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**APPLICATIONS FOR LEAVE TO  
APPEAL FILED**

**James Keegstra**  
Douglas H. Christie  
  
v. (24296)

**Her Majesty The Queen (Alta.)**  
Jack Watson, Q.C.  
A.G. of Alta.

FILING DATE 31.10.1994

**Gerald Michael Vaughan**  
Gerald M. Vaughan  
  
v. (24345)

**Her Majesty The Queen et al. (Ont.)**  
Susan L. Reid  
A.G. of Ontario

FILING DATE 21.10.1994

**Steven Neuberger**  
Steven Neuberger  
  
v. (24346)

**Marilyn Connors (Ont.)**  
Mary F. O'Connor Kaiser

FILING DATE 12.10.1994

**Leo Elgersma et al.**  
David M. Brown  
David M. Brown  
  
v. (24347)

**The Attorney General for Ontario et al. (Ont.)**  
Robert E. Charney  
A.G. of Ontario

and between

**Susie Adler et al.**  
Edward M. Morgan  
Davies, Ward & Beck  
  
v. (24347)

**Her Majesty The Queen in right of Ontario et al. (Ont.)**  
Robert E. Charney  
A.G. of Ontario

FILING DATE 27.10.1994

**Gymnase Longueuil Inc.**  
Bertrand Bouchard  
  
c. (24348)

**DEMANDES D'AUTORISATION  
D'APPEL DÉPOSÉES**

**Construction Dupal Inc. et al. (Qué.)**  
Denis Brassard  
Brassard Roy Gagnon

DATE DE PRODUCTION 27.10.1994

**Pierrette Cloutier**  
Hélène Sévigny  
  
c. (24349)

**Raymond Ferland et al. (Qué.)**  
Raymond Ferland

DATE DE PRODUCTION 26.10.1994

**Sa Majesté La Reine**  
Sabin Ouellet  
Subs. du procureur général  
  
c. (24350)

**Roger Aubin (Qué.)**  
Josée Ferrari  
Rolland, Pariseau, Lafontaine, Olivier et  
Assoc.

DATE DE PRODUCTION 27.10.1994

**Armada Lines Ltd.**  
Jon H. Scott  
McMaster Meighen  
  
v. (24351)

**Chaleur Fertilizers Ltd. (F.C.A.)**  
Thomas L. McGloan  
Gilbert, McGloan, Gillis

FILING DATE 26.10.1994

**Ville de St-Georges**  
Claude Sauvageau  
Pothier Delisle  
  
c. (24352)

**Commission municipale du Québec et al. (Qué.)**  
Luc Chamberland  
Rochette, Boucher et Gagnon

DATE DE PRODUCTION 28.10.1994

**Commonwealth Investors Syndicate Ltd.**  
Irwin G. Nathanson, Q.C.  
Nathanson, Schachter & Thompson  
  
v. (24353)

**John N. Laxton, Q.C. (B.C.)**

Thomas A. Berger, Q.C.  
Berger & Nelson

FILING DATE 28.10.1994

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**Municipalité de la paroisse de Ste-Rose-du-Nord  
et al.**

André Lemay  
Tremblay Bois et Assoc.

c. (24354)

**Procureur général du Québec (Qué.)**

Claude Bouchard  
Rochette, Boucher & Gagnon

DATE DE PRODUCTION 25.10.1994

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**Les Meubles du Québec Inspiration XIX<sup>e</sup> Ltée**

Pierre Moreau  
Bélanger Sauvé

c. (24355)

**Ville de Chicoutimi et al. (Qué.)**

Jean Bernier  
Romanowski & Assoc.

DATE DE PRODUCTION 24.10.1994

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**Lionel Desaulniers**

Gérard Dugré  
Byers Casgrain

c. (24356)

**Sa Majesté La Reine (Qué.)**

Pierre Boutin  
Palais de Justice

DATE DE PRODUCTION 24.10.1994

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**The Minister of Justice of Canada**

David I. Lucas  
Côté & Ouellet

c. (24357)

**Daniel Jamieson et al. (Qué.)**

Pierre Poupart  
Poupart et Cournoyer

DATE DE PRODUCTION 25.10.1994

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**Ronald A. Wilson**

L.A. Vandor, Q.C.  
Vandor & Co.

v. (24358)

**Chris McCrea et al. (Ont.)**

Robert Nelson  
Gowling, Strathy & Henderson

FILING DATE 20.10.1994

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**Bobby Glenn Holt**

James J. Ogle, Q.C.  
Moreau, Ogle & Hursh

v. (24362)

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

Earl C. Wilson, Q.C.  
Agent for Alberta Justice

FILING DATE 20.10.1994

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**Wendel Dewald**

Irwin Koziobrocki

v. (24363)

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

Rick Libman  
A.G. of Ontario

FILING DATE 26.10.1994

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**Felice D'Amato et al.**

James L. Barrett  
Giusti, Barrett & Ellan

v. (24364)

**Donald Herbert Badger et al. (B.C.)**

Daniel A. Webster, Q.C.  
Bull, Housser & Tupper

FILING DATE 27.10.1994

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**Donald George Rondpre**

Peter M. Kendall

v. (24365)

**Karen Louise Vickers (B.C.)**

Megan R. Ellis  
Stowe, Ellis

FILING DATE 27.10.1994

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**Associated Respiratory Services Inc.**

Robert A. Graesser  
Reynolds, Mirth, Richards & Farmer

v. (24366)

**The Purchasing Commission et al. (B.C.)**

Kevin E. Gillese  
Min. of the A.G. for B.C.

FILING DATE 28.10.1994

**Kansa General Insurance Co.**

Avon M. Mersey  
Russell & DuMoulin

v. (24368)

**Simcoe & Erie General Insurance Co. (B.C.)**

Stuart B. Hankinson  
Sharpiro Hankinson & Knutson

FILING DATE 27.10.1994

**Andrew Camani**

Irwin Koziebrocki

v. (24369)

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

A.G. of Ontario

FILING DATE 28.10.1994

**Charlemagne Landry**

Wilfrid Lefebvre  
Ogilvy, Renault

v. (24370)

**Sa Majesté La Reine (C.A.F.)**

Pierre Cossette  
Min. de la Justice

DATE DE PRODUCTION 28.10.1994

**Manly Ruben Cross**

Randall P. Gibson  
Gibson, Smith & Purvis

v. (24371)

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

A. G. of Ontario

FILING DATE 28.10.1994

**D'Amore Construction (Windsor) Ltd.**

D.H. Jack  
McDonald & Hayden

v. (24372)

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

Thomas Vickett, Q.C.  
A.G. of Ontario

FILING DATE 28.10.1994

**Le Sous-ministre du revenu national**

Jean-Marc Aubry, c.r.  
Sous-procureur général du Canada

c. (24361)

**Hydro-Québec (Qué.)**

Wilfrid Lefebvre  
Ogilvy, Renault

DATE DE PRODUCTION 20.10.1994

**Skyview Hotels Ltd. et al.**

A.L. Friend  
Bennett Jones Verchere

v. (24374)

**Chiips Inc. (Alta.)**

J.P. McMahon  
Ballem McDill, MacInnes Eden

FILING DATE 31.10.1994

**Gestion Gilles Ménard Inc.**

Jean El Masri  
Segal, Laforest

c. (24365)

**Georges Filion et al. (Qué.)**

Albert Prévost  
Prévost, Auclair, Fortin

DATE DE PRODUCTION 28.10.1994

**Randy Remington**

H.G. McKenzie  
Felesky Flynn

v. (24376)

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

Ian S. McGregor, Q.C.  
Dept. of Justice

FILING DATE 31.10.1994

**Crown Parking Co. Ltd.**

Brian A. Crane  
Gowling, Strathy & Henderson

v. (24377)

**The City of Calgary et al. (Alta.)**

Craig R. Myers

FILING DATE 27.10.1994

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**Her Majesty The Queen**  
Wayne Gorman  
Dept. of Justice

v. (24378)

**Garfield Lambert (Nfld.)**  
Michael Crystal  
Nfld Legal Aid Commission

FILING DATE 28.10.1994

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**Disco Gas & Oil Ltd. et al.**  
Walter Z. Gutierrez  
Disco Gas & Oil Ltd.

v. (24379)

**Petro-Canada Inc. (B.C.)**  
Michael Gianacopoulos  
Farris, Vaughan, Wills & Murphy

FILING DATE 27.09.1994

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

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

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**3 NOVEMBRE 1994** **NOVEMBER 3, 1994 / LE**

**CORAM: CHIEF JUSTICE LAMER AND GONTHIER AND IACOBUCCI JJ. /  
LE JUGE EN CHEF LAMER ET LES JUGES GONTHIER ET IACOBUCCI**

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**Réjean Hinse**

**c. (24320)**

**Sa Majesté La Reine (Crim.)(Qué.)**

**NATURE DE LA CAUSE**

Droit criminel - Défense - Preuve - *Charte canadienne des droits et libertés* - Nouvelle preuve - Articles 686(1)a) et 686(2) du *Code criminel* - Pouvoir discrétionnaire résiduel d'une cour d'appel d'ordonner un arrêt des procédures - Ayant accueilli l'appel et annulé la déclaration de culpabilité du demandeur en application de l'article 686(1)a) du *Code criminel* et ayant statué que la tenue d'un nouveau procès en l'espèce ne serait pas appropriée, la Cour d'appel a-t-elle commis une erreur de droit en ordonnant une suspension des procédures plutôt que l'inscription d'un jugement d'acquiescement en application de l'article 686(2)a) du *Code criminel*? - Dans les circonstances de l'espèce, l'arrêt des procédures plutôt que l'acquiescement constitue-t-il pour le demandeur une violation de ses droits fondamentaux garantis par l'article 7 de la *Charte canadienne des droits et libertés*?

**HISTORIQUE PROCÉDURAL**

Le 23 septembre 1964  
Cour des sessions de la paix (Côté J.C.S.P.)

Déclaration de culpabilité: Vol qualifié

Le 12 juin et le 20 juin 1991  
Cour d'appel du Québec (Beauregard, J.A.)

Requête en prorogation de délai d'appel et requête en autorisation d'appel accueillies successivement

Le 5 novembre 1991  
Cour d'appel du Québec  
(Beauregard, Nichols et Vallerand, J.J.C.A.)

Requête en autorisation de dépôt d'une nouvelle preuve accueillie en partie

Le 5 mars 1992  
Cour d'appel du Québec  
(Rothman, LeBel et Proulx, J.J.C.A.)

Requête additionnelle en autorisation de dépôt d'une nouvelle preuve accueillie

Le 8 juin 1994  
Cour d'appel du Québec  
(Tyndale, Delisle et Steinberg, J.J.C.A.)

Appel accueilli, nouvelle preuve jugée recevable, verdict de culpabilité annulé et arrêt des procédures

Le 6 octobre 1994  
Cour suprême du Canada

Demande d'autorisation d'appel déposée

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**Pino Leo**

**v. (24318)**

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

**NATURE OF THE CASE**

Criminal law - Sentencing - Plea - Appellant's application to vacate his guilty plea dismissed - Appeal dismissed - Whether the Court of Appeal of Alberta erred in upholding the trial judge's refusal to permit the Applicant to vacate his guilty plea - Whether the Court of Appeal erred in upholding the conviction when the factual foundation of the conviction provides no details sufficient to identify the transaction purportedly constituting the offense charged - Whether the Court of Appeal erred in upholding the conviction when the factual foundation of the conviction regarding the age of the victim derived solely from the admission of the Applicant which was based upon hearsay which the Applicant neither believed nor adopted as true.

**PROCEDURAL HISTORY**

September 13, 1993  
Provincial Court of Alberta (Fradsham P.C.J.)

Application by the Applicant to vacate his guilty plea dismissed

September 25, 1993  
Provincial Court of Alberta (Fradsham P.C.J.)

Sentence following conviction for obtaining for consideration sexual services of a person under 18: 1 year imprisonment

June 21, 1994  
Court of Appeal of Alberta (Lomas, Irving and Côté, J.J.A.)

Appeal against conviction dismissed  
Appeal against sentence allowed: 90 days

October 6, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Robert Scott Terry**

**v. (24335)**

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

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Applicant's statement to California local police admitted into evidence - Whether the Court of Appeal erred in interpreting the right to counsel guaranteed by s. 10(b) of the *Charter* as having limited extra-territorial effect - Whether the Court of Appeal erred in holding that it was bound by its decision in *R. v. Harrer* that the distinction between the purpose to which evidence is being put at trial is of constitutional significance in the application of s. 24(2) of the *Charter* - Whether the Court of Appeal erred in interpreting the word "counsel" as used in s. 10(b) as including foreign lawyers - Whether the Court of Appeal erred in asserting that an accused person seeking a remedy under s. 24(2) has the onus of establishing that advice available from a foreign lawyer would not have been constitutionally equivalent to that of a Canadian lawyer - Whether the Court of Appeal erred in holding that the requirements of s. 10(b) were satisfied when foreign police authorities acting as agents for Canadian police authorities in a foreign jurisdiction provided an accused person with a "Miranda" warning in accordance with California law and a reasonable opportunity to consult local lawyers - Whether the Court of Appeal erred in holding that the administration of justice would not be brought into disrepute by the admission into evidence of the Applicant's statement.

