T. confirmée |

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| --- | --- |
| Le 11 novembre 1988  Commission d'appel en matière de lésions professionnelles | Appel de la demanderesse rejeté |

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| --- | --- |
| Le 31 mai 1989  Cour supérieure du Québec  (Meyer j.c.s.) | Requête en évocation accueillie |

|  |  |
| --- | --- |
| Le 2 juillet 1992  Cour d'appel du Québec  (Bisson, j.c.Q., et Dubé, Gendreau, Mailhot [dissidente], Fish, jj.c.a.) | Appel de l'intimé accueilli |

|  |  |
| --- | --- |
| Le 30 octobre 1992  Cour suprême du Canada | Demande d'autorisation d'appel déposée |

**Société de transport de la communauté urbaine de Montréal**

**c. (23265)**

**Jean Chaput**

**et**

**Commission d'appel en matière de lésions professionnelles et Jacques-Guy**

**Béliveau et Commission de la Santé et de la Sécurité du Travail (Qué.)**

**NATURE DE LA CAUSE**

Droit du travail - Compétence - Appel - Contrôle judiciaire - Preuve - Accidents du travail et maladies professionnelles - Lésions professionnelles - Présomption - Condition personnelle préexistante - Événement imprévu et soudain - Cas d'application - La limite du pouvoir d'intervention des tribunaux judiciaires dans les décisions de la Commission d'appel en matière de lésions professionnelles et de ses commissaires - La notion d'erreur déraisonnable, particulièrement dans la détermination de ce que sont un accident du travail et une lésion professionnelle, par application des définitions données à l'article 2 de la *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., ch. A-3.001 - La portée de la présomption édictée à l'article 28 de la *Loi*, cette disposition étant de droit nouveau.

**HISTORIQUE PROCÉDURAL**

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| --- | --- |
| Le 5 mars 1987  Commission de la santé et de la sécurité du travail | Réclamation de l'intimée refusée |

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| --- | --- |
| Le 29 mai 1987  Bureau de révision paritaire | Décision de la C.S.S.T. confirmée |

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| --- | --- |
| Le 14 juin 1989  Commission d'appel en matière de lésions professionnelles | Appel accueilli |

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| Le 7 février 1990  Cour supérieure du Québec  (Dionne j.c.s.) | Requête en évocation accueillie |

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| --- | --- |
| Le 2 juillet 1992  Cour d'appel du Québec  (Bisson, j.c.Q., et Dubé, Gendreau, Mailhot [dissidente], Fish, jj.c.a.) | Appel accueilli |

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| --- | --- |
| Le 30 octobre 1992  Cour suprême du Canada | Demande d'autorisation d'appel déposée |

**Diane Robichaud**

**c. (23269)**

**Société canadienne des postes**

**et**

**Commission d'appel en matière de lésions professionnelles et Réal Brassard**

**et Commission de la santé et de la sécurité du travail (Qué.)**

**NATURE DE LA CAUSE**

Droit du travail - Compétence - Appel - Contrôle judiciaire - Preuve - Accidents du travail et maladies professionnelles - Lésions professionnelles - Présomption - Condition personnelle préexistante - Événement imprévu et soudain - Cas d'application - La limite du pouvoir d'intervention des tribunaux judiciaires dans les décisions de la Commission d'appel en matière de lésions professionnelles et de ses commissaires - La notion d'erreur déraisonnable, particulièrement dans la détermination de ce que sont un accident du travail et une lésion professionnelle, par application des définitions données à l'article 2 de la *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., ch. A-3.001 - La portée de la présomption édictée à l'article 28 de la *Loi*, cette disposition étant de droit nouveau.

**HISTORIQUE PROCÉDURAL**

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| Le 20 août 1986  Commission de la santé et de la sécurité du travail | Réclamation de la demanderesse accordée |

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| Le 17 décembre 1986  Bureau de révision paritaire | Décision de la C.S.S.T. cassée |

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| --- | --- |
| Le 11 janvier 1988  Commission d'appel en matière de lésions professionnelles | Appel accueilli |
| Le 6 août 1990  Cour supérieure du Québec  (Mass j.c.s.) | Requête en évocation accueillie |

|  |  |
| --- | --- |
| Le 2 juillet 1992  Cour d'appel du Québec  (Bisson, j.c.Q., et Dubé, Gendreau, Mailhot, Fish, jj.c.a.) | Appel rejeté |

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| --- | --- |
| Le 30 octobre 1992  Cour suprême du Canada | Demande d'autorisation d'appel déposée |

**Marcel Lavigne**

**c. (23270)**

**Centre Hospitalier des Laurentides**

**et**

**Commission d'appel en matières de lésions professionnelles et**

**Jacques-Guy Béliveau (Qué.)**

**NATURE DE LA CAUSE**

Droit du travail - Compétence - Appel - Contrôle judiciaire - Preuve - Accidents du travail et maladies professionnelles - Lésions professionnelles - Présomption - Condition personnelle préexistante - Événement imprévu et soudain - Cas d'application - La limite du pouvoir d'intervention des tribunaux judiciaires dans les décisions de la Commission d'appel en matière de lésions professionnelles et de ses commissaires - La notion d'erreur déraisonnable, particulièrement dans la détermination de ce que sont un accident du travail et une lésion professionnelle, par application des définitions données à l'article 2 de la *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., ch. A-3.001 - La portée de la présomption édictée à l'article 28 de la *Loi*, cette disposition étant de droit nouveau.

