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# [1986] S. C. R. Statistical Analysis

John H. Kim

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# [1986] S.C.R. STATISTICAL ANALYSIS®

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TABLE I<sup>1</sup>  
VOLUME OF WORK

|                                 |         |       | TOTAL <sup>2</sup> |
|---------------------------------|---------|-------|--------------------|
| Reported Judgments <sup>3</sup> |         |       |                    |
| Private                         | Public  |       |                    |
| 19                              | 59      |       | 75                 |
| Reported Motions                |         |       |                    |
| Granted                         | Refused | Other |                    |
| 0                               | 0       | 0     | 0                  |
| Unreported Motions              |         |       |                    |
| Granted                         | Refused | Other |                    |
| 75                              | 306     | 74    | 455                |

<sup>1</sup> All data considered in this table derive from the [1986] *Supreme Court Reports* and the [1986] *Bulletin of proceedings taken in the Supreme Court of Canada*.

<sup>2</sup> The following cases have been included under both "Private" and "Public" categories but only once under "Total": *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285; *Paul v. Paul*, [1986] 1 S.C.R. 306; and *Nelson v. C.T.C. Mortgage Corp.*, [1986] 1 S.C.R. 749.

<sup>3</sup> Appellate decisions and references are included under this heading; motions are not. A decision involving one or more appeals (including cross-appeals) or references is considered to be one case for the purpose of this category. Procedural cases are classified according to their underlying subject matter. If a case is classified under both "Private" and "Public," it is entered under each of these headings, but only once under "Total."

TABLE II<sup>1</sup>  
BREAKDOWN BY SOURCE

|                         | PRIVATE <sup>2</sup> |                       |          | PUBLIC    |           |          | Total<br>From<br>Source |
|-------------------------|----------------------|-----------------------|----------|-----------|-----------|----------|-------------------------|
|                         | Affirmed             | Reversed <sup>3</sup> | Other    | Affirmed  | Reversed  | Other    |                         |
| Alberta                 | 0                    | 1                     | 0        | 5         | 0         | 0        | 6                       |
| British Columbia        | 4                    | 1                     | 0        | 6         | 2         | 1        | 11                      |
| Manitoba                | 1                    | 1                     | 0        | 2         | 1         | 0        | 5                       |
| New Brunswick           | 0                    | 0                     | 0        | 2         | 1         | 0        | 3                       |
| Newfoundland & Labrador | 0                    | 0                     | 0        | 0         | 0         | 0        | 0                       |
| Northwest Territories   | 0                    | 0                     | 0        | 0         | 0         | 0        | 0                       |
| Nova Scotia             | 1                    | 2                     | 0        | 0         | 1         | 0        | 4                       |
| Ontario                 | 4                    | 1                     | 0        | 6         | 6         | 0        | 17                      |
| Prince Edward Island    | 0                    | 0                     | 0        | 0         | 1         | 0        | 1                       |
| Quebec                  | 0                    | 0                     | 0        | 9         | 5         | 0        | 14                      |
| Saskatchewan            | 0                    | 0                     | 0        | 0         | 2         | 0        | 2                       |
| Yukon Territory         | 1                    | 0                     | 0        | 0         | 0         | 0        | 1                       |
| Court Martial Appeal Ct | 0                    | 0                     | 0        | 0         | 0         | 0        | 0                       |
| Federal Board           | 0                    | 0                     | 0        | 0         | 0         | 0        | 0                       |
| Federal Court           | 2                    | 1                     | 0        | 6         | 3         | 0        | 11                      |
| <b>TOTAL</b>            | <b>13</b>            | <b>7</b>              | <b>0</b> | <b>36</b> | <b>22</b> | <b>1</b> | <b>75</b>               |

<sup>1</sup> Only appellate decisions (including references on appeal from the decision of a lower court) are included in this table. Decisions may be classified under both "Private" and "Public" due to multiple subject matters. A decision involving one or more appeals (including cross-appeals) is entered once under "Affirmed," "Reversed," or "Other" unless the lower court was both affirmed and reversed, in which case the decision is entered once under two or more of "Affirmed," "Reversed," or "Other." A decision is entered only once under "Total From Source" unless it involves multiple appeals having different origins. Procedural decisions are classified according to their underlying subject matter.

<sup>2</sup> The following cases have been included under both "Private" and "Public" categories but only once under "Total From Source": *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285, ("British Columbia"); *Paul v. Paul*, [1986] 1 S.C.R. 306, ("British Columbia"); and *Nelson v. C.T.C. Mortgage Corp.*, [1986] 1 S.C.R. 749, ("British Columbia").

<sup>3</sup> In *International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, ("Federal Court - Private"), the Court affirmed in part and reversed in part the decision of the lower court.