**PROCEDURAL HISTORY**



April 4, 1994  
Supreme Court of British Columbia (Low J.)

Conviction: Second Degree Murder

June 15, 1994  
Court of Appeal for British Columbia  
(Taylor, Gibbs and Hollinrake JJ.A.)

Appeal against conviction dismissed

October 14, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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

**Methody Lozinski**

**v. (24326)**

**Agricultural Credit Corporation  
of Saskatchewan (Sask.)**

**NATURE OF THE CASE**

Commercial law - Creditor & debtor - Statutes - Interpretation - Fairness - Fiduciary duty - Whether the Court of Appeal erred in holding that the Respondent owed no duty of fairness to the Applicant concerning the manner in which it applied s. 5(1)(a) of *The Agricultural Credit Corporation of Saskatchewan Act*, R.S.S. 1978 c. A-8.1, its enabling legislation - Whether the Court of Appeal erred in law in failing to rule that the duty of fairness which the Respondent owes to the Applicant includes the duty to clearly enunciate its policy formulated pursuant to s. 6(1)(a) of *The Agricultural Credit Corporation of Saskatchewan Act* and to publish the same to the Applicant and others persons in his position - Whether the Court of Appeal erred in holding that the Respondent could not, as a matter of law, be in the position of a fiduciary vis-à-vis the Applicant.

**PROCEDURAL HISTORY**

July 14, 1993  
Court of Queen's Bench for Saskatchewan  
(Gerein J.)

Respondent's application for an order granting final judgment for the amount of a debt dismissed

June 16, 1994  
Court of Appeal for Saskatchewan  
(Vancise, Wakeling and Lane JJ.A.)

Appeal allowed: statement of defence struck out

October 6, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Sinnadurai Paramadevan and Blossom Paramadevan**

**v. (24325)**

**Bernard Semelhago (Ont.)**

**NATURE OF THE CASE**

Commercial law - Contracts - Damages - Whether a plaintiff can recover more for breach of contract than he would have made had the contract been performed.

**PROCEDURAL HISTORY**

December 5, 1990  
Ontario Court of Justice (General Division)  
(Corbett J.)

Damages awarded to the Respondent

June 17, 1994  
Court of Appeal for Ontario (Galligan, Doherty and  
Austin J.J.A.)

Appeal and cross-appeal allowed

October 7, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Atlific (Nfld.) Limited**

**v. (24313)**

**Hotel Buildings Limited (Nfld.)**

**NATURE OF THE CASE**

Commercial law - Contracts - Evidence - Option agreement - Debentures - Whether the Applicant could exercise its option to purchase premises described in the option agreement for the sum of \$1.00 provided that all indebtedness arising out of the debenture issue had been paid and satisfied - What is the proper definition to be given to the expression "public indebtedness" in the commercial contract between private and public parties in this case? - What is the appropriate appellate approach to the evidentiary findings of the trial judge?

**PROCEDURAL HISTORY**

April 2, 1993  
Supreme Court of Newfoundland  
(Wells J.)

Action allowed; Applicant properly expressed its option to purchase the premises under the option agreement and had tendered the correct purchase price

June 29, 1994  
Court of Appeal for Newfoundland  
(Gushue, O'Neill and Cameron JJ.A.)

Appeal allowed

September 30, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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

**Ciba-Geigy Canada Ltd.**

**v. (24328)**

**Charles P. Rowen (Ont.)**

**NATURE OF THE CASE**

Commercial law - Insurance - Agency-mandate - Contracts - Respondent described as Applicant's broker of record - Respondent terminated and not paid commission though Applicant accepted all of Respondent's proposals for the following year - Whether the Court of Appeal erred in reversing the trial judge's finding that there was no contract with respect to payment of commissions between the parties - Whether the Court of Appeal erred in reversing the trial judge's finding that there was no express or implied term that the Applicant was obligated to compensate the Respondent on termination - Whether the Court of Appeal erred in finding that the custom of the insurance industry is in accordance with the general law, in light of the trial judge's findings - Whether the Court of Appeal erred in rejecting the trial judge's conclusion that the expert evidence as to the custom in the industry stood uncontradicted.

**PROCEDURAL HISTORY**

March 4, 1988  
Supreme Court of Ontario (Montgomery J.)

Respondents' action dismissed

June 8, 1994  
Court of Appeal for Ontario (Blair, Carthy and Galligan JJ.A.)

Appeal allowed: trial judgment set aside and award of \$138,040.00 in damages to the Respondent

October 11, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Canadian Pacific Limited**

**v. (24317)**

**Brotherhood of Maintenance of Way Employees  
Canadian Pacific System Federation (B.C.)**

**NATURE OF THE CASE**

Labour Law - Collective agreement - Arbitration - Jurisdiction - Interlocutory injunction granted to maintain status quo until arbitration completed - Whether Superior Courts in British Columbia have jurisdiction to issue injunctions in connection to disputes between federally regulated employers and employees - Whether courts in British Columbia have jurisdiction to issue interlocutory injunctions where there is no cause of action to which the injunction is ancillary.

**PROCEDURAL HISTORY**

APPLICATIONS FOR LEAVE  
SUBMITTED TO COURT SINCE LAST ISSUE

REQUÊTES SOUMISES À LA COUR DEPUIS  
LA DERNIÈRE PARUTION

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June 10, 1993  
Supreme Court of British Columbia  
(Shaw J.)

Interim injunction granted maintaining the status quo  
between the parties pending a decision by an  
arbitrator

July 19, 1993  
Court of Appeal for British Columbia  
(Hinkson J.A. in Chambers)

Leave to appeal granted

June 6, 1994  
Court of Appeal for British Columbia  
(Hinds, Goldie and Hutcheon JJ.A.)

Appeal dismissed

October 6, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**Eric Savics and A. Coupeco Ltd.**

**v. (24324)**

**Marc Amsen (Ont.)**

**NATURE OF THE CASE**

Commercial law - Creditor & debtor - Minutes of Settlement providing for payment to Respondent by Applicants - Whether the Court of Appeal erred in deciding that the Respondent had standing to bring this application for leave to appeal - Whether the Court of Appeal erred in deciding that the Respondent had a right of action based on the Minutes of Settlement - Whether the Court of Appeal erred in holding that the Applicant Savics was personally liable.

**PROCEDURAL HISTORY**

February 13, 1991  
Ontario Court of Justice (General Division)  
(Sheard J.)

Order: Payment to Respondent of amount provided  
for in Minutes of Settlement

June 7, 1994  
Court of Appeal for Ontario  
(Robins, McKinlay and Labrosse JJ.A.)

Appeal dismissed

October 7, 1994  
Supreme Court of Canada

Application for leave to appeal filed

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**NOVEMBER 3, 1994 / LE 3 NOVEMBRE 1994**

**24237**            **GANDOLPH ST. CLAIR v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:        The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Offences - Amendment of indictment - Charge to the jury - Burden of proof - Whether the Court of Appeal erred in its decision to materially amend the indictment charging aggravated assault by wounding to include the offense of assault with a weapon contrary to s. 267(1)(a) of the *Criminal Code* - Whether the Court of Appeal erred in finding that the trial judge did not err in his charge to the jury regarding the burden of proof.

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**24256**            **DELROY BARNES v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:        The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Evidence - Offences - Trial by jury - Cross-examination on the Applicant's prior convictions for robbery - Application of *R. v. Corbett* (1988) 41 C.C.C. (3d) 385 - Trial judge's discretion - Whether the Court of Appeal for Ontario erred in law in holding that the trial judge had properly exercised his discretion on the *Corbett* application - Whether the Court of Appeal for Ontario erred in law in its determination of the significance of the recentness of the prior convictions and in failing to balance probative value of the convictions against prejudice.

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**24264**            **JOHN EDWARD BRICKER v. HER MAJESTY THE QUEEN** (Crim.)(Ont.)

CORAM:        The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms* - Evidence - Credibility - Applicant's criminal record brought up during direct examination by his own counsel - Whether the Court of Appeal erred in holding that Crown counsel's cross examination of the Applicant on his criminal record was not improper and did not go beyond the issue of credibility or encourage the jury to draw an inference of propensity to commit the offences charged - Whether the Court of Appeal erred in holding that the failure of the trial judge to properly limit the jury's use of the criminal record to credibility and to exclude bad character reasoning caused no substantial prejudice to the Applicant - Whether the Court of Appeal erred in not holding that the Applicant's rights under section 13 of the *Charter* not to suffer self-incrimination from other proceedings were violated by the admission of voice identification evidence from his bail hearing.

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**24206**            **ANTHONY SCOTT BEALS AND ROBERT CHARLES SHEPPARD v. HER MAJESTY THE QUEEN** (Crim.)(N.S.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Evidence - Statutes - Interpretation - Identification evidence - Similar facts - Whether the Court of Appeal erred in its application of section 686(1)(b)(iii) of the *Criminal Code* in dismissing the appeals of each Applicant against their robbery convictions - Whether the Court of Appeal erred in its interpretation and application of the law in relation to identification evidence - Whether the Court of Appeal erred in its interpretation and application of the law relating to the failure of the Applicants to testify.

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**24160** DAVID WITTER v. HER MAJESTY THE QUEEN (Crim.)(Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Evidence - Identification - Appeal - Whether trial judge misdirected himself regarding the existence of and/or weight to be attributed to frailties of identification evidence - Whether trial judge misdirected himself regarding description of a scar and of significance of the evidence of the Applicant's jacket - Whether Court of Appeal erred in limiting scope of appellate review.

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**24232** DAVID PRIESTLEY v. HER MAJESTY THE QUEEN (Crim.)(Ont.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

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

La demande de prorogation de délai est accordée et la demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms* - Detention - Prerogative writs - Whether the detention of the Applicant, pursuant to a conviction for murder resting upon section 230 of the *Criminal Code*, is unlawful and is subject to collateral attack through *habeas corpus* - Whether the detention of the Applicant, pursuant to a fixed term of parole ineligibility, offends section 7 of the *Charter of Rights and Freedoms*.

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**24247** MICHAEL LEE HOBBS v. HER MAJESTY THE QUEEN (Crim.)(Alta.)

CORAM: The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Evidence - Defences - Whether the Court of Appeal erred in law in holding that the trial judge did not err in stating that he was bound to weigh the evidence of flight against the Applicant - Whether the Court of Appeal erred in law in holding that the trial judge did not err in failing to refer or give any weight to the disposition of the deceased for violence - Whether the Court of Appeal erred in law in dealing with the issues of flight and the disposition of the deceased for violence as distinct from the issues of self-defence and provocation.

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**24207**            **HER MAJESTY THE QUEEN v. THOMAS ALBERT PRINCE** (Crim.)(Man.)

CORAM:            The Chief Justice and Cory and Iacobucci JJ.

The application for leave to appeal is dismissed.

La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - Procedural law - Appeals - Evidence - Whether the Court of Appeal erred in reversing the trial judge's findings and conclusions of fact in the absence of a palpable error on the part of the trial judge - Whether the Court of Appeal, in concluding that the verdict at trial was unreasonable, erred in substituting its view of the evidence for that of the trial judge.

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**23805**            **NEIL VAN BOEYEN v. HER MAJESTY THE QUEEN** (Crim.)(B.C.)

CORAM:            The Chief Justice and Cory and Iacobucci JJ.

The application for extension of time to serve and file the application for leave to appeal is granted. The motion to adduce further evidence is granted. The application for leave to appeal is dismissed.

La demande de prorogation du délai de signification et de dépôt de la demande d'autorisation d'appel est accordée. La requête en vue de présenter de nouveaux éléments de preuve est accordée. La demande d'autorisation d'appel est rejetée.

**NATURE OF THE CASE**

Criminal law - *Canadian Charter of Rights and Freedoms* - Procedural law - Evidence - Applicant charged with one count of sexual assault, two counts of sexual assault with a weapon, one count of attempted sexual assault, three counts of kidnapping and one count of attempted kidnapping, with respect to four complainants - Whether the Court of Appeal erred in failing to find that the Applicant's rights under the *Charter* had been violated and his statements improperly admitted into evidence - Whether the Court of Appeal erred in finding that the photo line-up used for identification was fair - Whether the Court of Appeal erred in finding that the trial judge properly directed himself on the discrepancies in the evidence of identification - Whether the Court of Appeal erred in agreeing with the trial judge's reasoning that S.'s attacker must have been the attacker of P. - Whether the Court of Appeal erred in applying s. 686(1)(b)(iii) of the *Criminal Code* - Whether the Applicant can adduce fresh evidence before the Supreme Court of Canada.

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**24043**            **FRED HANSEN v. WESTMINER CANADA LTD., WESTMINER CANADA HOLDINGS LTD., JAMES H. LALOR, PETER MALONEY, WILLIAM B. BRAITHWAITE and WESTERN MINING CORPORATION HOLDINGS LTD.** (N.S.)

CORAM:            La Forest, Sopinka and Major JJ.

The application for leave to appeal and the application for leave to cross-appeal are dismissed.



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La demande d'autorisation d'appel et la demande d'autorisation d'appel incident sont rejetées.