**HISTORIQUE PROCÉDURAL**

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| Le 31 août 1988  Commission de la santé et de la sécurité du travail | Réclamation du demandeur refusée |

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| Le 18 avril 1990  Commission d'appel en matière de lésions professionnelles | Demande révision rejetée |

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| Le 5 octobre 1990  Cour supérieure du Québec  (Hannan j.c.s.) | Requête en évocation rejetée |

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| Le 2 juillet 1992  Cour d'appel du Québec  (Bisson, j.c.Q., et Dubé, Gendreau, Mailhot, Fish, jj.c.a.) | Appel accueilli |

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| Le 30 octobre 1992  Cour suprême du Canada | Demande d'autorisation d'appel déposée |

**Jean-Louis Lamontagne**

**c. (23272)**

**Domtar Inc.**

**et**

**Commission d'appel en matière de lésions professionnelles et**

**Georges Gendron (Qué.)**

**NATURE DE LA CAUSE**

Droit du travail - Compétence - Appel - Contrôle judiciaire - Preuve - Accidents du travail et maladies professionnelles - Lésions professionnelles - Présomption - Condition personnelle préexistante - Événement imprévu et soudain - Cas d'application - La limite du pouvoir d'intervention des tribunaux judiciaires dans les décisions de la Commission d'appel en matière de lésions professionnelles et de ses commissaires - La notion d'erreur déraisonnable, particulièrement dans la détermination de ce que sont un accident du travail et une lésion professionnelle, par application des définitions données à l'article 2 de la *Loi sur les accidents du travail et les maladies professionnelles*, L.R.Q., ch. A-3.001 - La portée de la présomption édictée à l'article 28 de la *Loi*, cette disposition étant de droit nouveau.

**HISTORIQUE PROCÉDURAL**

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| Le 31 juillet 1986  Commission de la santé et de la sécurité du travail | Réclamation de l'intimée refusée |

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| Le 4 décembre 1986  Bureau de révision paritaire | Décision de la C.S.S.T. confirmée |

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| Le 19 mai 1988  Commission d'appel en matière de lésions professionnelles | Appel accueilli |

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| Le 27 septembre 1990  Cour supérieure du Québec  (Lesage j.c.s.) | Requête en évocation accueillie |

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| Le 2 juillet 1992  Cour d'appel du Québec  (Bisson, j.c.Q., et Dubé, Gendreau, Mailhot, Fish, jj.c.a.) | Appel rejeté |

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| Le 30 octobre 1992  Cour suprême du Canada | Demande d'autorisation d'appel déposée |

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

**DECEMBER 10, 1992 / LE 10 DÉCEMBRE 1992**

**23163 EDWARD RAYMOND REID -v.- DEPARTMENT OF NATIONAL DEFENCE (PUBLIC SERVICE STAFF RELATIONS BOARD)** (Man.)

CORAM:La Forest, Sopinka, and Cory JJ.

The application for leave to appeal is dismissed with costs.

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

**NATURE OF THE CASE**

Labour law - Arbitration - Administrative law - Judicial review - Applicant discharged from employment with Respondent - Applicant starting his own company and working as a tax consultant while challenging his discharge - Discharge overturned and employer ordered to reinstate Applicant - Employer advising Applicant to cease his activities and to report to work within ten weeks - Applicant asking for a longer delay to complete his obligations to his clients - Applicant discharged as a result of his failure to obey a direct order to return to work and to comply with the Conflict of Interest and Post-Employment Code for the Public Service - Grievance dismissed - Did the Federal Court of Appeal err in law and/or in fact in dismissing the Applicant's application to review and set aside the decision of the Public Service Staff Relations Board?

**23165 NAIKA INTERNATIONAL -v.- BANK OF MONTREAL** (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 - Actions - Pre-trial procedure - Production of documents - Conflict of laws -Doctrine of comity - Commercial law - Applicant, a foreign company, refusing to produce certain documents on the basis that to do so was prohibited by foreign law - Order compelling production - Did the Court of Appeal err in not staying the proceedings pending decision of the Supreme Court of Canada in *Hunt v. T & N plc*, [1990] B.C.L.R. (2d) 390 (B.C.C.A.)? - Did Court of Appeal err in not following *Hunt*?

**22781 TIMOTHY JAMES WHITWELL -v.- HER MAJESTY THE QUEEN** (Alta.)

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 - Whether the Court of Appeal of Alberta erred in that the verdict of guilty of first degree murder should have been set aside on the ground that it is unreasonable or cannot be supported by the evidence with the provisions of Section 686(1)(a)(i) of the Criminal Code.

**23166 JAMES ALBERT SWEENEY -v.- HER MAJESTY THE QUEEN** (Crim.)(B.C.)

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 - 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.

**23092 L'UNION DES MUNICIPALITÉS RÉGIONALES DE COMTÉ et DES MUNICIPALITÉS LOCALES DU QUÉBEC INC. c. LE SYNDICAT DES TRAVAILLEUSES et DES TRAVAILLEURS DE HILTON QUÉBEC (CSN), CLAUDE-GILLES GAGNÉ, ROBERT LAPOINTE et JEAN-PAUL ASSELIN, et HILTON CANADA INC.** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit du travail - Code civil - Procédure - Législation - Convention collective - Employeur et employé - Responsabilité civile contractuelle et délictuelle - Interprétation - Validité de l'avis de négociation en vertu de l'article 52 du *Code du travail*, L.R.Q., ch. C-27, et légalité de la grève - Contrat conclu entre la demanderesse et Hilton Canada pour la tenue d'un congrès - Grève du Syndicat empêchant la tenue du congrès - Action de nature contractuelle contre Hilton Canada et de nature délictuelle contre le Syndicat - En l'absence d'un autre délai prévu à la convention collective, l'avis de rencontre exigé par l'article 52 du *Code du travail*, donné avant la période de 90 jours précédant l'expiration d'une convention collective, est-il valide?