**TABLE III<sup>1</sup>**  
**SUBJECT MATTER OF LITIGATION<sup>2</sup>**

This table indicates, first, the breakdown by subject matter of the reported cases; second, the number of cases decided by a given majority/dissent ratio within a given subject matter; and third, the number of "Appellate" cases in which the Supreme Court affirmed, reversed, or took other action with respect to the decision of the court immediately below.

|   | Number<br>of Cases<br>Reported | Majority/<br>Dissent<br>Ratio | Affirmed | Reversed | Other |
|---|--------------------------------|-------------------------------|----------|----------|-------|
| <b>ORIGINAL JURISDICTION</b>                    |                                |                               |          |          |       |
| References                                      |                                |                               |          |          |       |
| Reported Motions                                |                                |                               |          |          |       |
| <b>APPELLATE</b>                                |                                |                               |          |          |       |
| <b>(a) PRIVATE (Common Law &amp; Civil Law)</b> |                                |                               |          |          |       |
| <b>(i) Administration &amp; Succession</b>      |                                |                               |          |          |       |
| Dependent's Relief                              |                                |                               |          |          |       |
| Devolution                                      |                                |                               |          |          |       |
| Executors & Administrators                      |                                |                               |          |          |       |
| Wills   |                                |                               |          |          |       |
| <b>(ii) Commercial</b>                          |                                |                               |          |          |       |
| Accounts  |                                |                               |          |          |       |
| Agency & Partnership                            |                                |                               |          |          |       |
| Assignments                                     |                                |                               |          |          |       |
| Bankruptcy                                      |                                |                               |          |          |       |
| Banks & Banking                                 |                                |                               |          |          |       |
| Bills & Notes                                   |                                |                               |          |          |       |
| Companies                                       | 1                              | 1-5:0                         | 1        | 0        | 0     |
| Contract  | 5                              | 3-7:0 <sup>3</sup>            | 1        | 2        | 0     |
|   |                                | 2-5:0                         | 1        | 1        | 0     |
|   |                                | 1-4:3                         | 1        | 0        | 0     |
| Debtor & Creditor                               |                                |                               |          |          |       |
| Guarantees & Sureties                           | 1                              | 1-5:0                         | 1        | 0        | 0     |
| Insurance                                       |                                |                               |          |          |       |
| Interest  |                                |                               |          |          |       |
| Sale of Goods                                   |                                |                               |          |          |       |
| <b>(iii) Family Law</b>                         |                                |                               |          |          |       |
| Adoption  |                                |                               |          |          |       |
| Child Welfare, Custody & Access                 |                                |                               |          |          |       |
| Divorce   |                                |                               |          |          |       |
| Judicial Separation                             |                                |                               |          |          |       |

|                                   | Number<br>of Cases<br>Reported | Majority/<br>Dissent<br>Ratio | Affirmed | Reversed | Other |
|-----------------------------------|--------------------------------|-------------------------------|----------|----------|-------|
| Maintenance & Support             |                                |                               |          |          |       |
| Matrimonial Property              | 3                              | 3-7:0                         | 2        | 1        | 0     |
| Family Law - Other                | 1                              | 1-9:0                         | 0        | 1        | 0     |
| (iv) <i>Intellectual Property</i> |                                |                               |          |          |       |
| Copyrights                        |                                |                               |          |          |       |
| Industrial Designs                |                                |                               |          |          |       |
| Patents                           |                                |                               |          |          |       |
| Trademarks                        |                                |                               |          |          |       |
| Intellectual Property - Other     |                                |                               |          |          |       |
| (v) <i>Land</i>                   |                                |                               |          |          |       |
| Hypothecs & Mortgages             | 2                              | 2-5:0                         | 1        | 1        | 0     |
| Landlord & Tenant                 |                                |                               |          |          |       |
| Construction & Mechanics' Liens   |                                |                               |          |          |       |
| Real Property                     | 1                              | 1-5:0                         | 1        | 0        | 0     |
| (vi) <i>Torts</i>                 |                                |                               |          |          |       |
| Assault & Battery                 |                                |                               |          |          |       |
| Bailment                          |                                |                               |          |          |       |
| Conspiracy & Intimidation         |                                |                               |          |          |       |
| Conversion & Detinue              |                                |                               |          |          |       |
| False Imprisonment                |                                |                               |          |          |       |
| Libel & Slander                   |                                |                               |          |          |       |
| Negligence                        | 3                              | 1-7:0                         | 0        | 1        | 0     |
|                                   |                                | 1-5:0                         | 1        | 0        | 0     |
|                                   |                                | 1-4:0                         | 0        | 1        | 0     |
| Nuisance                          |                                |                               |          |          |       |
| Occupiers' Liability              |                                |                               |          |          |       |
| Trespass                          |                                |                               |          |          |       |
| Vicarious Liability               |                                |                               |          |          |       |
| (vii) <i>Other</i>                |                                |                               |          |          |       |
| Associations                      |                                |                               |          |          |       |
| Barristers & Solicitors           | 1                              | 1-7:0                         | 0        | 1        | 0     |
| Charities                         |                                |                               |          |          |       |
| Choses in Action                  |                                |                               |          |          |       |
| Conflict of Laws                  |                                |                               |          |          |       |
| Damages                           |                                |                               |          |          |       |
| Maritime, Admiralty & Shipping    | 1                              | 2-7:0 <sup>3</sup>            | 1        | 1        | 0     |
| Master & Servant                  |                                |                               |          |          |       |
| Natural Resources                 |                                |                               |          |          |       |
| Pensions                          | 1                              | 1-7:0                         | 1        | 0        | 0     |
| Privilege                         |                                |                               |          |          |       |
| Trusts & Trustees                 | 1                              | 1-7:0                         | 0        | 1        | 0     |
| Unjust Enrichment & Restitution   | 1                              | 1-7:0                         | 0        | 1        | 0     |