**NATURE OF THE CASE**

Torts - Damages - Respondents commencing action in damages in the Supreme Court of Ontario following loss suffered after takeover of mining company which project of a gold mine in Nova Scotia failed - Cavalier Capital Corporation incorporated for the purchase of Cavalier Energy and Applicant, a former director of the Nova Scotia company, providing letter of credit in support of a bank loan for the purchase of Cavalier Energy - Underwriter pulling out following the bringing of the Ontario action and Cavalier not listed as a public company recognized by a Canadian stock exchange - Respondents found guilty of civil conspiracy by the Supreme Court of Nova Scotia, Trial Division - Applicant's claim for damages for losses suffered following the commencement of the Ontario action dismissed by the Supreme Court, Trial Division - Whether the Court of Appeal erred in failing to award the Applicant damages for his losses associated with Cavalier Capital Corporation.

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**24230**            **POWRMATIC DU CANADA LTÉE v. ANGEÈLE BOIVIN - and - MOISE BENMERGUI AND THE REGISTRAR OF THE REGISTRATION DIVISION OF MONTREAL AND HENRY SZTERN & ASSOCIÉS INC.** (Que.)

CORAM:            L'Heureux-Dubé, Gonthier and McLachlin 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 - Civil procedure - Actions - Bankruptcy - *Res judicata* - Action commenced prior to bankruptcy - Applicant suing Respondent, bankrupt's wife, as Mis-en-cause or Intervenor - Permission of the Bankruptcy Court to continue proceedings obtained - Action dismissed as against the Respondent - Applicant instituting new action against Respondent, this time as defendant - Action dismissed because Applicant had not obtained permission of the Bankruptcy Court to institute action against the Respondent - Whether trial judge erred at law - Whether Applicant had obtained permission - Whether permission required when bankrupt has been discharged - Whether same parties, identical cause and same object - *Code of Civil Procedure*, arts. 75.1, 165(1),(2), and (4), and 166.

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**24213**            **NORMA JANZEN v. ATTORNEY GENERAL FOR BRITISH COLUMBIA, LANGLEY TEACHERS ASSOCIATION, THE BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 35 (LANGLEY) AND CANADIAN LABOUR CONGRESS** (B.C.)

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

The application for leave to appeal is dismissed without costs.

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

**NATURE OF THE CASE**

Procedural law - Judgments and orders - Costs - Whether an order permitting public interest intervention in a constitutional case without imposing conditions as to costs is or results in a violation or abrogation of s. 7 of the *Charter* and of s. 52 of the *Constitution Act, 1982* - Whether the Supreme Court of British Columbia erred in making an order permitting intervention by the Respondent Canadian Labour Congress without imposing conditions restricting it from seeking costs.

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**24270**            **CLAUDE CARON c. SA MAJESTÉ LA REINE** (Crim.)(Qué.)

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

La demande d'autorisation d'appel est rejetée.

The application for leave to appeal is dismissed.

**NATURE DE LA CAUSE**

Droit criminel - Preuve - Portée des articles 651(2) et 802(1) du *Code criminel* qui traitent respectivement du droit de l'accusé de résumer la cause et du droit de l'accusé à une défense complète - La Cour d'appel a-t-elle erré en refusant au demandeur la permission d'en appeler de la décision de la Cour supérieure qui a rejeté son appel à l'encontre de la décision de la Cour du Québec qui l'a déclaré coupable de voies de fait?

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24228 MUSHTAQ AHMED c. LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION  
(F.C.A.)(Qué.)

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

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

The application for leave to appeal is dismissed without costs.

**NATURE DE LA CAUSE**

Immigration - Droit administratif - Appel - Contrôle judiciaire - Demande de revendication du statut de réfugié au sens de la Convention rejetée - La Cour d'appel fédérale a-t-elle erré en concluant que la décision de la Section du statut de réfugié n'est pas "manifestement déraisonnable" et ne "mérite" pas son intervention, ces notions étant étrangères aux articles 18 et 28 de la *Loi sur la Cour fédérale*, S.C. 1990, ch. 8 - La Cour d'appel fédérale a-t-elle erré en droit en refusant d'agir face à une conclusion de fait erronée tirée de manière arbitraire au sens de l'art. 18.1(4)d) de la *Loi sur la Cour fédérale*?

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24255 JACQUES ARMAND CORBEIL v. NICOLE PAQUETTE (Ont.)

CORAM: L'Heureux-Dubé, Gonthier and McLachlin 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**

International - Conflict of laws - Procedural law - Civil procedure - Appeal - Jurisdiction - Family law - Division of property - Discovery of documents - Respondent in civil action in Quebec seeking discovery of documents from Ontario Applicant - Application of *Hunt v. Lac d'Amiante du Québec Ltée*, [1993] 4 S.C.R. 289 - *Business Concerns Records Act*, R.S.Q., c. D-12 - *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 - *Courts of Justice Act*, R.S.O. 1990, c. C-43 - Whether Doyle J. erred in law in his interpretation and application of the principles governing an application for leave to appeal an interlocutory order of a superior court judge, found in this case in Rule 62 of the Ontario *Rules of Civil Procedure*, and applied by statute or common-law in a number of other Canadian provinces - Whether Forget J., the superior court judge seized of the motion from which leave to appeal was sought, erred in law and exceeded his jurisdiction under the *Family Law Act*, R.S.O. 1990, c. F-3, the *Courts of Justice Act*, R.S.O. 1990, c. C-43 and at common law, in a material manner, and whether Doyle J. improperly failed to exercise his jurisdiction to grant leave to appeal the order of Forget J., contrary to the *Rules of Civil Procedure* - Whether the above issues, by reason of their significant national and public importance, are of such a nature as to warrant a decision by this Honourable Court pursuant to s. 40 of the *Supreme Court Act*.

24221 CENTURY HOLDINGS LTD. AND IMPERIAL DEVELOPMENTS LTD. v. THE CORPORATION OF DELTA AND HEINZ REUTER (B.C.)

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

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

La requête en prorogation de délai d'appel est accordée et la demande d'autorisation d'appel est rejetée avec dépens.

**NATURE OF THE CASE**

Torts - Negligence - Municipality - Duty of care - Restrictive covenants - Whether the Court of Appeal erred in restricting the application of *Kamloops v. Nielsen*, [1984] 2 S.C.R. 2, to its facts - Whether the fact that the powers of a municipality under a restrictive covenant are worded permissively is a complete defence to any private law duty of care on a municipality for its negligent failure to take reasonable steps to protect others from harm - Whether the duty of care on public officials recognized in *Kamloops v. Nielsen* applies where a municipality fails to enforce powers derived from a restrictive covenant, as opposed to a building bylaw.

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24250 JEAN-MARIE BURNETT v. COMPAGNIE DE FIDUCIE HOUSEHOLD - and - ST-GEORGE HEBERT INC., LE SURINTENDANT DE FAILLITE, LE PROTONOTAIRE DE LA COUR SUPÉRIEURE DU DISTRICT DE JOLIETTE - and - L'OFFICIER DE LA PUBLICITÉ DES DROITS DE CIRCONSCRIPTION FONCIÈRE DE L'ASSOMPTION (Que.)

CORAM: L'Heureux-Dubé, Gonthier and McLachlin 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 - Civil procedure - Bankruptcy - Creditor and debtor - Judicial sale of Applicant's property prior to bankruptcy - Scheme of collocation - Applicant alleging that property had not passed out of his patrimony at the time of bankruptcy.

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24284 JEAN-MARIE BURNETT v. BANQUE ROYALE DU CANADA - and - ST-GEORGES HEBERT INC., OFFICIER DE LA PUBLICITÉ DES DROITS DE LA CIRCONSCRIPTION FONCIÈRE DE L'ASSOMPTION, SURINTENDANT DES FAILLITES, GREFFIER DE LA COUR SUPÉRIEURE DE MONTRÉAL (Que.)

CORAM: L'Heureux-Dubé, Gonthier and McLachlin 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 - Civil procedure - Bankruptcy - Default judgment against bankrupt - Motion in revocation dismissed - Legal interest of non discharged bankrupt.

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24280            **METROPOLITAN PROPERTIES CORPORATION v. ALBERTA HOME MORTGAGE CORPORATION (now known as Alberta Mortgage Housing Corporation) - AND BETWEEN - METROPOLITAN PROPERTIES CORPORATION v. ALBERTA HOME MORTGAGE (now known as Alberta Mortgage Housing Corporation) (Alta.)**

CORAM:            L'Heureux-Dubé, Gonthier and McLachlin 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 - Commercial law - Crown - Crown prerogatives in commercial settings - Whether the maxim "*nullum tempus occurrit regi*" should not be applied for the benefit of the Crown when it is engaged in collection of a commercial debt.

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25.10.1994

Before / Devant: IACOBUCCI J.

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

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

Village Commissioners of Waverley et al.

v. (24151)

Hon. Greg Kerr et al. (N.S.)

**GRANTED / ACCORDÉE** Time extended to October 28, 1994.

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27.10.1994

Before / Devant: THE REGISTRAR

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**Motion to extend the time in which to file the case  
on appeal and the appellant's factum**

**Requête en prorogation du délai de dépôt du  
dossier d'appel et du mémoire de l'appelant**

Naoufal Naoufal

With the consent of the parties.

v. (24158)

Her Majesty The Queen (Ont.)

**GRANTED / ACCORDÉE** Time extended to October 28, 1994.

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27.10.1994

Before / Devant: THE REGISTRAR

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

**Requête en prorogation du délai de signification  
et de dépôt du dossier d'appel et du mémoire**

Wayne Clarence Badger et al.

v. (23603)

Her Majesty The Queen (Alta.)

**GRANTED / ACCORDÉE**

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27.10.1994

Before / Devant: IACOBUCCI J.



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

Troy Sherwin Montour et al.

v. (24343)

Her Majesty The Queen (N.B.)

**GRANTED / ACCORDÉE**

**Requête en prorogation du délai de dépôt de  
l'avis d'appel**

With the consent of the parties.

31.10.1994

Before / Devant: THE REGISTRAR

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**Motion for acceptance of factum on appeal over 40 pages**

Ihor Bardyn et al.

v. (23517)

Y.R. Botiuk (Ont.)

and

B.I. Maksymec et al.

v. (23519)

Y.R. Botiuk (Ont.)

**Requête en acceptation d'un mémoire d'appel de plus de 40 pages**

With the consent of the parties.

**GRANTED / ACCORDÉE**

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31.10.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion to adjourn the hearing of the appeal**

Lorne Douglas Blenner-Hassett

v. (23923)

Her Majesty The Queen (B.C.)

**GRANTED / ACCORDÉE**

**Requête pour ajourner l'audition de l'appel**

With the consent of the parties.

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31.10.1994

Before / Devant: CHIEF JUSTICE LAMER

**Motion to adjourn the hearing of the appeal**

James Preston Piluke

v. (24070)

Her Majesty The Queen (B.C.)

**GRANTED / ACCORDÉE**

**Requête pour ajourner l'audition de l'appel**

With the consent of the parties.

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2.11.1994

Before / Devant: LE REGISTRAIRE

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**Requête en prorogation du délai de dépôt du  
mémoire de l'intimé**

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

L'Honorable Andrée Ruffo

c. (23127)

Le Conseil de la Magistrature et al. (Qué.)

**ACCORDÉE / GRANTED**

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3.11.1994

Before / Devant: DEPUTY REGISTRAR

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

**Requête en prorogation du délai de dépôt de la  
réponse de l'intimé**

Shirley Bennett et al.

v. (24299)

Vernon Kynock (N.S.)

**GRANTED / ACCORDÉE** Time extended to November 4, 1994.

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3.11.1994

Before / Devant: DEPUTY REGISTRAR

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

**Requête en prorogation du délai de dépôt du  
mémoire de l'intimée**

Dow Corning Corp.

With the consent of the parties.

v. (23776)

Susan Hollis et al. (B.C.)

**GRANTED / ACCORDÉE** Time extended to November 8, 1994.

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**NOTICES OF APPEAL FILED SINCE  
LAST ISSUE**

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

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27.10.1994

**Israel Goldstein, ès qualité de syndic à la faillite de  
Chablis Textiles Inc.**

**c. (24130)**

**London Life Insurance Co. (Qué.)**

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17.10.1994

**Cheryl Rae Evans**

**v. (24359)**

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

**AS OF RIGHT**

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24.10.1994

**William David Pelfrey**

**v. (24367)**

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

**AS OF RIGHT**

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**NOTICES OF INTERVENTION FILED  
SINCE LAST ISSUE**

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

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BY/PAR: Attorney General of British Columbia

IN/DANS: **Donald and William Gladstone**

v. (23801)

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

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BY/PAR: Attorney General of British Columbia

IN/DANS: **NTC Smokehouse Ltd.**

v. (23800)

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

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BY/PAR: Attorney General of British Columbia

IN/DANS: **Jerry Benjamin Nikal**

v. (23804)

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

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**APPEALS HEARD SINCE LAST ISSUE  
AND DISPOSITION**

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

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31.10.1994

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

**Jeffrey Dunn**

**v. (24041)**

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

Bruce Duncan and Todd Ducharme, for the  
appellant.