**23093 HILTON CANADA INC. c. L'UNION DES MUNICIPALITÉS RÉGIONALES DE COMTÉ et DES MUNICIPALITÉS LOCALES DU QUÉBEC INC., LE SYNDICAT DES TRAVAILLEUSES et DES TRAVAILLEURS DE HILTON QUÉBEC (CSN), CLAUDE-GILLES GAGNÉ, ROBERT LAPOINTE et JEAN-PAUL ASSELIN** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit du travail - Code civil - Procédure - Législation - Convention collective - Employeur et employé - Responsabilité civile contractuelle et délictuelle - Interprétation - Validité de l'avis de négociation en vertu de l'article 52 du *Code du travail*, L.R.Q., ch. C-27, et date d'acquisition du droit de grève - Contrat conclu entre la demanderesse et Hilton Canada pour la tenue d'un congrès - Débrayage du Syndicat empêchant la tenue du congrès - Action de nature contractuelle contre Hilton Canada et de nature délictuelle contre le Syndicat - La Cour d'appel a-t-elle a erré en droit en concluant que l'avis de négociation expédié par le Syndicat était valide selon le *Code du travail*? - La Cour d'appel a-t-elle modifié sans droit le *Code du travail* en fixant un nouveau délai pour expédier l'avis de négociation prévu à l'article 52 du *Code du travail*, c'est-à-dire un délai raisonnable précédant celui de quatre-vingt-dix jours avant l'expiration de la convention collective? - La Cour d'appel a-t-elle erré en fait et en droit en exonérant le Syndicat et ses officiers de toute responsabilité alors que qu'ils ont agi sans justification ni excuse légitime et omis d'évaluer le risque d'une grève illégale? - En concluant que la demanderesse avait fait défaut de remplir ses obligations contractuelles envers le Syndicat, la Cour d'appel a-t-elle fixé une norme démesurée eu égard aux circonstances de l'espèce, et ce, en appliquant les articles 1071 et 1072 du *Code civil du Bas-Canada*.

**23088 HER MAJESTY THE QUEEN v. P.(M.B.)** (Crim.) (Ont.)

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

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Criminal law - Offence - Trial - Indictment - Re-opening of case - Whether the Court of Appeal for Ontario erred in law in concluding that the trial judge erred in permitting the Crown to amend the indictment and to re-open its case.

**23095 JACQUES BILODEAU et LES DISTRIBUTIONS C.L.B. INC. c. ROLAND BOUTIN ET QUALIPRO INC.** (Qué.)

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

La demande d'autorisation d'appel est accordée.

The application for leave to appeal is granted.

**NATURE DE LA CAUSE**

Droit des biens - Droit d'auteur - Procédure - Tribunaux - Appel - Compétence - Preuve - Test applicable pour déterminer une contrefaçon - Fardeau de preuve imposé à l'auteur de l'oeuvre - Compte tenu de la preuve, la Cour d'appel pouvait-elle conclure que la carte des intimés ne peut être considérée comme une reproduction ou au mieux, une simple adaptation de la carte des demandeurs? - La Cour d'appel a-t-elle commis une erreur en écartant les conclusions de fait du juge de première instance? - *Loi sur le droit d'auteur*, L.R.C. (1985), ch. C-42.

**22885 RAYMOND MARVIN JOUBERT v. HER MAJESTY THE QUEEN** (Crim.) (B.C.)

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

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Evidence - *Canadian Charter of Rights and Freedoms* - Trial - Narcotics - Was employment of Applicant's former lawyer as informer an abuse of process? - Did Court of Appeal use a prohibited line of reasoning to conclude Applicant had conspired to import cocaine - Did Court of Appeal err in considering commission evidence by overturning trial judge's findings as to sufficiency of evidence? - Did Court of Appeal err in not allowing Applicant to introduce testimony via satellite transmission?

**23135 M. M. c. J.-Y. P.** (Qué.)

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

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

The application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit de la famille - Divorce - Partage des biens - Contrat - Consentement - Annulation du jugement en divorce au motif de parjure des deux parties - Allégation de violence conjugale - Rôle de l'avocat dans les demandes conjointes en divorce - Validité du contrat notarié et de l'entente subséquente préparée par l'avocat - L'appréciation du quantum des dommages attribués à la demanderesse pour blessures physiques.

**23117 PAUL ANDRÉ MARTEL c. DIANE LEMELIN** (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* - Droit de la famille - Pension alimentaire - Législation - Interprétation - Procédure - Procédure civile - Dépens - Requête en irrecevabilité - Possibilité de réclamer une provision pour les frais de l'instance dans le cas de conjoints de fait - La demande de provision pour frais est-elle limitée aux époux ou peut-elle être octroyée à tout autre créancier alimentaire? - Art. 549 et 636 du *Code civil du Québec*.

**23030 ALTON ARSENAULT and DOROTHY ARSENAULT and DOROTHY ARSENAULT as Guardian *ad Litem* for an infant, JOSEPH REGINALD ARSENAULT v. CITY OF CHARLOTTETOWN** (P.E.I.)