|   | Number<br>of Cases<br>Reported | Majority/<br>Dissent<br>Ratio | Affirmed | Reversed | Other |
|---|--------------------------------|-------------------------------|----------|----------|-------|
| <b>(b) PRIVATE (Civil Law)</b>          |                                |                               |          |          |       |
| Preliminary Title                       |                                |                               |          |          |       |
| Persons & Moral Persons                 |                                |                               |          |          |       |
| I Marriage, Separation & Divorce        |                                |                               |          |          |       |
| II Property                             |                                |                               |          |          |       |
| II Dismemberments of Property           |                                |                               |          |          |       |
| III Succession & Liberalities           |                                |                               |          |          |       |
| III Obligations                         |                                |                               |          |          |       |
| III Proof                               |                                |                               |          |          |       |
| III Sale, Exchange & Lease              |                                |                               |          |          |       |
| III Mandate, Partnerships & Suretyships |                                |                               |          |          |       |
| III Pledges, Privileges & Hypothecs     |                                |                               |          |          |       |
| III Registration & Prescription         |                                |                               |          |          |       |
| III Minor Nominate Contracts            |                                |                               |          |          |       |
| IV Commercial Law & Insurance           |                                |                               |          |          |       |
| Civil Law - Other                       |                                |                               |          |          |       |
| <b>(c) PUBLIC</b>                       |                                |                               |          |          |       |
| Aboriginal Rights                       | 2                              | 2-7:0                         | 2        | 0        | 0     |
| Administrative Boards                   | 1                              | 1-5:0                         | 1        | 0        | 0     |
| Assessment                              |                                |                               |          |          |       |
| <i>Certiorari</i>                       | 1                              | 1-9:0                         | 1        | 0        | 0     |
| <i>Charter</i>                          | 9                              | 1-9:0                         | 1        | 0        | 0     |
|   |                                | 5-7:0                         | 4        | 1        | 0     |
|   |                                | 1-4:3                         | 1        | 0        | 0     |
|   |                                | 2-6:1                         | 2        | 0        | 0     |
| Civil Rights                            | 1                              | 1-3:2                         | 0        | 1        | 0     |
| Combines                                |                                |                               |          |          |       |
| Communications                          |                                |                               |          |          |       |
| Constitutional                          | 6                              | 2-7:0                         | 2        | 0        | 0     |
|   |                                | 2-6:1                         | 2        | 0        | 0     |
|   |                                | 1-6:3                         | 0        | 1        | 0     |
|   |                                | 1-3:2                         | 0        | 1        | 0     |
| Criminal                                | 21                             | 1-9:0                         | 1        | 0        | 0     |
|   |                                | 11-7:0                        | 5        | 6        | 0     |
|   |                                | 1-8:1                         | 0        | 1        | 0     |
|   |                                | 1-7:2                         | 1        | 0        | 0     |
|   |                                | 1-6:3                         | 0        | 1        | 0     |
|   |                                | 5-5:0                         | 4        | 1        | 0     |
|   |                                | 1-4:3                         | 1        | 0        | 0     |
| Crown & Sovereign Immunity              | 1                              | 1-7:0                         | 0        | 0        | 14    |
| Elections                               |                                |                               |          |          |       |

|                          | Number<br>of Cases<br>Reported | Majority/<br>Dissent<br>Ratio | Affirmed | Reversed | Other |
|--------------------------|--------------------------------|-------------------------------|----------|----------|-------|
| Environmental            |                                |                               |          |          |       |
| Expropriation            | 1                              | 1-5:0                         | 1        | 0        | 0     |
| Extradition              |                                |                               |          |          |       |
| Habeas Corpus            | 1                              | 1-7:0                         | 1        | 0        | 0     |
| Human Rights             | 1                              | 1-9:0                         | 0        | 1        | 0     |
| Immigration              |                                |                               |          |          |       |
| International            |                                |                               |          |          |       |
| Judicial Review          |                                |                               |          |          |       |
| Labour                   | 3                              | 2-7:0                         | 1        | 1        | 0     |
|                          |                                | 1-5:0                         | 1        | 0        | 0     |
| Mandamus                 |                                |                               |          |          |       |
| Municipal & Planning     | 2                              | 1-7:0                         | 0        | 1        | 0     |
|                          |                                | 1-5:0                         | 1        | 0        | 0     |
| Prohibition              |                                |                               |          |          |       |
| Public Utilities         |                                |                               |          |          |       |
| Securities               |                                |                               |          |          |       |
| Statutory Interpretation | 1                              | 1-7:0                         | 0        | 1        | 0     |
| Taxation                 | 4                              | 3-7:0                         | 1        | 2        | 0     |
|                          |                                | 1-5:0                         | 1        | 0        | 0     |
| Transportation           |                                |                               |          |          |       |
| Unemployment             | 2                              | 1-4:3                         | 1        | 0        | 0     |
|                          |                                | 1-5:0                         | 0        | 1        | 0     |
| (d) PROCEDURAL           |                                |                               |          |          |       |
| Appeal                   | 2                              | 1-7:0                         | 1        | 0        | 0     |
|                          |                                | 1-5:0                         | 0        | 1        | 0     |
| Costs                    | 1                              | 1-5:0                         | 1        | 0        | 0     |
| Declaratory Action       | 1                              | 1-7:0                         | 1        | 0        | 0     |
| Evidence                 | 6                              | 3-7:0                         | 1        | 2        | 0     |
|                          |                                | 1-5:0                         | 0        | 1        | 0     |
|                          |                                | 1-5:2                         | 1        | 0        | 0     |
|                          |                                | 1-4:3                         | 1        | 0        | 0     |
| Injunctions              |                                |                               |          |          |       |
| Jurisdictions            | 7                              | 7-7:0 <sup>3</sup>            | 6        | 1        | 0     |
|                          |                                | 1-9:0                         | 0        | 1        | 0     |
| Limitation Period        | 2                              | 1-7:0                         | 0        | 1        | 0     |
|                          |                                | 1-5:0                         | 1        | 0        | 0     |
| Procedural - Other       | 3                              | 2-7:0                         | 1        | 1        | 0     |
|                          |                                | 1-5:0                         | 1        | 0        | 0     |
| Procedure                | 1                              | 1-7:0                         | 0        | 1        | 0     |
| Res Judicata             |                                |                               |          |          |       |
| Standing                 | 1                              | 1-7:0                         | 1        | 0        | 0     |