John Corelli and David Butt, for the respondent.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Criminal law - Statutes - Interpretation - Sentencing - Appellant convicted of assault causing bodily harm - Whether the Court of Appeal erred in holding that the Appellant could not receive the benefit of a new sentencing provision that was proclaimed into force after he was sentenced at trial but before his appeal from sentence was heard and determined in the Court of Appeal.

**Nature de la cause:**

Droit criminel - Lois - Interprétation - Détermination de la peine - Appellant reconnu coupable de voies de fait causant des blessures corporelles - La Cour d'appel a-t-elle commis une erreur en concluant que l'appellant ne pouvait bénéficier d'une nouvelle disposition en matière de détermination de la peine entrée en vigueur après l'imposition de la peine au procès mais avant l'audition de l'appel interjeté contre la sentence?

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31.10.1994

CORAM: La Forest, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

**Cooperators General Insurance Co.**

**v. (23502)**

**Judgment Recovery (P.E.I.) Ltd. (P.E.I.)**

Patrick L. Aylward, for the appellant.

Graham W. Stewart, Q.C., for the respondent.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Commercial law - Statutes - Insurance - Judgment and orders - Renewal - Whether owner insured although premium not paid - Whether a policy of insurance is renewed by the forwarding of renewal documents and whether the delivering of an insurance card ("pink slip") is a policy of insurance in and of itself - *Insurance Act*, R.S.P.E.I., 1988, Cap. I-4.

**Nature de la cause:**

Droit commercial - Lois - Assurance - Jugements et ordonnances - Reconduction - Le propriétaire était-il assuré même s'il n'a pas payé la prime? - L'envoi des documents de renouvellement opère-t-il la reconduction d'une police d'assurance et la délivrance d'une carte d'assurance («feuille rose») constitue-t-elle à elle seule une police d'assurance? - *Insurance Act*, R.S.P.E.I., 1988, ch. I-4.

1.11.1994

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

**James Egan et al.**

**v. (23636)**

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

Joseph J. Arvay, Q.C. and Leah Greathead, for the appellant.

William F. Pentney and J. Helen Beck, for the intervener Canadian Human Rights Commission.

Hélène Tessier, pour l'intervenante Commission des droits de la personne du Québec.

Charles M. Campbell and Susan Ursel, for the intervener Metropolitan Community Church of Toronto.

Steven Barrett and Vanessa Payne, for the intervener Canadian Labour Congress.

Cynthia Petersen, for the intervener Equality for Gays & Lesbians.

H.J. Wruck, Q.C., F.E. Campbell, Q.C. and L.M. Hitch, for the respondent.

Madeleine Aubé, pour l'intervenant le procureur général du Québec.

Peter R. Jervis and Ian T. Benson, for the intervener Inter-Faith Coalition on Marriage and the Family.

**RESERVED / EN DÉLIBÉRÉ**

**Nature of the case:**

Constitutional law - *Canadian Charter of Rights and Freedoms* - Statutes - Interpretation - Applicant Nesbit's application for spousal allowance rejected on the basis that the relationship of the Appellants did not meet the definition of "spouse" prescribed by s. 2 of the *Old Age Security Act*, R.S.C. 1985, c. O-9 - Appellants seeking declarations that *Old Age Security Act* contrary to s. 15 of the *Charter*, that the definition of "spouse" in s. 2 be extended to include "partners in same-sex relationships otherwise akin to conjugal relationship" and that the Respondent be directed to pay the spousal benefit allowance - Whether Parliament can, as a matter of constitutional law, deprive homosexual couples of benefits that would otherwise be available to heterosexual couples.

**Nature de la cause:**

Droit constitutionnel - *Charte canadienne des droits et libertés* - Législation - Interprétation - L'allocation au conjoint demandée par Nesbit lui a été refusée au motif que la relation entre les appelants ne relevait pas de la définition de «conjoint» à l'art. 2 de la *Loi sur la sécurité de la vieillesse*, L.R.C. (1985), ch. O-9 - Les appelants demandent un jugement déclarant que ladite loi viole l'art. 15 de la *Charte*, exigeant que la définition de «conjoint» à l'art. 2 soit élargie de manière à comprendre «les partenaires engagés dans une union de personnes de même sexe mais ayant à tous autres égards les mêmes caractéristiques qu'une union conjugale» et enjoignant à l'intimée de verser l'allocation au conjoint - Du point de vue du droit constitutionnel, le Parlement peut-il priver les couples homosexuels de prestations qui seraient accordées aux couples hétérosexuels?

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2.11.1994

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

**Her Majesty The Queen**

**v. (23479)**

**Brent Blair Brown (Crim.)(Man.)**

Marva J. Smith, for the appellant/respondent by cross-appeal.

Kimberley Prost and Erin McKey, for the intervener Attorney General of Canada.

Eric H. Sibenmorgen, for the intervener the A.G. of Ontario.

Daniel Grégoire et Jacques Gauvin, pour l'intervenant le procureur général du Québec.

No one appearing, for the intervener the A.G. of B.C.

Bruce F. Bonney, for the respondent/appellant by cross appeal.

THE CHIEF JUSTICE-- We are ready to pronounce judgment. Mr. Justice Iacobucci will give the judgment of the Court.

IACOBUCCI J. -- At issue in this appeal is the constitutionality of s. 85 of the *Criminal Code*, R.S.C., 1985, c. C-46. We are all of the view that the appeal should be allowed on the basis of the principles recently decided by the Court in *R. v. Goltz*, [1991] 3 S.C.R. 485. In *Goltz*, the majority of the Court held that a two-stage test should be employed to evaluate the constitutionality of a legislative sentencing provision under s. 12 of the *Canadian Charter of Rights and Freedoms*. The first stage is to view the provision in question from the perspective of the accused, and on the facts of this case, which involved three armed robberies using a shotgun, the provision clearly does not offend s. 12.

The second stage involves considering reasonable hypotheticals involving the offence underlying the sentence in the case before the court. Here, the Attorney General of Manitoba limited its defence of s. 85 to the case which concerns armed robbery as the underlying offence. As such, the hypothetical proposed by the respondent relating to mischief is not a reasonable hypothetical envisioned by *Goltz*. We agree with these submissions and would therefore find no violation of s. 12 of the *Charter*.

Accordingly, the appeal is allowed, the judgment of the Court of Appeal of Manitoba is set aside, the cross-appeal is dismissed, and the trial judge's calculation of the respondent's sentence is restored.

We would answer the constitutional questions as follows:

Questions 1 and 3: No, when the underlying offence is robbery. The operation of s. 85 in conjunction with other potential underlying indictable offences is not at issue in this appeal and no answer is required regarding the validity of s. 85 in conjunction with such other offences.

Question 2 and 4: These questions do not arise.

LE JUGE EN CHEF -- Nous sommes prêts à rendre jugement, lequel sera prononcé par le juge Iacobucci.

LE JUGE IACOBUCCI -- Le présent pourvoi porte sur la constitutionnalité de l'art. 85 du *Code criminel*, L.R.C. (1985), ch. C-46. Nous sommes tous d'avis qu'il y a lieu d'accueillir le pourvoi en raison des principes que notre Cour a récemment formulés dans l'arrêt *R. c. Goltz*, [1991] 3 R.C.S. 485. Dans l'arrêt *Goltz*, notre Cour à la majorité a décidé qu'il y avait lieu de recourir à un test en deux étapes pour évaluer la constitutionnalité d'une disposition législative prescrivant une peine, en fonction de l'art. 12 de la *Charte canadienne des droits et libertés*. La première étape consiste à considérer la disposition en cause du point de vue de l'accusé et, d'après les faits de la présente affaire où il est question de trois vols à main armée commis au moyen d'un fusil, il est évident qu'elle ne contrevient pas à l'art. 12.

La seconde étape consiste à examiner des situations hypothétiques raisonnables mettant en cause l'infraction qui sous-tend la peine prononcée dans l'affaire dont la cour est saisie. En l'espèce, le procureur général du Manitoba a limité sa défense de l'art. 85 au cas où l'infraction sous-jacente est un vol à main armée. C'est pourquoi, l'hypothèse relative à un méfait formulée par l'intimé n'est pas une situation hypothétique raisonnable envisagée par l'arrêt *Goltz*. Nous souscrivons à ces arguments et nous sommes donc d'avis de conclure à l'absence de violation de l'art. 12 de la *Charte*.

En conséquence, le pourvoi est accueilli, l'arrêt de la Cour d'appel du Manitoba est infirmé, le pourvoi incident est rejeté et le calcul de la peine de l'intimé par le juge du procès est rétabli.

Nous sommes d'avis de répondre ainsi aux questions constitutionnelles:

Questions 1 et 3: Non, lorsque l'infraction sous-jacente est un vol qualifié. L'application de l'art. 85 relativement à d'autres actes criminels sous-jacents potentiels n'est pas en cause en l'espèce et aucune réponse n'est requise au sujet de la validité de l'article à cet égard.

Questions 2 et 4: Ces questions ne se posent pas.

3.11.1994

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

**Non-Labour Lien Claimants**

**v. (23549)**

**Her Majesty The Queen in right of Canada et al.  
(Sask.)**

Murray R. Sawatsky, for the appellant.

Edward R. Sojonky, Q.C. and Mark R. Kindrachuk,  
for the respondent A.G. of Canada.

No one appearing for the respondent Saskatchewan  
Workers' Compensation Board.

**DISMISSED WITH COSTS / REJETÉ AVEC DÉPENS**



**Nature of the case:**

Constitutional - *Canadian Charter of Rights and Freedoms* - Taxation - Statutes - Interpretation - Whether s. 224(1.2) of the *Income Tax Act* meets the test of constitutionality prescribed by the Supreme Court of Canada in *Attorney General of Canada v. Attorney General of Alberta*, [1992] 2 S.C.R. 446 - Whether the intrusion of s. 224(1.2) of the *ITA* on provincial jurisdiction under ss. 92(13) or 92(16) of the *Constitution Act, 1867*, is justified in the circumstances where the garnishment of trust funds in the hands of an owner such as the Respondent TransGas Ltd., are not available to the sub-contractors and material suppliers of the defaulting contractor - If s. 224(1.2) is constitutional, whether trust funds held by the Respondent TransGas Ltd. were attachable and properly transferred to Revenue Canada to satisfy taxes which the contractor had failed to remit.

**Nature de la cause:**

Droit constitutionnel - *Charte canadienne des droits et libertés* - Taxation - Lois - Interprétation - Le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* satisfait-il au critère de la constitutionnalité énoncé par la Cour suprême du Canada dans l'arrêt *Procureur général du Canada c. Procureur général de l'Alberta*, [1992] 2 R.C.S. 446? - L'empiètement du par. 224(1.2) de la *LIR* sur la compétence provinciale aux termes des par. 92(13) ou 92(16) de la *Loi constitutionnelle de 1867* est-elle justifiée dans les circonstances où il n'est pas loisible aux sous-entrepreneurs et aux fournisseurs de matériaux de l'entrepreneur en défaut d'exiger la saisie-arrêt de fonds en fiducie détenus par un propriétaire comme l'intimée TransGas Ltd.? - Dans le cas où le par. 224(1.2) est constitutionnel, les fonds en fiducie détenus par l'intimée TransGas Ltd. étaient-ils saisissables et ont-ils à bon droit été transférés à Revenu Canada pour rembourser des impôts que l'entrepreneur n'avait pas versé.

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

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**AGENDA for the week beginning November 7, 1994.**  
**ORDRE DU JOUR pour la semaine commençant le 7 novembre 1994.**

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<u>Date of Hearing/ Date d'audition</u>	<u>NO.</u>	<u>Case Number and Name/ Numéro et nom de la cause</u>
07/11/94		Motions - Requêtes
07/11/94	12	Her Majesty the Queen v. John Michael Ferris (Crim.)(Alta.)(23988)
08/11/94	30	Camille Huot c. Sa Majesté la Reine (Crim.)(Ont.)(23849)
08/11/94	5	Larry Melvin Herman v. Her Majesty the Queen (Crim.)(B.C.)(24040)
09/11/94	41	Antonio Silveira v. Her Majesty the Queen (Crim.)(Ont.)(24013)
09/11/94	3	Terrance Wayne Burlingham v. Her Majesty the Queen (Crim.)(B.C.)(23966)
10/11/94	11	Her Majesty the Queen v. William John Dubazs (Crim.)(Alta.)(23978)
10/11/94	37	Her Majesty the Queen v. John Paul Lepage (Crim.)(Ont.)(23974)

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**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.

Criminal law - Trial - Evidence - *Voir dire* - Instructions to the jury

The Respondent reported the death of David Parker, by telephone, to the police on the morning of October 22, 1989. When the police arrived at Parker's apartment, they found the Respondent beside Parker's dead body. He was spotted with the deceased's blood. The cause of Parker's death was ten stab wounds. The Respondent was arrested and taken into police custody. The Respondent was allowed the use of a telephone when he said he wished to call his father. Detective Schmidt overheard telephone statements made by the Respondent which included the words "I've been arrested" and "I killed David".