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**

Torts - Municipal law - Negligence - Municipal corporations - Police - Duty of care - Civil liability of municipality - Public and private law duties - Policy decision - Operational decision - Whether the Respondent municipality had a duty to enforce its bylaws regarding automobile repair garages - Whether the police had a discretionary policy decision at the operational level to enforce the bylaw - Application of *City of Kamloops v. Neilsen et al.*, [1984] 2 S.C.R. 2, to a municipality which elects to use its police department in a by-law enforcement capacity - Whether the Court of Appeal erred in ruling that the City of Charlottetown police have a discretion arising from the wording of the enabling provision and from their public duty in the enforcement of the criminal law as to whether to enforce the by-law in question - Whether the Court of Appeal erred in answering the question whether a discretion existed at the operational level by reference to the identity of the authority rather than by reference to the nature of the function to be carried out by that authority.

**22549 HER MAJESTY THE QUEEN v. GREGORY MacMILLAN** (Crim.) (Ont.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Unreasonable delay - Whether Court of Appeal erred in holding that Respondent's rights to trial within a reasonable time under s. 11(b) of the *Charter* had been infringed - *R. v. Askov et al.*, [1990] 2 S.C.R. 1199.

**23044 SOCIÉTÉ CANADIENNE DES MÉTAUX REYNOLDS, LIMITÉE - c. - SOCIÉTÉ QUÉBÉCOISE D'ASSAINISSEMENT DES EAUX, PROCUREUR GÉNÉRAL DU QUÉBEC - et - VILLE DE BAIE-COMEAU** (Qué.)

CORAM: Le Juge en chef et les juges McLachlin et Iacobucci

La demande de prorogation du délai est accordée. Bien que nous soyons tous d'avis qu'un appel peut être interjeté à notre Cour en l'espèce, la demande d'autorisation d'appel est rejetée avec dépens.

The application for extension of time is granted. While we are all of the view that an appeal lies to this Court in this matter, the application for leave to appeal is dismissed with costs.

**NATURE DE LA CAUSE**

Droit constitutionnel - Droit administratif - Procédure - Législation - Expropriation - Appel -Compétence - Requête de l'intimé en vue d'être autorisée à poursuivre les procédures d'expropriation en application de l'article 44.1 de la *Loi sur l'expropriation*, L.R.Q. (1977), ch. E-24 - Décision de la Cour supérieure finale et sans appel - Demanderesse déboutée de son appel en Cour d'appel - La Cour d'appel a-t-elle eu tort de décider qu'il y avait inexistence du droit d'appel devant elle? - La Cour d'appel a-t-elle eu tort de décider que les dispositions de la *Loi sur l'expropriation* prohibant l'appel ne prohibaient que l'appel devant la Cour d'appel et non pas également l'appel à la Cour suprême du Canada? - La Cour d'appel a-t-elle eu tort de ne pas décider que lesdites dispositions de la *Loi sur l'expropriation* étaient incompatibles avec l'article 101 de la *Loi constitutionnelle de 1867* et avec l'article 40 de la *Loi sur la Cour suprême*.

**23023 HER MAJESTY THE QUEEN v. IMRE FINTA** (Crim.) (Ont.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Criminal law - Evidence - Offences - War crimes - Crimes against humanity - Admissibility of evidence - Exceptions to the hearsay rule - Instructions to the jury - Interpretation of s. 7(3.71) of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in holding that the police statement and deposition of Imre Dallos, which were taken from the record of the 1947 investigation and the 1948 *in absentia* trial of the Respondent held in Hungary, were admissible - Whether the Court of Appeal erred in law in holding that the trial judge's instructions to the jury pertaining to the evidence relating to the eyewitness identification of the Respondent were appropriate and did not amount to a misdirection - Whether the Court of Appeal erred in law in failing to find that the trial judge erred in putting to the jury the peace officer defence embodied in s. 25 of the *Criminal Code*, the military orders defence and the issue of mistake of fact. Did the trial judge misdirect the jury in the manner in which he defined those defences.

**23097 IMRE FINTA v. HER MAJESTY THE QUEEN** (Crim.) (Ont.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Constitutional law - Evidence - Offences - War crimes - Crimes against humanity - Interpretation of s. 7(3.71) of the *Criminal Code*, R.S.C. 1985, c. C-46 - Whether the Court of Appeal erred in disregarding the constitutional validity issue, or erroneously decided it, in respect to the application of the *Charter* to the whole intent and purpose of the War Crimes legislation, but more specifically to the provision which abolishes the effect of Section 15 of the *Criminal Code of Canada* as a defence to the charges under s.7(3.71) - Whether the Court of Appeal erred in holding that s. 7(3.71) of the *Criminal Code of Canada*, and ss. 7(3.71)(a)(i)(ii)(iii), 7 (3.71)(b), 7(3.74) and 7(3.76) are constitutionally valid and do not offend against the provisions of the *Charter*, specifically ss. 7, 11(a), (b) (d) and 11(g) of the *Charter of Rights and Freedoms*.

**23063 HER MAJESTY THE QUEEN v. CHIKMAGLUR MOHAN** (Crim.) (Ont.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Criminal law - Offences - Physicians and surgeons - Evidence - Sexual assault - *Voir dire* - Admissibility of the expert's evidence - Respondent doctor convicted of four counts of sexual assault, contrary to s. 246 (now s.271) of the *Criminal Code*, R.S., c. C-34 - Trial judge excluding the expert evidence as character evidence not falling within the proper sphere of expert evidence - Whether the Court of Appeal erroneously expanded upon the basis for the admissibility of expert evidence going to an individual's lack of propensity to commit an offence - Whether the Court of Appeal erred by misapprehending the nature of the expert opinion evidence in this case and by substituting its view of that evidence for that of the trial judge?