<sup>1</sup> A decision involving one or more appeals (including cross-appeals), motions, or references is considered to be one case for the purposes of this table unless the results differ with respect to affirmation or reversal, or the vote or composition of majority or minority varies among the appeals, motions, or references.

Multiple entries are made if a case involves more than one subject matter of importance. Appeals from decisions on references brought before lower courts are classified according to subject matter under "Appellate."

<sup>2</sup> The following cases have been included under two or more subject categories: *Morozuk v. R.*, [1986] 1 S.C.R. 31, ("Criminal" and "Jurisdictions"); *R. v. Oakes*, [1986] 1 S.C.R. 103, ("Charter" and "Criminal"); *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285, ("Constitutional," "Aboriginal Rights," and "Matrimonial Property"); *Paul v. Paul*, [1986] 1 S.C.R. 306, ("Aboriginal Rights," "Matrimonial Property," and "Constitutional"); *Dubois v. R.*, [1986] 1 S.C.R. 366, ("Criminal" and "Certiorari"); *Gendron v. Municipalité de la Baie-James*, [1986] 1 S.C.R. 401, ("Labour" and "Administrative Boards"); *MacDonald v. Montreal (City of)*, [1986] 1 S.C.R. 460, ("Appeal" and "Constitutional"); *Société des Acadiens du Nouveau-Brunswick Inc. v. Association of Parents for Fairness in Education*, [1986] 1 S.C.R. 549, ("Jurisdictions," "Procedural - Other," and "Charter"); *Dube v. Labar*, [1986] 1 S.C.R. 649, ("Negligence" and "Procedural - Other"); *St. Anne Nackawic Pulp & Paper Co. v. C.P.W.U., Local 219*, [1986] 1 S.C.R. 704, ("Labour" and "Jurisdictions"); *Nelson v. C.T.C. Mortgage Corp.*, [1986] 1 S.C.R. 749, ("Hypothecs & Mortgages" and "Criminal"); *International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, ("Contract," "Maritime, Admiralty & Shipping," and "Jurisdictions"); *Canning v. R.*, [1986] 1 S.C.R. 991, ("Criminal" and "Evidence"); *Sorochan v. Sorochan*, [1986] 2 S.C.R. 38, ("Unjust Enrichment & Restitution," "Matrimonial Property," and "Trusts & Trustees"); *Beauregard v. Canada*, [1986] 2 S.C.R. 56, ("Constitutional" and "Civil Rights"); *Wile v. Cook*, [1986] 2 S.C.R. 137, ("Real Property" and "Contract"); *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147, ("Barristers & Solicitors," "Negligence," and "Contract"); *E. (Mrs.) v. Eve*, [1986] 2 S.C.R. 388, ("Jurisdictions," "Family Law - Other," and "Human Rights"); *R. v. Prince*, [1986] 2 S.C.R. 480, ("Criminal" and "Procedure"); *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607, ("Declaratory Action" and "Standing"); *R. v. Head*, [1986] 2 S.C.R. 684, ("Criminal" and "Procedural - Other"); and *R. v. Nehring*, [1986] 2 S.C.R. 709, ("Criminal" and "Evidence").

<sup>3</sup> In *MacDonald v. Montreal (City of)*, [1986] 1 S.C.R. 460, one appeal was allowed and one was dismissed.

<sup>4</sup> In *Air Canada v. British Columbia (A.G.)*, [1986] 2 S.C.R. 539, the appeal was allowed and an order in the nature of mandamus was issued.