The Respondent was charged with second degree murder. A *voir dire* was held to determine the admissibility of statements made by the accused during the telephone conversation with his father. Detective Schmidt testified that he heard conversation before, after and in between the two sets of words he heard, but could not hear what was said. The three words "I killed David" could have been at the beginning, the end or the middle of the sentence. The Crown did not call the father to testify on the *voir dire* and the defence gave no evidence. The defence position was that the statement "I killed David" was inadmissible because what was said before or after was missing, and therefore the statement as testified to by Detective Schmidt was incomplete and not accurate and therefore not admissible. On the conclusion of the *voir dire*, the trial judge ruled the statements had been made freely and voluntarily. The jury returned a verdict of guilty on September 27, 1991. The Respondent appealed his conviction to the Court of Appeal. The majority of the Court allowed the appeal and directed a new trial on the grounds that the trial judge erred in admitting the words "I killed David" into evidence and that this error was not corrected in the charge to the jury. McClung J.A., dissenting, would have dismissed the appeal. The Appellant appealed to this Court as of right.

The following are the issues raised in this appeal:

1. It is respectfully submitted that the learned trial judge did not err in admitting into evidence the utterance of the Respondent: "I killed David".
2. It is respectfully submitted that the ruling of the majority of the Court of Appeal that such evidence was inadmissible is unsupported by legal principle or policy and is not consistent with the inclusionary policy and truth-seeking functions of the rules and principles of evidence in criminal matters. The dissenting judgment of the Honourable Mr. Justice McClung is, in the Crown's submission, correct on this issue.
3. It is respectfully submitted that the instructions given by the learned trial judge in his charge to the jury as to the statement "I killed David" were not wrong in law nor insufficient.

Origin: Alberta

File No.: 23988

Judgment of the Court of Appeal: January 11, 1994

Counsel: Jack Watson Q.C. for the Appellant  
Mona Duckett for the Respondent

23988

SA MAJESTÉ LA REINE c. JOHN MICHAEL FERRIS

Droit criminel - Procès - Preuve - Voir-dire - Directives au jury.

Le matin du 22 octobre 1989, l'intimé a signalé à la police, par téléphone, la mort de David Parker. Arrivés à l'appartement de ce dernier, les policiers ont trouvé l'intimé auprès du cadavre. Il était taché du sang de la victime, dont la mort avait résulté de dix coups de couteau. L'intimé a été arrêté et emmené au poste de police. Quand il a manifesté le désir d'appeler son père, il a été permis à l'intimé de se servir d'un téléphone. Le détective Schmidt a entendu certaines déclarations faites par l'intimé au téléphone, à savoir : «Je me suis fait arrêter» et «J'ai tué David.»

L'intimé ayant été accusé de meurtre au deuxième degré, un voir-dire a été tenu afin de déterminer l'admissibilité des déclarations qu'il a faites au cours de sa conversation téléphonique avec son père. Le détective Schmidt a témoigné

qu'il avait entendu l'intimé parler avant, entre et après les deux déclarations qu'il avait saisies, mais qu'il n'avait pu comprendre ce qu'il disait. Les mots «J'ai tué David» auraient pu avoir été prononcés au début, au milieu ou à la fin d'une phrase. Le ministère public n'a pas cité le père comme témoin lors du voir-dire et la défense n'y a produit aucune preuve. La défense alléguait l'inadmissibilité de la déclaration «J'ai tué David» du fait qu'on ignorait ce qui avait été dit avant ou après celle-ci. La déclaration rapportée par le détective Schmidt était en conséquence incomplète et inexacte et, partant, inadmissible. À la conclusion du voir-dire, le juge du procès a dit que les déclarations avaient été faites librement et volontairement. Le jury a rendu, le 27 septembre 1991, un verdict de culpabilité, dont l'intimé a interjeté appel devant la Cour d'appel. Celle-ci, statuant à la majorité, a accueilli l'appel et a ordonné la tenue d'un nouveau procès au motif que le juge du procès avait commis une erreur en admettant en preuve les mots «J'ai tué David», et qu'il n'avait pas rectifié cette erreur dans ses directives au jury. Le juge McClung, dissident, a été d'avis de rejeter l'appel. L'appelante se pourvoit de plein droit devant la Cour suprême du Canada.

Les points soulevés dans le cadre du pourvoi sont les suivants :

1. Le juge du procès n'a pas commis d'erreur en admettant en preuve la déclaration «J'ai tué David».
2. La conclusion des juges majoritaires en Cour d'appel à l'inadmissibilité de cette preuve ne se fonde sur aucun principe de droit ni sur l'ordre public et est en outre inconciliable avec la notion d'inclusion et du rôle de recherche de la vérité propres aux règles et aux principes de la preuve en matière pénale. De l'avis du ministère public, c'est le juge McClung, dissident, qui a raison sur ce point.
3. Les directives qu'a données le juge du procès au jury relativement à la déclaration «J'ai tué David» n'étaient entachées d'aucune erreur de droit ni n'étaient insuffisantes.

Origine : Alberta  
N° du greffe : 23988  
Arrêt de la Cour d'appel : le 11 janvier 1994  
Avocats : Jack Watson, c.r., pour l'appelante  
Mona Duckett pour l'intimé

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**23849 CAMILLE HUOT v. HER MAJESTY THE QUEEN**

Criminal law - Civil rights - Similar fact evidence - Application of s. 686(1)(b)(iii) of the *Criminal Code*.

The appellant, who was charged with two counts of indecent assault and sodomy, was a member of the Frères des Écoles Chrétiennes and responsible for placement of residents at the St. Joseph Reform School in Alfred from 1962 to 1964. As placement officer he had to place residents in foster homes, supervise placements by making unannounced visits and talk to the homes to determine whether return of the children to their families was appropriate.

The first complainant related that when he was taking him back or going to pick him up from the homes the appellant tried to touch his genital organs and take his hand and put it on his penis. The second complainant related several unsuccessful attempts at contact when he was in the plaintiff's office. Further, when he was on a placement with his parents the appellant sodomized him. The appellant testified and denied everything.

At the start of the trial the appellant made an application that s. 148 of the 1953-54 *Criminal Code* be declared of no force or effect because it was contrary to s. 1(b) of the *Canadian Bill of Rights*. The trial judge dismissed the application for the reasons set forth in *The Queen v. André Charbonneau*, a judgment of March 4, 1992 on the same point. The Ontario Court of Justice found the plaintiff guilty. The Ontario Court of Appeal dismissed the plaintiff's appeal, Lacourcière J.A. dissenting on the application of s. 686(1)(b)(iii) of the *Criminal Code* to similar fact evidence. The appellant filed a notice of appeal as of right on this point in this Court. However, the Court dismissed his application for leave to appeal on April 21, 1994. The appeal as of right raises the following questions:

1. Did the Ontario Court of Appeal err in law in applying the provisions of s. 686(1)(b)(iii) of the *Criminal Code* when it held that despite the error of law in the admissibility of similar fact evidence the accused had suffered no serious prejudice?
2. The appellant humbly submitted that the majority judgment of the Court of Appeal was wrong in law in that, having found an error of law made by the trial court in the admissibility of similar fact evidence, the Court of Appeal did not order a new trial as the dissenting judge Lacourcière J.A. would have done.

Origin:	Ontario
File No.:	23849
Court of Appeal judgment:	November 8, 1993
Counsel:	Gabriel Lapointe and Josée D'Aoust for the appellant James K. Stewart for the respondent

**23849 CAMILLE HUOT c. SA MAJESTÉ LA REINE**

Droit criminel - Libertés publiques - Preuve d'actes similaires - Application du sous-alinéa 686(1)(b)(iii) du *Code criminel*.

L'appelant, accusé de deux attentats à la pudeur et de sodomie, était membre des Frères des Écoles Chrétiennes et responsable du placement des résidents de l'école de réforme St-Joseph à Alfred de 1962 à 1964. À titre d'officier de placement, il devait placer les résidents dans des familles d'accueil, superviser les placements en faisant des visites à l'improviste et faire enquête auprès des familles pour déterminer si le retour des enfants auprès de leur famille était approprié.

Le premier plaignant relate que l'appelant, alors qu'il allait le reconduire ou le chercher dans des familles, tentait de le toucher aux organes génitaux et de lui prendre la main pour la mettre sur son pénis. Le deuxième plaignant relate plusieurs tentatives infructueuses d'attouchements alors qu'il se trouvait dans le bureau du demandeur. En outre, alors qu'il bénéficiait d'un placement chez ses parents, l'appelant l'a sodomisé. L'appelant a témoigné et nié tous les faits.

Au début du procès, l'appelant a présenté une requête en vue de faire déclarer inopérant l'article 148 du *Code criminel* de 1953-54 parce que contraire à l'alinéa 1b) de la *Déclaration canadienne des droits*. Le juge du procès a rejeté la requête pour les motifs exposés dans l'arrêt *La Reine c. André Charbonneau*, jugement rendu le 4 mars 1992 sur la même question. La Cour de justice de l'Ontario a conclu à la culpabilité du demandeur. La Cour d'appel de l'Ontario a rejeté l'appel du demandeur, le juge Lacourcière étant dissident quant à l'application du sous-alinéa 686(1)(b)(iii) du *Code criminel* à la preuve des actes similaires. L'appelant a déposé devant notre Cour un avis d'appel de plein droit sur cette question. Notre Cour a cependant rejeté sa demande d'autorisation d'appel le 21 avril 1994. L'appel de plein droit soulève les questions suivantes:

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1. La Cour d'appel de l'Ontario a-t-elle erré en droit en appliquant les dispositions de l'article 686(1)b)(iii) du *Code criminel* en décidant que malgré l'erreur de droit dans l'admissibilité de la preuve de faits similaires, l'accusé n'avait subi aucun tort sérieux?
  2. L'appelant soumet humblement que le jugement majoritaire de la Cour d'appel est erroné en droit en ce que, ayant constaté l'erreur de droit du tribunal de première instance dans l'admissibilité de la preuve de faits similaires, la Cour d'appel n'a pas ordonné un nouveau procès tel qu'en a décidé le juge dissident, l'honorable juge Lacourcière.

Origine: Ontario

No. de dossier: 23849

Jugement de la Cour d'appel: Le 8 novembre 1993

Avocats: Mes Gabriel Lapointe et Josée D'Aoust pour l'appelant  
Me James K. Stewart pour l'intimée

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24040

**LARRY MELVIN HERMAN v. HER MAJESTY THE QUEEN**

Criminal law - Evidence - Whether the Court of Appeal erred in failing to admit the new evidence sought to be adduced.

The Appellant was charged that, on April 12, 1990, he did commit a sexual assault on A.H., a 14 year old girl who was 4 1/2 months pregnant. On April 13, 1990, shortly after 6:00 p.m., the complainant's father and a friend went to the home of the Appellant's friends with whom he was staying and allegedly beat the Appellant. This disturbance led to the police being called. At 6:59 p.m., a police officer arrived and, at 7:15 p.m. arrested and warned the Appellant. By 7:45 p.m., the Appellant's clothes, which he indicated were the same he was wearing the previous day, had been seized. On April 14, 1990, at approximately 7:30 p.m., the Appellant was interviewed by the police. He denied all sexual contact with the complainant. In a second statement given at about midnight, the Appellant admitted sexual contact with the complainant but gave a different version than that of the complainant's at trial.

The Appellant testified at trial, admitting to some sexual touching but denying that it was against the complainant's will and denying that there was intercourse. The Appellant stated that he ejaculated after consensual touching and without any attempt at penetration while the complainant testified that the Appellant forced sexual intercourse on her. The Appellant's clothes were tested and no semen was found on them. On February 14, 1991, the Appellant was convicted on the charge of sexual assault. On March 13, 1991, the Appellant filed a Notice of Appeal to the Court of Appeal for British Columbia. On May 21, 1993, the Appellant filed his factum, one of the grounds of appeal being that there was fresh evidence which, if admitted, would materially affect the judgment.

On November 19, 1993, the Appellant made an application to adduce fresh evidence. This evidence consisted of a pair of jeans, on which semen was found, which the Appellant claimed would give confirming evidence of his testimony that there was no penetration. The Appellant claimed that he had forgotten that he was wearing these pants at the time of the alleged offence because of the events that occurred on the day of his arrest, in particular the beating he received. The pants, which were in a sports bag, had been seized and were in an exhibit locker at the police station during the trial. On January 21, 1994, the Court of Appeal dismissed the Appellant's application and appeal, Prowse J.A. dissenting.

Origin of the case:	British Columbia
File No.:	24040
Judgment of the Court of Appeal:	January 21, 1994
Counsel:	Rory Morahan, Esq., for the Appellant Robert A. Mulligan, Esq., for the Respondent

24040

**LARRY MELVIN HERMAN c. SA MAJESTÉ LA REINE**

Droit criminel - Preuve - La Cour d'appel a-t-elle commis une erreur en refusant d'admettre une nouvelle preuve que l'on cherchait à introduire?