**23115 HER MAJESTY THE QUEEN v. ROBERT HOWARD BURNS** (Crim.) (B.C.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Criminal law - Offences - Evidence - Credibility of complainant - Applicant convicted of indecent assault, contrary to s. 149(1) of the *Criminal Code*, and sexual assault, contrary to s. 246.1(1) of the *Criminal Code* - Whether the British Columbia Court of Appeal erred in law in reversing the trial judge's assessment of the credibility of the complainant - Whether the British Columbia Court of Appeal erred in law in holding that the trial judge was required to give reasons why he accepted the complainant's evidence about the indecent and sexual assaults.

**23161 WILLIAM POTTS v. HER MAJESTY THE QUEEN** (Crim.) (Alta.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Indians - Constitutional law - Criminal law - Offences - Applicant, a treaty Indian, charged with possession of and trafficking in wildlife contrary to the provisions of the *Wildlife Act*, R.S.A. 1980, c. W-9.1 - Does the Applicant have the right to hunt for wildlife for commercial purposes under provision of his treaty? - Does the *Wildlife Act* apply to the Applicant? - Was the Applicant liable as a party to the offences alleged, by virtue of s. 21 of the *Criminal Code*, R.S.C. 1985, c. C-46?

**23162 GILBERT POTTS v. HER MAJESTY THE QUEEN** (Crim.) (Alta.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Indians - Constitutional law - Criminal law - Offences - Applicant, a treaty Indian, charged with possession of and trafficking in wildlife contrary to the provisions of the *Wildlife Act*, R.S.A. 1980, c. W-9.1 - Does the Applicant have the right to hunt for wildlife for commercial purposes under provision of his treaty? - Does the *Wildlife Act* apply to the Applicant? - Was the Applicant liable as a party to the offences alleged, by virtue of s. 21 of the *Criminal Code*, R.S.C. 1985, c. C-46?

**23046 NOEL FRANCIS McINTYRE v. HER MAJESTY THE QUEEN** (Crim.) (Sask.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Indians - *Canadian Charter of Rights and Freedoms* - Constitutional law - Criminal law - Land titles - Aboriginal rights - Applicant convicted of unlawful possession of wildlife, contrary to s. 31 of the *Wildlife Act*, R.S.S., c. W-13.1 - Whether the true interpretation of the "merger and consolidation" theory enunciated in *R. v. Horseman*, [1990] 1 S.C.R. 901, is that s. 12 of the *Natural Resource Transfer Agreement* is the sole and exclusive "existing" source of the entitlement of Indians *qua* Indians to hunt, trap and fish for food in Saskatchewan - Whether provincial action that has the effect of limiting the Indians' right to hunt for food as set out in s. 12 is not controlled by the fiduciary duty owed by the Crown to aboriginal peoples as set out in *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

**23160 MARCEL GEORGE HARPER v. HER MAJESTY THE QUEEN** (Crim.) (Man.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Right to counsel - Evidence - Admissibility of evidence - Duty of police to inform accused of available of duty counsel -Incriminating spontaneous statement made by Applicant - Whether Court of Appeal erred in ruling that the Applicant's right to be advised of his right to counsel was not infringed pursuant to s. 10(b) of the *Charter* in that the Applicant was not advised of his right to duty counsel - Whether the statement of the Applicant should not have been admitted into evidence on the basis that there was an infringement of the Applicant's s. 10(b) rights of the *Charter* and that the admission of the evidence would bring the administration of justice into disrepute pursuant to s. 24 of the *Charter*.

**23090 SOUTH NATION RIVER CONSERVATION AUTHORITY, KOSTUCH ENGINEERING LIMITED, ERNIE BRISSON, LAWRENCE STRADER, KEN DUNLOP, JIM WINDSOR, CECIL MacNAB, EDWARD SIMMS, LUCIEN GROULX, GASTON PATENAUDE, HAROLD KEENAN, DR. LAWRENCE GRAY, DAVID SLOAN, W.E. BURTON, ROLAND BERCIER and JOHN WHITTEKER v. AUTO CONCRETE CURB LTD.** (Ont.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Torts - Negligence - Commercial law - Contract - Duty of care - Economic loss - Did the Court of Appeal erred in holding there was a duty of care owed by the Applicant Engineer to the Respondent Contractor - Was the Court of Appeal wrong in holding that the Applicant Authority was liable to the Respondent contractor in tort - Did the Court of Appeal err in failing to find that the Respondent caused its own economic loss?

**23109 KARL THOMAS GALASKE, an infant suing by his Guardian *ad Litem*, ELIZABETH MOSER v. ERICH STAUFFER, FLORENCE HORVATH, COLUMCILLE DAMIEN O'DONNELL and BOURGOIN CONTRACTING LTD. - BETWEEN - KARL THOMAS GALASKE, an infant suing by his Guardian *ad Litem*, ELIZABETH MOSER v. ERICH STAUFFER, FLORENCE HORVATH, COLUMCILLE DAMIEN O'DONNELL, BOURGOIN CONTRACTING LTD., and MALA GALASKE as representative *ad Litem* of the Estate of PETER HELMUT GALASKE, Deceased - BETWEEN - MALA GALASKE and THERESA MAGARETTE GALASKE, an infant suing by her Guardian *ad Litem*, MALA GALASKE v. COLUMCILLE DAMIEN O'DONNELL, BOURGOIN CONTRACTING LTD., ERICH STAUFFER, and FLORENCE HORVATH** (B.C.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Torts - Negligence - Motor vehicles - Contributory negligence - Liability - Principle of duty -Duty of care - Duty of care between driver and child passenger with respect to the use of a seat belt - Whether driver of a motor vehicle owes a child passenger a duty of care, namely to take steps to ensure that the child is safely buckled up in the seat belt - Whether duty is affected by the presence of the child's parent.