TABLE IV<sup>1</sup>  
MAJORITY/DISSENT RATIO

|  |    |               |   |                 |    |               |   |
|--|----|---------------|---|-----------------|----|---------------|---|
| Total Number of Cases Reported . . . . . |    |               |   | 75 <sup>2</sup> |    |               |   |
| Unanimous Decisions . . . . .            |    |               |   | 62              |    |               |   |
| Split Decisions . . . . .                |    |               |   | 14              |    |               |   |
| 9:0 . . . . .                            | 3  | 8:0 . . . . . | 0 | 7:0 . . . . .   | 38 | 6:0 . . . . . | 0 |
| 8:1 . . . . .                            | 1  | 7:1 . . . . . | 0 | 6:1 . . . . .   | 4  | 5:1 . . . . . | 0 |
| 7:2 . . . . .                            | 1  | 6:2 . . . . . | 0 | 5:2 . . . . .   | 1  | 4:2 . . . . . | 0 |
| 6:3 . . . . .                            | 2  | 5:3 . . . . . | 0 | 4:3 . . . . .   | 4  | 3:3 . . . . . | 0 |
| 5:4 . . . . .                            | 0  | 4:4 . . . . . | 0 |                 |    |               |   |
| 5:0 . . . . .                            | 20 | 4:0 . . . . . | 1 | 3:0 . . . . .   | 0  | 1:0 . . . . . | 0 |
| 4:1 . . . . .                            | 0  | 3:1 . . . . . | 0 | 2:1 . . . . .   | 0  |               |   |
| 3:2 . . . . .                            | 1  | 2:2 . . . . . | 0 |                 |    |               |   |

<sup>1</sup> Both "Original Jurisdiction" and "Appellate" decisions are included in this table. A decision involving one or more appeals (including cross-appeals), motions, or references is considered to be one case for the purposes of this table unless the composition of majority and minority varies among the appeals, motions, or references. If the ratios differ, they will be included in this table but not in the "Total Number of Cases Reported." Dissenting judgments include dissents in part.

<sup>2</sup> In *MacDonald v. Montreal (City of)*, [1986] 1 S.C.R. 460, one issue was decided "7:0" and one was decided "6:1."

TABLE VI  
TYPE OF WORK

|           | Common<br>Law | Civil<br>Law | Constitutional | Criminal | Other<br>Public Law | Reported<br>Motions |
|-----------|---------------|--------------|----------------|----------|---------------------|---------------------|
| Beetz     | 9             | 0            | 13             | 18       | 14                  | 9                   |
| Chouinard | 14            | 0            | 10             | 20       | 15                  | 8                   |
| Dickson   | 10            | 0            | 14             | 12       | 12                  | 7                   |
| Estey     | 9             | 0            | 10             | 12       | 3                   | 5                   |
| La Forest | 9             | 0            | 9              | 14       | 10                  | 6                   |
| Lamer     | 11            | 0            | 13             | 23       | 11                  | 4                   |
| Le Dain   | 12            | 0            | 12             | 20       | 10                  | 8                   |
| McIntyre  | 13            | 0            | 14             | 20       | 9                   | 7                   |
| Wilson    | 13            | 0            | 12             | 20       | 9                   | 9                   |

<sup>1</sup> Both "Original Jurisdiction" and "Appellate" decisions are included in this table. A decision involving one or more appeals (including cross-appeals), motions, or references is considered to be one case for the purposes of this table. Procedural cases and references are classified according to their underlying subject matter. Cases involving multiple subject matters may be classified under one or more of "Common Law," "Civil Law," "Constitutional," "Criminal," or "Other Public Law."



Concurrences with Another Justice

|                                  | Number<br>of Cases | Judgments | Concurrences | The<br>Court | Beetz  | Chouinard | Dickson | Estey  | La Forest | Lamer  | Le Dain | McIntyre | Wilson |
|----------------------------------|--------------------|-----------|--------------|--------------|--------|-----------|---------|--------|-----------|--------|---------|----------|--------|
| La Forest<br>Majority<br>Dissent | 48                 | 10<br>3   | 27<br>1      | 7            | 3<br>0 | 6<br>0    | 4<br>0  | 2<br>0 | 4<br>0    | 4<br>1 | 2<br>0  | 2<br>0   | 4<br>0 |
| Lamer<br>Majority<br>Dissent     | 61                 | 12<br>3   | 39<br>1      | 6<br>1       | 5<br>0 | 7<br>0    | 7<br>0  | 4<br>0 | 6<br>0    | 3<br>0 | 3<br>0  | 4<br>0   | 3<br>0 |
| Le Dain<br>Majority<br>Dissent   | 59                 | 6<br>1    | 44<br>0      | 8            | 5<br>0 | 7<br>0    | 6<br>0  | 4<br>0 | 6<br>0    | 8<br>0 | 4<br>0  | 4<br>0   | 4<br>0 |
| McIntyre<br>Majority<br>Dissent  | 59                 | 11<br>0   | 36<br>3      | 9            | 5<br>1 | 3<br>1    | 3<br>0  | 6<br>1 | 4<br>0    | 6<br>0 | 5<br>0  | 4<br>0   | 4<br>0 |
| Wilson<br>Majority<br>Dissent    | 62                 | 13<br>6   | 34<br>2      | 6<br>1       | 3<br>0 | 3<br>0    | 4<br>0  | 3<br>0 | 5<br>1    | 8<br>1 | 3<br>0  | 5<br>0   | 3<br>0 |

In *R. v. Nehring*, [1986] 2 S.C.R. 709, the judgments of the majority and the minority (Estey, Lamer, and Wilson J.J. were the latter) were delivered by the Court.