L'appelant a été accusé d'avoir, le 12 avril 1990, commis une agression sexuelle sur A.H., une jeune fille de 14 ans alors enceinte de 4 mois et demi. Le 13 avril 1990, peu après 18 h, le père de la plaignante et un ami se sont rendus à la résidence d'amis de l'appelant chez qui ce dernier demeurait, et auraient agressé l'appelant. On a dû faire appel à la police. À 18 h 59, un policier est arrivé et, à 19 h 15, il a arrêté l'appelant et lui a servi une mise en garde. À 19 h 45, les vêtements de l'appelant, qui selon ce dernier, étaient ceux qu'il portait la veille, avaient été saisis. Le 14 avril 1990, à environ 19 h 30, l'appelant a été interrogé par la police. Il a nié tout contact sexuel avec la plaignante. Dans une seconde déclaration faite à environ minuit, l'appelant a admis avoir eu un contact sexuel avec la plaignante, mais il a donné une version différente de celle de la plaignante au procès.

L'appelant a témoigné au procès, admettant certains attouchements sexuels, mais niant que ce fut contre le gré de la jeune fille et dans le cadre de relations sexuelles. L'appelant a déclaré qu'il avait éjaculé à la suite des attouchements et sans qu'il n'y ait eu tentative de pénétration, alors que la plaignante a témoigné que l'appelant l'avait forcée à avoir des relations sexuelles. Les vêtements de l'appelant ont été analysés, et aucun liquide séminal n'y a été décelé. Le 14 février 1991, l'appelant a été déclaré coupable relativement à l'accusation d'agression sexuelle. Le 13 mars 1991, il a déposé un avis d'appel à la Cour d'appel de la Colombie-Britannique. Le 21 mai 1993, il a déposé son mémoire, invoquant comme moyen d'appel l'existence d'une nouvelle preuve qui, si elle était admise, modifierait sensiblement le jugement.

Le 19 novembre 1993, l'appelant a présenté une demande en vue d'introduire une nouvelle preuve. Cette preuve consistait en un jeans, sur lequel du liquide séminal avait été découvert, et qui, selon l'appelant, étayerait son témoignage portant qu'il n'y avait pas eu pénétration. L'appelant a fait valoir qu'il avait oublié qu'il portait ce pantalon au moment où l'infraction aurait été commise en raison des événements qui se sont déroulés le jour de son arrestation, particulièrement des coups qu'il a reçus. Le pantalon, qui se trouvait dans un sac de sport, avait été saisi et placé dans une armoire à pièces au poste de police pendant le procès. Le 21 janvier 1994, la Cour d'appel a rejeté la demande et l'appel de l'appelant, le juge Prowse étant dissident.

Origine : Colombie-Britannique  
N° du greffe : 24040  
Arrêt de la Cour d'appel : le 21 janvier 1994  
Avocats : Rory Morahan pour l'appelant  
Robert A. Mulligan pour l'intimée

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**24013 ANTONIO SILVEIRA v. HER MAJESTY THE QUEEN**

Criminal law - Evidence - Narcotics - Search warrant - Police secured premises for an hour before search warrant arrived - Whether Appellant's rights under s.8 of the *Charter* violated - Did the majority of the Court of Appeal err in finding the admission of evidence would not bring the administration of justice into disrepute?

On September 10, 14 and 18, 1990 an undercover police officer made purchases of cocaine from Scinocco at a community centre in Trinity Park, Toronto. The police had paid in advance for the purchase of cocaine. On each occasion Scinocco was observed making contact with the Appellant, Antonio Silveira. The Appellant was seen being driven each time by another co-accused to 486 Dufferin Street where Silveira went inside.

Moments after the third sale, the Appellant was arrested at approximately 7:10 p.m., charged and taken to the police station. Officer Clifford prepared a sworn Information and obtained a search warrant at approximately 8:30 p.m. Other members of the police went directly to the Appellant's home at 486 Dufferin Street and arrived there at approximately 7:30 p.m. The police entered the house, monitored the occupants and kept the premises secure until the arrival of Officer Clifford at approximately 8:45 p.m. with the search warrant. The search commenced and within 15 minutes a gym bag containing 286.56 grams of cocaine and \$49,530 in Canadian currency was located in the Appellant's bedroom. A large part of the money was marked bills from the earlier cocaine purchases.

The Ontario Court of Justice (General Division) convicted the Appellant of three counts of trafficking in cocaine and one count of the possession of cocaine for the purposes of trafficking. The Appellant was sentenced to imprisonment for three years. The majority of the Court of Appeal for Ontario dismissed the appeal, while Abella J.(dissenting) would have allowed the appeal on the basis that the Appellant's rights under s.8 of the *Charter of Rights and Freedoms* were violated, the violation was serious and the admission of evidence as a result would bring the administration of justice into disrepute.

Origin of the case:	Ontario
File No.	24013
Judgment of the Court of Appeal	February 16, 1994
Counsel:	Paul B. Rosen for the Appellant Federal Department of Justice for the Respondent

**24013 ANTONIO SILVEIRA c. SA MAJESTÉ LA REINE**

Droit criminel - Preuve - Stupéfiants - Mandat de perquisition - La police a pris le contrôle des locaux une heure avant la délivrance du mandat de perquisition - Y a-t-il eu violation des droits que l'art. 8 de la *Charte* reconnaît à l'appelant? - La Cour d'appel à la majorité a-t-elle commis une erreur en concluant que l'utilisation des éléments de preuve ne déconsidérerait pas l'administration de la justice?

Les 10, 14 et 18 septembre 1990, un policier en civil a acheté de la cocaïne à Scinocco dans un centre communautaire de Trinity Park, à Toronto. Le policier avait payé à l'avance l'achat de cocaïne. À chaque occasion, Scinocco a été vu contactant l'appelant, Antonio Silveira. Chaque fois, on a vu un coaccusé conduire l'appelant au 486 Dufferin Street où celui-ci entrait.

Peu après la troisième vente, l'appelant a été arrêté vers 19 h 10, accusé et amené au poste de police. L'agent Clifford a préparé une dénonciation sous serment et obtenu un mandat de perquisition vers 20 h 30. D'autres policiers sont allés directement chez l'appelant au 486 Dufferin Street où ils sont arrivés vers 19 h 30. Ils sont entrés dans la maison, ont surveillé les occupants et pris le contrôle des lieux jusqu'à l'arrivée de l'agent Clifford muni du mandat de perquisition, vers 20 h 45. Après 15 minutes de recherche, un sac de sport contenant 286,56 grammes de cocaïne et 49 530 \$ en billets canadiens a été découvert dans la chambre de l'appelant. Une bonne partie de l'argent était constituée de billets marqués provenant des achats antérieurs de cocaïne.

La Cour de justice de l'Ontario (Division générale) a déclaré l'appelant coupable de trois chefs de trafic de cocaïne et de chef de possession de cocaïne en vue d'en faire le trafic. L'appelant a été condamné à trois ans de prison. La Cour d'appel à la majorité a rejeté l'appel. Le juge Abella (dissidente) aurait accueilli l'appel parce que les droits reconnus à l'appelant en vertu de l'art. 8 de la *Charte* ont été violés, que la violation était grave et que, par conséquent, l'utilisation des éléments de preuve déconsidérerait l'administration de la justice.

Origine:	Ontario
N° de greffe:	24013
Arrêt de la Cour d'appel:	Le 16 février 1994
Avocats:	Paul B. Rosen, pour l'appelant Le ministère de la Justice fédéral pour l'intimée

23966

**TERRENCE WAYNE BURLINGHAM v. HER MAJESTY THE QUEEN**

*Canadian Charter of Rights and Freedoms* - Criminal law - Evidence - Admissibility of statements - Similar fact evidence - Derivative evidence - Whether the trial judge erred in failing to quash the indictment for first degree murder - Whether the Court of Appeal erred, in having ruled that certain statements and directions of the Appellant to the police to be inadmissible, by admitting the Appellant's statements to another person concerning the murder weapon - Whether the Court of Appeal erred in admitting the alleged murder weapon into evidence - Whether the statements and the weapon ought to have been excluded by s. 24(2) of the *Canadian Charter of Rights and Freedoms* - Whether the Court of Appeal erred in admitting as similar fact evidence the circumstances of another murder and whether the Appellant's confession to that murder ought to have been excluded.

The Appellant was charged with the first degree murder of Denean Worms, committed in October, 1984, at Cranbrook. The Appellant had earlier been convicted of the first degree murder of Brenda Hughes, committed in December, 1984, also at Cranbrook. In both murders, each victim was a young woman who had been sexually assaulted. Each was found naked, and was shot twice in the head. The Appellant was arrested almost immediately after Ms. Hughes was found dead. In the course of the investigation, he confessed to the killing and took the police to his parents' home where a sawed-off shotgun was found. As the officers were convinced that the Appellant was also responsible for the earlier death of Ms. Worms, they continued their interrogation of the Appellant. By this time, the Appellant had consulted a lawyer who advised him not to talk to the police. During their continued interrogation of the Appellant, the officers made disparaging remarks about the Appellant's counsel and suggested that they were more trustworthy than a lawyer. When the officers realized they were not making headway with their interrogation, they consulted with Crown counsel and offered the Appellant an arrangement. In return for cooperation by admissions or supplying physical evidence, the charge for the death of Ms. Worms would be reduced to second degree murder. The Appellant then made some incriminating admissions and took the police to where the murder weapon was found. The Crown knew that the Appellant had two conversations with his girlfriend, Ms. Hall, telling her that he knew something about the Worms killing, that he had shown the police where the gun could be found and also that another person had beaten and killed Ms. Worms in his presence. Notwithstanding the arrangement, the Appellant was charged with first degree murder of Ms. Worms. Crown counsel would only have authorized the officers to say that a plea of guilty to second degree murder would be accepted, not that the Appellant would be charged with second degree murder. At the opening of the Worms trial, the Appellant applied to quash the indictment on grounds of abuse of process arising out of the arrangement with the police. The trial judge dismissed the motion. After an eight day *voir dire*, the trial judge found that there had been a breach of the Appellant's s. 10(b) *Charter* rights and ruled that the admissions made by him and his disclosure of the location of the murder weapon were inadmissible. The Crown adduced independent evidence implicating the Appellant and similar fact evidence arising out of the killing of Ms. Hughes. Later in the trial, the statement made by the Appellant to his girlfriend establishing knowledge on his part about the killing of Ms. Worms and also his knowledge of the location of the murder weapon was admitted into evidence. The Appellant was convicted as charged. His appeal to the Court of Appeal was dismissed. McEachern C.J.J.A., dissenting, would have allowed the appeal.

Origin of the case:	British Columbia
File No:	23966
Judgment of the Court of Appeal:	October 7, 1993
Counsel:	Sheldon Goldberg and Norman Callegaro for the Appellant Colin M. Sweeney for the Respondent

23966

**TERRENCE WAYNE BURLINGHAM c. SA MAJESTÉ LA REINE**

*Charte canadienne des droits et libertés* - Droit criminel - Preuve - Admissibilité de déclarations - Preuve de faits similaires - Preuve dérivée - Est-ce à tort que le juge du procès a refusé d'annuler l'accusation de meurtre au premier degré? - Est-ce à tort que la Cour d'appel, ayant déclaré inadmissibles certaines déclarations que l'appelant a faites à la police et certaines indications qu'il leur a données, a admis les déclarations de l'appelant à une autre personne concernant l'arme meurtrière? - Est-ce à tort que la Cour d'appel a admis en preuve la prétendue arme meurtrière? - Les déclarations et l'arme auraient-elles dû être écartées en vertu de l'art. 24(2) de la *Charte canadienne des droits et libertés*? - Est-ce à tort que la Cour d'appel a admis à titre de preuve de faits similaires les circonstances d'un autre meurtre et la confession de l'appelant relativement à ce meurtre aurait-elle dû être écartée?

L'appelant a été accusé du meurtre au premier degré de Denean Worms, commis en octobre 1984 à Cranbrook. L'appelant avait antérieurement été reconnu coupable du meurtre au premier degré de Brenda Hughes, commis en décembre 1984, également à Cranbrook. Dans les deux cas, la victime était une jeune femme qui avait été agressée sexuellement. Chacune a été trouvée nue, deux balles lui ayant été tirées dans la tête. L'appelant a été arrêté presque immédiatement après la

découverte du cadavre de M<sup>me</sup> Hughes. Au cours de l'enquête, il a avoué avoir commis le meurtre et a amené la police chez ses parents, où l'on a trouvé un fusil à canon tronqué. Convaincus que l'appelant était également l'auteur de l'homicide antérieur de M<sup>me</sup> Worms, les policiers ont poursuivi leur interrogation de l'appelant. À ce stade-là, ce dernier avait consulté un avocat, qui lui avait conseillé de ne rien dire à la police. En continuant leur interrogation, les policiers ont fait des observations désobligeantes au sujet de l'avocat de l'appelant et ont laissé entendre qu'ils étaient davantage dignes de confiance qu'un avocat. Quand ils se sont rendus compte que leur interrogation n'aboutissait à rien, les policiers ont consulté un procureur de la couronne, par suite de quoi ils ont proposé à l'appelant un arrangement suivant lequel l'accusation relative à l'homicide de M<sup>me</sup> Worms serait réduite à meurtre au deuxième degré si l'appelant se montrait coopératif en faisant des aveux ou en fournissant une preuve matérielle. L'appelant a alors fait des aveux incriminants et a amené la police à l'endroit où a été trouvée l'arme meurtrière. Le ministère public savait que l'appelant avait eu avec son amie, M<sup>me</sup> Hall, deux conversations au cours desquelles il lui avait dit qu'il en savait quelque chose sur l'homicide de M<sup>me</sup> Worms, qu'il avait indiqué à la police l'endroit où se trouvait l'arme à feu, mais aussi que quelqu'un d'autre avait battu M<sup>me</sup> Worms à mort devant lui. Malgré l'arrangement, l'appelant a été accusé du meurtre au premier degré de cette dernière. Le procureur de la couronne n'aurait autorisé les policiers qu'à dire qu'un plaidoyer de culpabilité de meurtre au deuxième degré serait accepté et non pas que l'appelant serait accusé de meurtre au deuxième degré. À l'ouverture du procès relatif à l'homicide de M<sup>me</sup> Worms, l'appelant a demandé l'annulation de l'acte d'accusation pour cause d'abus de procédure résultant de l'arrangement intervenu avec la police. Le juge du procès a rejeté cette requête. Mais, au terme d'un voir-dire de huit jours, il a conclu que l'appelant avait subi une atteinte aux droits que lui garantissait l'al. 10*b*) de la *Charte* et a en conséquence conclu à l'inadmissibilité des aveux de l'appelant et de sa déclaration concernant l'endroit où se trouvait l'arme meurtrière. Le ministère public a produit une preuve indépendante impliquant l'appelant dans l'infraction ainsi qu'une preuve de faits similaires se rapportant à l'homicide de M<sup>me</sup> Hughes. Plus tard au cours du procès a été admise en preuve la déclaration par l'appelant à son amie indiquant qu'il en savait quelque chose sur l'homicide de M<sup>me</sup> Worms et qu'il savait où se trouvait l'arme meurtrière. L'appelant a été déclaré coupable de l'infraction qui lui était reproché. Son appel devant la Cour d'appel a été rejeté, mais le juge en chef McEachern, dissident, a été d'avis d'accueillir l'appel.