**23244 LARRY LITTLEWOLF v. HER MAJESTY THE QUEEN** (Crim.) (Alta.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Indians - Constitutional law - Criminal law - Offences - Applicant, a treaty Indian, charged with possession of and trafficking in wildlife contrary to the provisions of the *Wildlife Act*, R.S.A. 1980, c. W-9.1 - Does the Applicant have the right to hunt for wildlife for commercial purposes under provision of his treaty? - Extinguishment of treaty rights - *R. v. Horseman*, [1990] 1 S.C.R. 901 and *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

**23197 HER MAJESTY THE QUEEN v. K. (M.)** (Crim.) (Man.)

CORAM:The Chief Justice and McLachlin and Iacobucci JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Criminal law - Offence - Respondent convicted of assaulting one of his sons - Court of Appeal allowing appeal and ordering a stay of proceedings - Whether the Court of Appeal erred in law in interfering with the exercise of discretion of the Crown in the prosecution of this case - Whether the Court of Appeal erred in law in interfering with a policy decision of the Attorney General and Minister of Justice of Manitoba in establishing priorities for law enforcement and prosecutions in Manitoba - Whether the Court of Appeal erred in law in staying the proceedings based upon a misapprehension of the domestic violence policy in question - Whether the Court of Appeal erred in law in holding that s. 43 of the *Criminal Code* provides a complete defence to the assault committed by the Respondent.

**23039 MELVIN WAYNE WRIGHT, EXECUTOR OF THE ESTATE OF RITA JEANNETTE WRIGHT, DECEASED -and- BRADLEY ALLAN DAVIDSON AND KATHLEEN DAVIDSON** (B.C.)

CORAM:La Forest, 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**

Torts - Negligence - Damages - Causation - Deceased suffering depression as a result of motor vehicle accident and committing suicide - Is suicide a *novus actus interveniens* which breaks chain of causation? - Is suicide reasonable foreseeable result of accident? - Thin skull doctrine - Applicability of concept of foreseeability to *Family Compensation Act* cases?

**23057 GUNTER SCHMIDT IN HIS PERSONAL CAPACITY AND ON BEHALF OF THE BENEFICIARIES OF THE STEARNS CATALYTIC LTD. PENSION PLANS -and- AIR PRODUCTS CANADA LTD., WILLIAM M. MERCER LIMITED, CONFEDERATION LIFE INSURANCE COMPANY AND T.J. WESTLEY** (Alta.)

CORAM:La Forest, Sopinka, and Gonthier JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Labour law - Pensions - Trusts - Contracts - Entitlement to surplus in employee defined benefit pension plans, which had been terminated by sale of company - Whether the Court of Appeal erred in failing to find that the Respondents were required to distribute the surplus assets in a pension plan to the Applicants on termination of the pension plan.

**23047 AIR PRODUCTS CANADA LTD., WILLIAM M. MERCER LIMITED, CONFEDERATION LIFE INSURANCE COMPANY AND T.J. WESTLEY -and- GUNTER SCHMIDT IN HIS PERSONAL CAPACITY AND ON BEHALF OF THE BENEFICIARIES OF THE STEARNS CATALYTIC LTD. PENSION PLANS** (Alta.)

CORAM:La Forest, Sopinka, and Gonthier JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

Labour law - Pensions - Trusts - Contracts - Entitlement to surplus in employee defined benefit pension plans, which had been terminated by sale of company - Whether trust law principles override the application of the principles of contractual interpretation in determining entitlement to surplus in employee defined benefit pension plans is a matter of public importance which warrants a decision by this Court - Whether Court of Appeal's decision that entitlement to surplus on pension plan termination conclusively determines an employer's entitlement, under the terms of an ongoing defined benefits plan, to take into account actuarial surplus in determining its annual funding obligation, is inconsistent with decisions of other Canadian appellate courts.

**23096 WING LUN LI -and- HER MAJESTY THE QUEEN** (Ont.)

CORAM:La Forest, Sopinka, and Gonthier JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Defence - Evidence - Charge to the jury - Drunkenness - Provocation - Doctrine of cumulative effect - Whether the trial judge erred in failing to instruct the jury on the cumulative effect of intoxication, self-defence and provocation - Whether the trial judge erred in failing to instruct the jury with respect to the defence of intoxication - Whether the trial judge erred in instructing the jury that "whoever stabbed Mr. Wu three times in the back and once on the head must have intended to cause his death or to cause bodily injury that would likely result in death and was reckless whether death would ensue or not" in light of the cumulative effect doctrine - Whether the trial judge erred in law in failing to instruct the jury as to the complete definition of the requisite *mens rea* for murder - Whether the trial judge erred in failing to instruct the jury with respect to the defence of provocation as it related to alcohol consumption and as directed by the Supreme Court of Canada in *Olbey v. The Queen*.

**23157 SCOTT JONES -and- HER MAJESTY THE QUEEN** (B.C.)

CORAM:La Forest, Sopinka, and Cory JJ.

The application for leave to appeal is granted.

La demande d'autorisation d'appel est accordée.