**TABLE VII<sup>1</sup>**  
**SUCCESS RATE OF CHARTER CLAIMANTS**

|                               | Number   | Per cent     |
|-------------------------------|----------|--------------|
| <i>Charter</i> Claimant Wins  | 4        | 44.4         |
| <i>Charter</i> Claimant Loses | 4        | 44.4         |
| Other <sup>2</sup>            | 1        | 11.1         |
| <b>Total</b>                  | <b>9</b> | <b>100.0</b> |

<sup>1</sup> "Claimant Wins" includes cases in which both the *Charter* claim and the disposition are successful. "Claimant Loses" includes cases in which both the *Charter* claim and the disposition are unsuccessful. "Other" includes cases in which the claimant wins the *Charter* argument but loses the disposition on other grounds, or the claimant loses the *Charter* argument but wins on other grounds.

<sup>2</sup> In *Mills v. R.*, [1986] 1 S.C.R. 863, the matter was returned to provincial court to complete the preliminary hearing.

**TABLE VIII**  
OBJECT OF *CHARTER* LITIGATION

|   |             | Number | Per cent | Success Rate (%) |
|---|-------------|--------|----------|------------------|
| Legislation: <sup>1</sup>                   | Federal     | 1      | 11.1     | 100              |
|   | Provincial  | 2      | 22.2     | 50               |
|   | Territorial |        |          |                  |
|   | Municipal   |        |          |                  |
| Administrative: Decisions                   |             |        |          |                  |
| Rules                                       |             |        |          |                  |
| Conduct or Decisions<br>of Public Officials |             | 4      | 44.4     | 25               |
| Common Law                                  |             | 2      | 22.2     | 50               |

<sup>1</sup> "Legislation" includes subordinate legislation, orders in council, and regulations. If the legislation expressly or by necessary implication authorizes the limitation of the *Charter* right or freedom, it will fall under "Legislation." If the legislation confers a broad discretion, it will be classified as an "Administrative Decision" or "Administrative Rule."

**TABLE IX**  
**CHARTER LITIGATION BY SOURCE**

| Source            | # of Cases | % of Cases   | Lower Decisions |          |       | Claimant |          |                |
|-------------------|------------|--------------|-----------------|----------|-------|----------|----------|----------------|
|                   |            |              | Affirmed        | Reversed | Other | Wins     | Loses    | Other          |
| Alberta           | 2          | 22.2         | 2               |          |       | 1        | 1        |                |
| British Columbia  | 2          | 22.2         | 2               |          |       |          | 2        |                |
| Manitoba          |            |              |                 |          |       |          |          |                |
| New Brunswick     | 2          | 22.2         | 1               | 1        |       | 1        | 1        |                |
| Newfoundland      |            |              |                 |          |       |          |          |                |
| Nova Scotia       |            |              |                 |          |       |          |          |                |
| Ontario           | 3          | 33.3         | 3               |          |       | 2        |          | 1 <sup>1</sup> |
| P.E.I.            |            |              |                 |          |       |          |          |                |
| Quebec            |            |              |                 |          |       |          |          |                |
| Saskatchewan      |            |              |                 |          |       |          |          |                |
| N.W.T. & Yukon    |            |              |                 |          |       |          |          |                |
| Federal Court     |            |              |                 |          |       |          |          |                |
| Federal Reference |            |              |                 |          |       |          |          |                |
| <b>Total</b>      | <b>9</b>   | <b>100.0</b> | <b>8</b>        | <b>1</b> |       | <b>4</b> | <b>4</b> | <b>1</b>       |

<sup>1</sup> See *Mills v. R.*, *supra* Table VII ([1986] S.C.R. Charter Tables), note 2.