Origine:	Colombie-Britannique
N° du greffe:	23966
Arrêt de la Cour d'appel:	le 7 octobre 1993
Avocats:	Sheldon Goldberg et Norman Callegaro pour l'appelant Colin M. Sweeney pour l'intimée

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23978

**HER MAJESTY THE QUEEN v. WILLIAM JOHN DUBAZS**

Criminal law - Evidence - *Criminal Code* s. 34 - Defence of self-defence - Whether excessive force used when deceased shot from 12 to 15 feet on second forcible entry of the night.

The home of the Appellant William John Dubazs at the town of Irma was twice broken into in the early hours of May 16, 1991 by James Andrew Gertsma. Gertsma first broke into the home an hour and a half earlier. The two conversed and then Gertsma left. There was animosity between the two men because the Appellant had bothered Gertsma's seventeen year old sister with lewd remarks and unwanted phone calls. The Appellant was known as the "town's eccentric". Gertsma had threatened the accused, but he did not take the threats seriously and indeed had dismissed them as "goofy talk". During the second forcible entry, the Appellant shot and killed Gertsma as he attempted to enter. There was no alcohol involved on the Appellant's part, but Gertsma had consumed a considerable quantity. The deceased was killed by a single shotgun shot fired at approximately 12 to 15 feet. The shot went through a large glass pane in a closed door.

At trial it was the Crown's theory that the killing was planned and had been set-up by the Appellant with the help of Jack Clisdell. It was alleged that Clisdell had called Gertsma three times and invited him over to the Appellant's home. The defence of the Appellant was that he shot Gertsma in self-defence.

The Court of Queen's Bench convicted the Appellant of manslaughter and sentenced him to fifteen years imprisonment. The Court of Appeal of Alberta allowed the appeal, set aside the conviction and entered an acquittal. Foisy J.A. dissented, and would have dismissed the appeal.

Origin of the case:

Alberta

File No.:

23978

Judgment of the Court of Appeal:

January 24, 1994

Counsel:

Paul C. Bourque for the Appellant  
David B. Mercer for the Respondent

23978

**SA MAJESTÉ LA REINE c. WILLIAM JOHN DUBAZS**

Droit criminel – Preuve – *Code criminel* art. 34 – Légitime défense – Y a-t-il eu usage de force excessive quand la victime a été tirée d'une distance de 12 à 15 pieds à l'occasion d'une seconde entrée de force la même nuit?

Aux petites heures du 16 mai 1991, James Andrew Gertsma est entré deux fois de force dans la maison de l'appelant, William John Dubazs, dans la ville d'Irma. Quand Gertsma est entré de force la première fois, les deux hommes se sont parlés puis Gertsma est parti. Il y avait de l'animosité entre les deux parce que l'appelant avait ennuyé la jeune soeur de 17 ans de Gertsma en lui adressant des remarques disgracieuses et des appels téléphoniques importuns. L'appelant était connu comme «l'original de l'endroit». Gertsma avait menacé l'accusé, mais il n'a pas pris les menaces au sérieux, les considérant plutôt comme des paroles loufoques. Au cours de la seconde entrée, une heure et demie plus tard, l'appelant a tiré et tué Gertsma pendant qu'il tentait d'entrer. L'appelant était sobre, mais Gertsma avait beaucoup bu. Il a été tué d'une seule balle tirée d'environ 12 à 15 pieds. La balle est passée à travers une grande vitre d'une porte fermée.

Au procès, le ministère public a fait valoir la théorie que le meurtre a été planifié et avait été préparé par l'appelant avec l'aide de Jack Clisdell. On a allégué que Clisdell avait appelé Gertsma trois fois et l'avait invité à la maison de l'appelant. L'appelant a fait valoir la légitime défense.

La Cour du Banc de la Reine a déclaré l'appelant coupable d'homicide involontaire coupable et l'a condamné à 15 ans de prison. La Cour d'appel de l'Alberta a accueilli l'appel, infirmé la déclaration de culpabilité et inscrit un acquittement. Le juge Foisy, dissident, aurait rejeté l'appel.

Origine:	Alberta
N° de greffe:	23978
Arrêt de la Cour d'appel:	24 janvier 1994
Avocats:	Paul C. Bourque, pour l'appelante David B. Mercer pour l'intimé

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23974

**HER MAJESTY THE QUEEN v. JOHN PAUL LEPAGE**

Criminal law - Food and drugs - Offences - Trial - Evidence - Appeal - Jurisdiction - Did the majority of the Court of Appeal err in concluding that the trial judge erred in finding that the Crown had proven the Respondent's possession of L.S.D. from the evidence presented at the trial, including the evidence of the presence of the Respondent's fingerprints on the clear bag which contained L.S.D.? - Did the majority of the Court of Appeal err in usurping the function of the trial judge by substituting their view of the evidence for that of the trial judge's in a situation where there was no error in the trial judge's evaluation of the evidence and the conclusions that she drew from it?

The Respondent was charged with possession of L.S.D. for the purpose of trafficking contrary to s. 48(2) of the *Food and Drug Act*, R.S.C. 1985, c. F-27. The charges arose out of the execution of a search warrant and the discovery of a clear plastic zip-lock bag containing only sheets of blotting paper with 682 hits of L.S.D. on them. The search took place at a house rented by the Respondent who in turn sublet rooms to Kenneth Thelland and John Paciocco. All three men had the use of the living room and kitchen. At the time of the search and seizure Thelland was upstairs in his room and the Respondent was in the living room with his girlfriend. The bag was found under a couch in the living room and the only identifiable fingerprints on it were those of the Respondent. Thelland told the police that he was the owner of the bag. The Respondent was jointly charged with Thelland who swore an affidavit in support of the Respondent's application for bail admitting liability for the drugs. Eight months after his arrest, Thelland went to the police station and recanted his statements. The charge against the Respondent and Thelland was severed. Thelland was tried first before Pardu J. of the Ontario Court, General Division, who acquitted him on the charge of possession for the purpose of trafficking.

At the Respondent's trial, which was also held before Pardu J., Thelland testified that he was not the owner of the L.S.D. found under the sofa and that he was on welfare and could not afford to buy a large quantity of drugs. He agreed that the zip-lock bag could have come from a drawer in the kitchen to which everyone had access. Paciocco was not called by the Crown and the Respondent did not testify. The Respondent was convicted and was sentenced to imprisonment for eight months. The Respondent appealed his conviction and applied for leave to appeal his sentence. The majority of the Court of Appeal allowed the appeal, set aside the conviction and directed a new trial at the discretion of the Crown. Finlayson J.A., dissenting, would have dismissed the appeal. The Respondent appealed to this Court as of right.

Origin: Ontario

File No.: 23974

Judgment of the Court of Appeal: December 15, 1993

Counsel: James W. Leising and Lucia P. Favret for the Appellant  
Donald R. Oraziotti Q.C. for the Respondent

23974

**SA MAJESTÉ LA REINE c. JOHN PAUL LEPAGE**

Droit criminel - Aliments et drogues - Infractions - Procès - Preuve - Appel - Compétence - La Cour d'appel à la majorité a-t-elle commis une erreur en concluant que le juge du procès a commis une erreur quand elle a conclu de la preuve présentée au procès, dont la preuve de la présence d'empreintes digitales de l'intimé sur le sac transparent contenant du L.S.D., que la poursuite avait prouvé que l'intimé était en possession de L.S.D.? - La Cour d'appel à la majorité a-t-elle commis une erreur en usurpant le rôle du juge du procès en substituant son opinion quant à la preuve à celle du juge du procès dans une situation où celle-ci n'avait pas commis d'erreur dans l'appréciation de la preuve et la conclusion qu'elle en a tirée?

L'intimé a été accusé de possession de L.S.D. en vue d'en faire le trafic, contrairement au par. 48(2) de la *Loi sur les aliments et drogues*, L.R.C. (1985), ch. F-27. Les accusations découlaient de l'exécution d'un mandat de perquisition et de la découverte d'un sac transparent à fermeture par pression contenant seulement des feuilles de papier buvard portant 682 doses de L.S.D. La perquisition a eu lieu dans une maison louée par l'intimé qui y sous-louait des chambres à Kenneth Thelland et John Paciocco. Les trois hommes utilisaient la salle de séjour et la cuisine. Au moment de la perquisition et de la saisie, Thelland était en haut dans sa chambre et l'intimé était dans la salle de séjour avec son amie. Le sac a été trouvé sous un divan dans la salle de séjour et les seules empreintes digitales identifiables sur le sac étaient celles de l'intimé. Thelland a dit à la police être le propriétaire du sac. L'intimé a été accusé conjointement avec Thelland qui a signé un affidavit à l'appui de la demande de cautionnement de l'intimé, dans lequel il admettait sa responsabilité à l'égard des drogues. Huit mois après son arrestation, Thelland s'est rendu au poste de police et est revenu sur ses déclarations.

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L'accusation contre l'intimé et Thelland a été séparée. Thelland a subi son procès le premier devant le juge Pardu de la Cour de l'Ontario, Section générale, qui l'a acquitté relativement à l'accusation de possession en vue de faire le trafic.

Au procès de l'intimé, également devant le juge Pardu, Thelland a témoigné qu'il n'était pas le propriétaire du L.S.D. trouvé sous le divan, qu'il était bénéficiaire de l'aide sociale et qu'il ne pouvait se permettre d'acheter une grande quantité de drogues. Il a reconnu que le sac à fermeture par pression pouvait venir d'un tiroir de la cuisine auquel tout le monde avait accès. La poursuite n'a pas cité Paciocco comme témoin et l'intimé n'a pas témoigné. L'intimé a été reconnu coupable et condamné à huit mois de prison. Il en a appelé de sa déclaration de culpabilité et a demandé une autorisation d'en appeler de sa sentence. La Cour d'appel à la majorité a accueilli l'appel, infirmé la déclaration de culpabilité et ordonné la tenue d'un nouveau procès à la discrétion de la poursuite. Le juge Finlayson, dissident, aurait rejeté l'appel. L'appelante se pourvoit devant notre Cour de plein droit.

Origine:	Ontario
N° de greffe:	23974
Arrêt de la Cour d'appel:	Le 15 décembre 1993
Avocats:	James W. Leising et Lucia P. Favret pour l'appelante Donald R. Oraziotti, c.r., pour l'intimé

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**CUMULATIVE INDEX -  
APPLICATIONS FOR LEAVE TO  
APPEAL**

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EN AUTORISATION DE POURVOI**

This index includes applications for leave to appeal standing for judgment at the beginning of 1994 and all the applications for leave to appeal filed or heard in 1994 up to now.