**NATURE OF THE CASE**

*Canadian Charter of Rights and Freedoms* - Criminal law - Sentencing - During course of an assessment of mental state, prior to preliminary inquiry, investigation undertaken about his potential to re-offend - Applicant aware of his right to counsel and that information could be used against him in Court - Following plea of guilty, inquiry undertaken and Applicant found to be dangerous offender - Was his right to silence infringed when he was not told by mental health professionals that the examinations might lead to dangerous offender proceedings - Were Applicant's s. 10(b) rights infringed when he was not advised of his right to counsel with respect to these examinations insofar as they related to his ongoing custody.

**23154 HER MAJESTY THE QUEEN -and- DAVID ALLAN GUTTMAN** (Man.)

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 - Respondent, practising lawyer, telling his client who had been charged with offences under *The Highway Traffic Act* to remain outside courtroom - Crown witnesses not able to identify motorcycle driver as being in the courtroom - Did the Court of Appeal erred in law in holding that the Respondent's conduct in instructing his client to remain outside the courtroom while the trial proceeded did not, on the facts of this case, constitute obstruction of justice?

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| **MOTIONS** | **REQUÊTES** |

1.12.1992

Before / Devant: IACOBUCCI J.

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| **Motion to extend the time in which to serve and file a factum and motion to file a factum in its present form**  Her Majesty The Queen  v. (22649)  B.A.W. (Ont.) | **Requête en prorogation du délai de signification et de production du mémoire et requête en production d'un mémoire dans sa forme actuelle**  With the consent of the parties. |

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**GRANTED / ACCORDÉES** Time extended to Dec. 2, 1992.

1.12.1992

Before / Devant: IACOBUCCI J.

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| **Motion to extend the time in which to apply for leave to appeal**  David Pearlman et al.  v. (23008)  The City of Winnipeg (Man.) | **Requête en prorogation du délai pour obtenir autorisation d'appel**  With the consent of the parties. |

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**GRANTED / ACCORDÉE** Time extended to Nov. 30, 1992.

1.12.1992

Before /Devant: THE REGISTRAR

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| **Motion to extend the time in which to serve and file a case on appeal**  Kenneth Bruce Vancoughnett  v. (22944)  Her Majesty The Queen (Ont.) | **Requête en prorogation du délai de signification et de production du dossier d'appel**  With the consent of the parties. |

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**GRANTED / ACCORDÉE** Time extended to Nov. 30, 1992

2.12.1992

Before / Devant: THE DEPUTY REGISTRAR

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| **Motion to withdraw as solicitor**  Dunphy Leasing Enterprises Ltd. et al.  v. (22819)  The Bank of Nova Scotia (Alta.) | **Requête pour cesser d'occuper**  With the consent of the parties. |

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**GRANTED / ACCORDÉE**

2.12.1992

Before / Devant: THE DEPUTY REGISTRAR

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| **Motion permitting that the case on appeal be printed in 8 1/2" x 14" format with no more than 70 lines on each page**  Graham Haig et al.  v. (23223)  John Doe et al. (F.C.A.) | **Requête en autorisation d'imprimer le dossier d'appel avec un format de 8 1/2" x 14" avec 70 lignes par page tout au plus**  With the consent of the parties. |

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**GRANTED / ACCORDÉE**

2.12.1992

Before / Devant: LE JUGE IACOBUCCI

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| **Demande pour obtenir des directives**  Daniel Plouffe, Christine Shea et al. and Irene Helen Young  c. (22296 / 22227)  James Kam Chen Young et al. (Qué.) | **Motion for directions**  With the consent of the parties. |

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**GRANTED / ACCORDÉE**

2.12.1992

Before / Devant: IACOBUCCI J.

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| **Motion to extend the time in which to serve and file a factum *nunc pro tunc***  Sie-Mac Pipeline Contractors Ltd.  v. (22775)  Her Majesty The Queen (F.C.A.) | **Requête en prorogation du délai de signification et de production d'un mémoire *nunc pro tunc***  With the consent of the parties. |

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**GRANTED / ACCORDÉE** Time extended to November 24, 1992

2.12.1992

Before / Devant: IACOBUCCI J.

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| **Motion to extend the time in which to file a notice of appeal**  J.G.B.  v. (23320)  Her Majesty The Queen (Ont.) | **Requête en prorogation du délai de production de l'avis d'appel**  With the consent of the parties. |

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**GRANTED / ACCORDÉE** Time extended to Nov. 27, 1992

2.12.1992

Before / Devant: IACOBUCCI J.

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| **Motion to extend the time in which to serve and file a factum**  Her Majesty The Queen  v. (22578)  Henry Morgentaler (N.S.) | **Requête en prorogation du délai de signification et de production d'un mémoire**  With the consent of the parties. |
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**GRANTED / ACCORDÉE** Time extended to Nov. 30, 1992

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

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| 27.11.1992  **J.G.B.**  v. (23320)  **Her Majesty The Queen (Crim.)(Ont.)**  **AS OF RIGHT** |  |

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

BY/PAR: Procureur général du Québec

IN/DANS: Stephen William Osolin

v. (22826)

Sa Majesté La Reine (C.-B.)

BY/PAR:Attorney General of Ontario

IN/DANS:Her Majesty the Queen

v. (22660)

D.O.L. (Crim.)(MAN.)