**TABLE X<sup>1</sup>**  
**SUBJECT OF CHARTER LITIGATION**

| Section                                 | # of Cases | Claimant |        |                | Right or Freedom |         | Section 1   |              |       |
|---|------------|----------|--------|----------------|------------------|---------|-------------|--------------|-------|
|   |            | Wins     | Losses | Other          | Limited          | Not Ltd | Saves Limit | Doesn't Save | Other |
| <b>2. Fundamental Freedoms</b>          |            |          |        |                |                  |         |             |              |       |
| (a) Conscience                          | 1          | 1        |        |                | 1                |         |             |              | 1     |
| Religion                                | 2          | 1        | 1      |                | 1                | 1       |             |              | 1     |
| (b) Thought, Belief & opinion           |            |          |        |                |                  |         |             |              |       |
| Expression, Press & other               | 1          |          | 1      |                |                  |         | 1           |              |       |
| (c) Peaceful assembly                   |            |          |        |                |                  |         |             |              |       |
| (d) Association                         |            |          |        |                |                  |         |             |              |       |
| s. 2 SUBTOTAL                           | 3          | 1        | 2      |                | 1                | 2       |             |              | 1     |
| <b>3. - 5. Democratic Rights</b>        |            |          |        |                |                  |         |             |              |       |
| <b>6. Mobility Rights</b>               |            |          |        |                |                  |         |             |              |       |
| <b>Legal Rights</b>                     |            |          |        |                |                  |         |             |              |       |
| <b>7. General (non-distinguished)</b>   |            |          |        |                |                  |         |             |              |       |
| <b>Life</b>                             |            |          |        |                |                  |         |             |              |       |
| Liberty                                 | 2          |          | 1      | 1 <sup>2</sup> |                  |         | 2           |              |       |
| Security of person                      |            |          |        |                |                  |         |             |              |       |
| Principles of fund. justice             |            |          |        |                |                  |         |             |              |       |
| s. 7 SUBTOTAL                           | 2          |          | 1      | 1              |                  |         | 2           |              |       |
| <b>8. Search or seizure</b>             |            |          |        |                |                  |         |             |              |       |
| <b>9. Detention or imprisonment</b>     |            |          |        |                |                  |         |             |              |       |
| <b>10. Arrest or Detention</b>          |            |          |        |                |                  |         |             |              |       |
| <b>(a) Informed promptly of reasons</b> |            |          |        |                |                  |         |             |              |       |
| (b) Retain & instruct counsel           | 1          | 1        |        |                | 1                |         |             |              |       |
| <b>(c) Habeas corpus</b>                |            |          |        |                |                  |         |             |              |       |
| <b>11. Criminal &amp; Penal Matters</b> |            |          |        |                |                  |         |             |              |       |
| <b>(a) Informed of offence</b>          |            |          |        |                |                  |         |             |              |       |
| (b) Tried within reasonable time        | 2          |          | 1      | 1 <sup>3</sup> |                  |         | 1           |              |       |
| <b>(c) Compelled to be a witness</b>    |            |          |        |                |                  |         |             |              |       |
| (d) Presumption of innocence,           | 1          | 1        |        |                | 1                |         |             |              | 1     |
| Fair public hearing,                    |            |          |        |                |                  |         |             |              |       |
| Independent impartial tribunal          |            |          |        |                |                  |         |             |              |       |
| s. 11(d) SUBTOTAL                       | 1          | 1        |        |                | 1                |         |             |              | 1     |
| <b>(e) Reasonable bail</b>              |            |          |        |                |                  |         |             |              |       |
| <b>(f) Trial by jury</b>                |            |          |        |                |                  |         |             |              |       |
| <b>(g) Time of act or omission</b>      |            |          |        |                |                  |         |             |              |       |

| Section                           | # of<br>Cases | Claimant |       |       | Right or<br>Freedom |         | Section 1      |                 |                |
|-----------------------------------|---------------|----------|-------|-------|---------------------|---------|----------------|-----------------|----------------|
|                                   |               | Wins     | Loses | Other | Limited             | Not Ltd | Saves<br>Limit | Doesn't<br>Save | Other          |
| (h) Double jeopardy               |               |          |       |       |                     |         |                |                 |                |
| (i) Benefit of lesser punishment  |               |          |       |       |                     |         |                |                 |                |
| 12. Treatment or Punishment       |               |          |       |       |                     |         |                |                 |                |
| 13. Self-incrimination            | 1             | 1        |       |       |                     | 1       |                |                 |                |
| 14. Interpreter                   |               |          |       |       |                     |         |                |                 |                |
| 15. Equality Rights               |               |          |       |       |                     |         |                |                 |                |
| (1) Race                          |               |          |       |       |                     |         |                |                 |                |
| National or ethnic origin         |               |          |       |       |                     |         |                |                 |                |
| Colour                            |               |          |       |       |                     |         |                |                 |                |
| Religion                          |               |          |       |       |                     |         |                |                 |                |
| Sex                               |               |          |       |       |                     |         |                |                 |                |
| Age                               |               |          |       |       |                     |         |                |                 |                |
| Mental or physical disability     |               |          |       |       |                     |         |                |                 |                |
| Aboriginal peoples                |               |          |       |       |                     |         |                |                 |                |
| Other                             |               |          |       |       |                     |         |                |                 |                |
| s. 15(1) SUBTOTAL                 |               |          |       |       |                     |         |                |                 |                |
| (2) Affirmative action            |               |          |       |       |                     |         |                |                 |                |
| 16. - 22. Official Languages      |               |          |       |       |                     |         |                |                 |                |
| 23. Minority Language             | 1             |          | 1     |       |                     |         |                | 1 <sup>4</sup>  |                |
| Educational Rights                |               |          |       |       |                     |         |                |                 |                |
| 24(1) Enforcement                 | 1             |          |       |       |                     |         |                |                 | 1 <sup>3</sup> |
| (2) Exclusion of Evidence         |               |          |       |       |                     |         |                |                 |                |
| 25. Aboriginal Rights             |               |          |       |       |                     |         |                |                 |                |
| 26. Other Rights & Freedoms       |               |          |       |       |                     |         |                |                 |                |
| 27. Multicultural Heritage        |               |          |       |       |                     |         |                |                 |                |
| 28. Rights Guaranteed Equally     |               |          |       |       |                     |         |                |                 |                |
| 29. Rights Respecting Schools     |               |          |       |       |                     |         |                |                 |                |
| 30. Application to Territories    |               |          |       |       |                     |         |                |                 |                |
| 31. Legislative Powers            |               |          |       |       |                     |         |                |                 |                |
| 32. Application of <i>Charter</i> | 1             |          | 1     |       |                     |         |                | 1               |                |
| 33. Exception                     |               |          |       |       |                     |         |                |                 |                |

<sup>1</sup> The categories of analysis in this table are as follows: the number of times a particular section or subsection was considered; the number of cases in which the claimant wins or loses; the number of cases decided otherwise; the number of decisions in which the *Charter* right or freedom was found to be limited or not limited; and the number of decisions in which the limit was saved or not saved by section 1, or was decided on another basis.