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<i>Grimard v. Berry</i> (Sask.), 24079, *02 1.9.94	880(94)	1260(94)
<i>Guessous c. Legrand</i> (Qué.), 24271, *B	1631(94)	
<i>Guns N'Roses Missouri Storm Inc. c. Productions Musicales Donald K. Donald Inc.</i> (Qué.), 24286, *B	1562(94)	
<i>Gymnase Longueuil Inc. c. Construction Dupal Inc.</i> (Qué.), 24348, *A	1674(94)	
<i>Gyori v. The Queen</i> (Crim.)(Alta.), 23907, *01 3.3.94	162(94)	356(94)
<i>Gyorvari v. The Queen</i> (F.C.A.), 23807, *01 28.4.94	401(94)	696(94)
<i>Hammou c. Ministère de la Citoyenneté et de l'Immigration</i> (C.A.F.)(Qué.), 23990, *02 16.6.94	804(94)	1035(94)
<i>Hamon c. La Reine</i> (Crim.)(Qué.), 23857, *01 27.1.94	2289(93)	94(94)
<i>Hanna v. The Queen</i> (Crim.)(B.C.), 24174, *01 22.9.94	1142(94)	1338(94)

<i>Hansen v. Westminster Canada Ltd.</i> (N.S.), 24043, *01 3.11.94	683(94)	1688(94)
<i>Hanson v. The Queen</i> (Crim.)(Ont.), 24037, *01 26.5.94	680(94)	884(94)
<i>Harrigan v. The Queen</i> (Ont.), 22958, *A	916(92)	
<i>Harvey v. Attorney General for New Brunswick</i> (N.B.), 23968, *03 2.6.94 203(94)	939(94)	
<i>Harvey v. The Queen</i> (Crim.)(N.B.), 23894, *01 19.5.94	78(93)	852(94)
<i>Haughton v. The Queen</i> (Crim.)(Ont.), 23665, *03 3.2.94	1541(93)	173(94)
<i>Hawrish v. The Queen</i> (Crim.)(Sask.), 23898, *03 28.4.94	202(94)	689(94)
<i>Hecht v. Reid</i> (B.C.), 23751, *02 13.1.94	2209(93)	18(94)
<i>Heggie v. The Queen</i> (F.C.A.)(Ont.), 24023, *02 2.6.94	523(94)	943(94)
<i>Helo Enterprises Ltd. v. Ernst &amp; Young Inc.</i> (B.C.), 23924, *03 2.6.94 345(94)	950(94)	
<i>Heritage Trust of Nova Scotia v. Nova Scotia Utility and Review Board</i> (N.S.), 24068, *02 1.9.94	848(94)	1258(94)
<i>Herman v. The Queen</i> (Crim.)(B.C.), 24040, referred to the bench which will hear the appeal as of right/référée au banc qui entendra l'appel de plein droit 9.6.94	544(94)	981(94)
<i>Hibbert v. The Queen</i> (Crim.)(Ont.), 23815, *03 10.2.94	2198(93)	213(94)
<i>Hill v. The Registrar, South Alberta Land Registration District (Alta.)</i> , 23650, *02 10.2.94	1753(93)	221(94)
<i>Hinse c. La Reine</i> (Crim.)(Qué.), 24320, *B	1679(94)	
<i>Hobbs v. The Queen</i> (Crim.)(Alta.), 24247, *01 3.11.94	1245(94)	1687(94)
<i>Holt v. The Queen</i> (Alta.), 24362, *A	1676(94)	
<i>Hongkong Bank of Canada v. Toyota Canada Inc.</i> (Alta.), 24273, *B	1597(94)	
<i>Horan v. The Queen</i> (Crim.)(Ont.), 23855, *01 3.2.94	10(94)	177(94)
<i>Howe v. Professional Conduct Committee</i> (Ont.), 24275, *B	1333(94)	
<i>Human Rights Commission v. Board of School Trustees, District No. 15 (N.B.)</i> , 24002, *03 13.10.94	507(94)	1565(94)
<i>Hunt v. The Queen</i> (Crim.)(Man.), 23845, *01 23.6.94	731(94)	1063(94)
<i>Huot v. The Queen</i> (Crim.)(Ont.), 23849, *01 21.4.94	163(94)	563(94)
<i>Hutchins v. Commission nationale des libérations conditionnelles (F.C.A.)(Ont.)</i> , 23725, *01 13.1.94	1845(93)	16(94)
<i>Hutter v. The Queen</i> (Crim.)(Ont.), 23950, *01 28.4.94	268(94)	690(94)
<i>Hynes v. The Queen</i> (Crim.)(N.S.), 23718, *01 3.2.94	2135(93)	174(94)
<i>Imprimerie Quebecor Inc. - Quebecor Printing Inc. v. Rittel (B.C.)</i> , 24175, *02 22.9.94	1151(94)	1341(94)
<i>Industrielle-Alliance, compagnie d'assurance-vie c. Deslauriers (Qué.)</i> , 23824, *02 28.4.94	89(94)	699(94)
<i>Insurance Corporation of British Columbia v. Petersen</i> (B.C.), 23961, *02 16.6.94	403(94)	1034(94)
<i>International Association of Machinists and Aerospace Workers, District Lodge No. 692 v. United Brotherhood of Carpenters and Joiners of America, Local 2736</i> (B.C.), 24039, *02 11.8.94	737(94)	1217(94)
<i>International Lottery Distributors Inc. v. Government of Manitoba</i> (Man.), 23958, *02 11.8.94	510(94)	1211(94)
<i>International Lottery Distributors Inc. v. Government of Manitoba</i> (Man.), 24100, *02 11.8.94	802(94)	1215(94)
<i>J.L.D. c. Vallée</i> (Qué.), 24028, *03 6.10.94	538(94)	1520(94)
<i>J.W.S. v. H.A.D.</i> (Alta.), 23915, *02 3.3.94	12(94)	355(94)
<i>Jackson v. The Queen</i> (Crim.)(Alta.), 24241, *B	1247(94)	
<i>Jaffé v. Hatch</i> (Crim.)(Ont.), 23755, *01 20.1.94	2049(93)	23(94)
<i>Janes v. The Queen in right of Newfoundland</i> (Nfld.), 22997, *01 13.1.94 1544(93)	20(94)	
<i>Janzen v. Attorney General for British Columbia</i> (B.C.), 24213, *01 3.11.94 1313(94)	1689(94)	
<i>Jazra c. Banque de Montréal</i> (Qué.), 24096, *02 1.9.94	805(94)	1262(94)
<i>Johnson (Clayton Norman) v. The Queen</i> (Crim.)(N.S.), 24133, *B	1319(94)	
<i>Johnson v. The Queen</i> (N.S.), 23593, after reconsideration of the application for leave to appeal, the granting of leave is quashed/ après avoir réexaminé la demande d'autorisation d'appel, l'autorisation est annulée 4.10.94	1523(94)	1523(94)
<i>Johnstone v. The Queen</i> (Ont.), 23996, *01 12.5.94	520(94)	807(94)
<i>Jones (Ronald Stuart) v. The Queen</i> (Crim.)(Alta.), 23667, *B	1467(93)	

<i>Jones (Scott David) v. The Queen</i> (Crim.)(B.C.), 23916, *01 24.3.94 162(94)	549(94)	
<i>Jorgensen v. The Queen</i> (Crim.)(Ont.), 23787, *03 28.4.94	160(94)	688(94)
<i>K.S.V. v. The Queen</i> (Crim.)(Nfld.), 24249, *B	1246(94)	
<i>Kansa General Insurance Co. v. Simcoe &amp; Erie General Insurance Co.</i> (B.C.), 24368, *A	1676(94)	
<i>Kasvand v. The Queen</i> (F.C.A.)(Ont.), 24103, *02 1.9.94	879(94)	1259(94)
<i>Kean c. La Reine</i> (Crim.)(Qué.), 23957, *01 11.8.94	536(94)	1215(94)
<i>Keegstra v. The Queen</i> (Alta.), 24296, *A	1674(94)	
<i>Kettle River Sawills Ltd. v. The Queen</i> (F.C.A.)(Crim.)(Ont.), 23944, *02 2.6.94 448(94)	942(94)	
<i>Khan v. The Queen</i> (Crim.)(Ont.), 23947, *01 5.5.94	338(94)	742(94)
<i>Kibale c. La Reine</i> (C.A.F.)(Ont.), 24082, *02 23.6.94	806(94)	1064(94)
<i>Kieling v. Saskatchewan Wheat Pool</i> (Sask.), 24285, *B	1556(94)	
<i>Kindret v. The Queen</i> (F.C.A.)(Crim.)(Man.), 24215, *B	1331(94)	
<i>Kinsella v. Solicitor General of Canada</i> (Crim.)(Ont.), 24014, *01 2.6.94 516(94)	936(94)	
<i>Kopen v. 61345 Manitoba Ltd.</i> (Man.), 23498, *02 17.3.94	940(93)	454(94)
<i>Kreuzer v. The Queen</i> (Crim.)(Alta.), 24067, *01 11.8.94	682(94)	1214(94)
<i>Kumar v. The Queen</i> (Crim.)(B.C.), 23975, *01 5.5.94	449(94)	747(94)
<i>L.D. c. G.R.</i> (Qué.), 24033, *02 9.6.94	530(94)	980(94)
<i>L.G.B. v. The Queen</i> (Crim.)(Alta.), 24204, *01 8.9.94	1155(94)	1271(94)
<i>L.M. c. L.L.</i> (Qué.), 23829, *01 17.2.94	2253(93)	239(94)
<i>LRSCO Investments Ltd. v. Royal Bank of Canada</i> (Alta.), 24166, *02 8.9.94	1057(94)	1267(94)
<i>Laboratories Nordic Inc. c. Gagnon</i> (Qué.), 23977, *05 30.3.94	405(94)	594(94)
<i>Lacoste c. Société nationale d'assurances</i> (Qué.), 24167, *02 1.9.94	1060(94)	1264(94)
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<i>Lewery v. Governing Council of the Salvation Army in Canada</i> (N.B.), 23775, *02 13.1.94	2048(93)	21(94)
<i>Lewis v. The Queen</i> (B.C.), 23802, *03 10.3.94	84(94)	408(94)
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<i>Liberati v. Canada Employment and Immigration Commission</i> (F.C.A.)(Ont.), 23869, *01 3.3.94	2368(93)	352(94)
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<i>Lord v. The Queen</i> (Crim.)(B.C.), 23943, *03 28.4.94	271(94)	690(94)
<i>Loubier c. La Reine</i> (Crim.)(Qué.), 23969, *01 19.5.94	343(94)	853(94)
<i>Lozinski v. Agricultural Credit Corporation of Saskatchewan</i> (Sask.), 24326, *B	1681(94)	
<i>Ludwig v. Crick</i> (B.C.), 24327, *A	1594(94)	
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<i>Manufacturers Life Insurance Co. v. Marystown Shipyard Ltd.</i> (Nfld.), 23901, *02 5.5.94	275(94)	743(94)
<i>Martin v. The Queen</i> (Crim.)(Ont.), 23761, *01 14.4.94	270(94)	556(94)
<i>Martin &amp; Stewart Inc. v. Superintendent of Pensions (Nova Scotia)</i> (N.S.), 24021, *02 11.8.94	533(94)	1212(94)
<i>Martselos Services Ltd. v. Arctic College</i> (N.W.T.), 24048, *02 1.9.94	543(94)	1257(94)
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<i>McAllister c. États-Unis d'Amerique</i> (Crim.)(Qué.), 24238, *01 20.10.94	1334(94)	1599(94)
<i>McAllister c. États-Unis d'Amerique</i> (Crim.)(Qué.), 24267, *01 20.10.94	1334(94)	1599(94)
<i>McCain Foods Ltd. v. National Transportation Agency</i> (F.C.A.)(N.B.), 23318, *01 5.5.94	483(93)	749(94)
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<i>McCarten v. Government of Prince Edward Island</i> (P.E.I.), 24098, *02 25.8.94	849(94)	1256(94)
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<i>McRae v. McRae</i> (B.C.), 24201, *02 8.9.94	1149(94)	1270(94)
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**DEADLINES: MOTIONS****DÉLAIS: REQUÊTES****BEFORE THE COURT:**

Pursuant to Rule 23.1 of the *Rules of the Supreme Court of Canada*, the following deadlines must be met before a motion before the Court can be heard:

**Motion day : November 7, 1994**

Service : October 17, 1994  
 Filing : October 24, 1994  
 Respondent : October 31, 1994

**Motion day : December 5, 1994**

Service : November 14, 1994  
 Filing : November 21, 1994  
 Respondent : November 28, 1994

**DEVANT LA COUR:**

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

**Audience du : 7 novembre 1994**

Signification : 17 octobre 1994  
 Dépôt : 24 octobre 1994  
 Intimé : 31 octobre 1994

**Audience du : 5 décembre 1994**

Signification : 14 novembre 1994  
 Dépôt : 21 novembre 1994  
 Intimé : 28 novembre 1994

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**DEADLINES: APPEALS**

The next session of the Supreme Court of Canada commences on October 3, 1994.

Pursuant to the *Supreme Court Act* and *Rules*, the following requirements for filing must be complied with before an appeal will be inscribed and set down for hearing:

**Case on appeal** must be filed within three months of the filing of the notice of appeal.

**Appellant's factum** must be filed within five months of the filing of the notice of appeal.

**Respondent's factum** must be filed within eight weeks of the date of service of the appellant's factum.

**Intervener's factum** must be filed within two weeks of the date of service of the respondent's factum.

The Registrar shall inscribe the appeal for hearing upon the filing of the respondent's factum or after the expiry of the time for filing the respondent's factum

The Registrar shall enter on a list all appeals inscribed for hearing at the October 1994 Session on August 9, 1994.

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**DÉLAIS: APPELS**

La prochaine session de la Cour suprême du Canada débute le 3 octobre 1994.

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

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

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

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

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

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

Le 9 août 1994, le registraire met au rôle de la session d'octobre 1994 tous les appels inscrits pour audition.