BY/PAR:Charter Committee on Poverty Issues

IN/DANS:Elizabeth C. Symes

v. (22659)

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

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

4.12.1992

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

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| **Morris Greenbaum**  **v. (22506)**  **Her Majesty The Queen, Ex Rel, Williams Andrews, Inspector, City of Toronto (Crim.)(Ont.)** | Frank Addario and Shaun Nakatsuru, for the appellant.  Beverley A.B. Simson, for the respondent City of Toronto.  Robert Avinoam, for the intervener the Municipality of Met. Toronto. |

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**RESERVED / EN DÉLIBÉRÉ**

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| **Nature of the case:**  *Canadian Charter of Rights and Freedoms* - Municipal law - Administrative law - Criminal law - Statutes - Statutory instruments - Interpretation - Freedom of expression - Municipal by-laws regulating street vending. | **Nature de la cause:**  *Charte canadienne des droits et libertés* - Droit municipal - Droit administratif - Droit criminel - Lois - Textes réglementaires - Interprétation - Liberté d'expression - Règlements municipaux sur la vente dans la rue. |

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4.12.1992

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

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| **Her Majesty The Queen**  **v. (22649)**  **B.A.W. (Crim.)(Ont.)** | Susan Chapman, for the appellant.  Nicholas A. Xynnis, for the respondent. |
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| **LA FOREST J.** (orally for the Court)-- The Court is ready to hand down judgment. The judgment will be pronounced by Madam Justice McLachlin. | **Le juge la forest** (oralement au nom de la Cour) -- La Cour est prête à rendre jugement, lequel sera prononcé par le juge McLachlin. |

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| **McLACHLIN J.** -- We are all of the view that the appeal should be allowed. It was for the trial judge to determine whether the evidence, which was tendered solely on the basis of credibility, demonstrated a degree of relevance which outweighed its prejudicial value. After considering the motion on record and the submissions of counsel, he concluded that it did not. In doing so, he committed no error of law. | **Le juge McLachlin** -- Nous sommes tous d'avis d'accueillir le pourvoi. Il incombait au juge du procès de déterminer si la preuve, qui ne portait que sur la crédibilité, était pertinente au point de l'emporter sur sa valeur préjudiciable. Après avoir étudié la requête au dossier et la plaidoirie de l'avocat, il a conclu qu'elle ne l'était pas. Il n'a pas commis d'erreur de droit en ce faisant. |

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| In the absence of an indication that the complainant's evidence on collateral matters might be false, the claim for its relevance was tenuous. On the other hand, its prejudice and its potential to mislead the jurors was significant. The words of this Court in *R. v. Meddoui,* [1991] 3 S.C.R. 320, at pp. 320-21 are relevant. There Sopinka J. stated: | Faute d'indication que la preuve du demandeur sur des questions incidentes pouvait être fausse, le fondement de la demande relative à sa pertinence était faible. Par ailleurs, le préjudice qu'elle représentait et la possibilité qu'elle induise les jurés en erreur étaient importants. Ce qu'a dit le juge Sopinka de notre Cour dans *R. c. Meddoui*, [1991] 3 R.C.S. 320, aux pp. 320 et 321, est pertinent: |

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| With respect to the ground relating to cross-examination, the proposed line of questioning related to a collateral matter. Furthermore, its relevance was extremely tenuous and while wide latitude is permitted in cross-examination in a criminal case, the trial judge properly exercised his discretion in excluding the cross-examination. | En ce qui concerne le moyen relatif au contre-interrogatoire, le genre de questions proposées se rapportaient à un fait incident. En outre, elles étaient extrêmement peu pertinentes et, bien qu'une grande latitude soit permise lors du contre-interrogatoire en matière criminelle, le juge du procès a bien exercé son pouvoir discrétionnaire en excluant le contre-interrogatoire. |

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| The appeal is allowed and the convictions are restored. The matters are remitted to the Court of Appeal for disposition of the sentence appeal. | Le pourvoi est accueilli et les déclarations de culpabilité sont rétablies. Les questions sont renvoyées à la Cour d'appel afin qu'elle tranche l'appel contre la peine. |

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

**AGENDA for the week beginning December 14, 1992.**

**ORDRE DU JOUR pour la semaine commençant le 14 décembre 1992.**

Date of Hearing/ Case Number and Name/

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

The Court is not sitting this week

La Cour ne siège pas cette semaine

**NOTE:**

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

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

**This index includes applications for leave to appeal standing for judgment at the beginning of 1992 and all the applications for leave to appeal filed or heard in 1992 up to now.**

**Cet index comprend les requêtes en autorisation de pourvoi en délibéré au début de 1992 et toutes celles produites ou entendues en 1992 jusqu'à maintenant.**

**\*01Refused/Refusée**

**\*02Refused with costs/Refusée avec dépens**

**\*03Granted/Accordée**

**\*04Granted with costs/Accordée avec dépens**

**\*05Discontinuance filed/Désistement produit**

**\*AApplications for leave to appeal filed/Requêtes en autorisation de pourvoi produites**

**\*BSubmitted to the Court/Soumises à la Cour**

**\*COral Hearing/Audience**

**\*DReserved/En délibéré**

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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 : December 7, 1992**  Service of motion : November 13, 1992  Filing of motion : November 19, 1992  Response : November 27, 1992 | **Audience du: 7 décembre 1992**  Signification: 13 novembre 1992  Dépôt: 19 novembre 1992  Réponse : 27 novembre 1992 |

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| **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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| The next session of the Supreme Court of Canada commences on October 5, 1992. | La prochaine session de la Cour suprême du Canada débute le 5 octobre 1992. |

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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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| The Registrar shall enter on a list all appeals inscribed for hearing at the October 1992 Session on August 11, 1992. | Le 11 août 1992, le registraire met au rôle de la session d'octobre 1992 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. |

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| \*Please note change from information given in Bulletin of June 26, 1992. | \*Veuillez prendre note de la modification apportée au Bulletin du 26 juin 1992. |