<sup>2</sup> In *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, the claimant won on the basis of section 2(a). The Court held that section 7 was not infringed.

<sup>3</sup> In *Mills v. R.*, [1986] 1 S.C.R. 863, the claimant won on the basis of section 24(1). A magistrate sitting before a preliminary hearing is not a court of competent jurisdiction within the meaning of section 24. The Court held that section 11(b) was not limited.

<sup>4</sup> In *Société des Acadiens du Nouveau-Brunswick Inc. v. Association of Parents for Fairness in Education*, [1986] 1 S.C.R. 549, a decision of the New Brunswick Court of Appeal was appealed based in part on the adequacy of the presiding judge's fluency in French. The constitutional question—whether section 19(2) of the *Charter* entitles a party to be heard by a court whose member(s) are capable of understanding the proceedings, the evidence and the arguments, written and oral, regardless of the official language of the parties. The majority answered this in the negative. While Dickson C.J. and Wilson J. answered the question in the affirmative on the facts of the case, they found no violation of section 19(2) rights.



TABLE XII<sup>1</sup>  
VOTING BEHAVIOUR OF JUSTICES

| Justice   | Majority     |       |       |              |       |       | Minority     |       |       |              |       |       | Section 1   |       |       |             |              |       |
|-----------|--------------|-------|-------|--------------|-------|-------|--------------|-------|-------|--------------|-------|-------|-------------|-------|-------|-------------|--------------|-------|
|           | Judgment For |       |       | Concurs With |       |       | Judgment For |       |       | Concurs With |       |       | Support For |       |       | Saves Limit | Doesn't Save | Other |
|           | Claimant     | Gov't | Other | Claimant     | Gov't | Other | Claimant     | Gov't | Other | Claimant     | Gov't | Other | Claimant    | Gov't | Other |             |              |       |
| Beetz     | 1            | 2     |       | 1            | 2     | 1     |              |       |       |              |       |       | 2           | 4     | 1     |             | 1            |       |
| Chouinard |              |       |       | 3            | 3     | 1     |              |       |       |              |       |       | 3           | 3     | 1     |             | 2            |       |
| Dickson   | 2            | 1     |       | 1            | 3     |       |              |       | 1     |              |       |       | 4           | 3     |       |             | 2            |       |
| Estey     | 1            |       |       | 2            | 3     |       |              |       |       |              |       |       | 3           | 3     |       |             | 1            |       |
| La Forest | 1            | 1     | 1     | 2            | 1     |       |              |       |       |              |       |       | 3           | 2     | 1     |             | 1            |       |
| Lamer     |              | 2     |       | 3            | 1     |       | 1            |       |       |              |       |       | 4           | 3     |       |             | 1            |       |
| Le Dain   |              |       |       | 3            | 4     |       |              |       |       |              |       |       | 3           | 4     |       |             | 2            |       |
| McIntyre  | 2            | 2     | 1     | 2            | 1     |       |              |       |       |              |       |       | 4           | 3     | 1     |             | 2            |       |
| Wilson    | 1            | 3     |       | 2            |       |       | 1            | 1     | 1     |              |       |       | 5           | 4     |       |             | 2            |       |

<sup>1</sup> "Support for Claimant" is the sum of those judgments and concurrences decided in favour of the claimant's *Charter* argument, regardless of the disposition. "Support for Government" is the sum of those judgments and concurrences decided in favour of the government's *Charter* arguments, regardless of the disposition. "Section 1" notes the number of times a justice pronounces on section 1 for each constitutional issue. Therefore, a case can be counted twice if there are multiple issues.



**TABLE XIV**  
**MAJORITY/DISSENT RATIO**

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|                           |   |
|---------------------------|---|
| Unanimous Decisions ..... | 6 |
| Split Decisions .....     | 3 |

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|           |   |           |   |           |   |           |   |
|-----------|---|-----------|---|-----------|---|-----------|---|
| 9:0 ..... | 1 | 8:0 ..... | 0 | 7:0 ..... | 5 | 6:0 ..... | 0 |
| 8:1 ..... | 0 | 7:1 ..... | 0 | 6:1 ..... | 2 | 5:1 ..... | 0 |
| 7:2 ..... | 0 | 6:2 ..... | 0 | 5:2 ..... | 0 | 4:2 ..... | 0 |
| 6:3 ..... | 0 | 5:3 ..... | 0 | 4:3 ..... | 1 | 3:3 ..... | 0 |
| 5:4 ..... | 0 | 4:4 ..... | 0 |           |   |           |   |
|           |   |           |   |           |   |           |   |
| 5:0 ..... | 0 | 4:0 ..... | 0 | 3:0 ..... | 0 | 1:0 ..... | 0 |
| 4:1 ..... | 0 | 3:1 ..... | 0 | 2:1 ..... | 0 |           |   |
| 3:2 ..... | 0 | 2:2 ..... | 0 |           |   |           |   |

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