

---

# [1989] S. C. R. Statistical Analysis

John H. Kim

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>  
Article

---

## Citation Information

Kim, John H.. "[1989] S. C. R. Statistical Analysis." *Osgoode Hall Law Journal* 30.4 (1992) : 973-999.  
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol30/iss4/11>

This Article is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

# [1989] S.C.R. STATISTICAL ANALYSIS®

## GENERAL TABLES

I. VOLUME OF WORK .....	974
II. BREAKDOWN BY SOURCE .....	975
III. SUBJECT MATTER OF LITIGATION .....	977
IV. MAJORITY/DISSENT RATIO .....	985
V. TYPE OF WORK .....	986
VI. ACTION OF THE JUSTICES .....	987

## CHARTER TABLES

VII. SUCCESS RATE OF <i>CHARTER</i> CLAIMANTS .....	989
VIII. OBJECT OF <i>CHARTER</i> LITIGATION .....	990
IX. <i>CHARTER</i> LITIGATION BY SOURCE .....	991
X. SUBJECT OF <i>CHARTER</i> LITIGATION .....	992
XI. ACTION OF THE JUSTICES .....	995
XII. VOTING BEHAVIOUR OF JUSTICES .....	996
XIII. TYPE OF <i>CHARTER</i> CLAIMANTS .....	997
XIV. MAJORITY/DISSENT RATIO .....	998
XV. LEGAL RIGHTS AND SECTION 24(2) .....	999

TABLE I'  
VOLUME OF WORK

			TOTAL <sup>2</sup>
Reported Judgments <sup>3</sup>			
Private	Public		
27	105		127
Reported Motions			
Granted	Refused	Other <sup>4</sup>	
4	2	1	7
Unreported Motions			
Granted	Refused	Other	
109	370	144	623

<sup>1</sup> All data considered in this table derive from the [1989] *Supreme Court Reports* and the [1989] *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": *Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 S.C.R. 880; *YMHA Jewish Community Centre of Winnipeg Inc. v. Brown*, [1989] 1 S.C.R. 1532; *Tock v. St. John's Metropolitan Area Board*, [1989] 2 S.C.R. 1181; *Just v. British Columbia*, [1989] 2 S.C.R. 1228; and *Rothfield v. Manolakos*, [1989] 2 S.C.R. 1259.

<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."

<sup>4</sup> In *Tétreault-Gadoury v. Canada (Employment and Immigration Commission)*, [1989] 2 S.C.R. 1110, the motion to state constitutional questions was granted in part.

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

	PRIVATE <sup>2</sup>			PUBLIC			Total from Source
	Affirmed	Reversed <sup>3</sup>	Other <sup>4</sup>	Affirmed	Reversed	Other	
Alberta	0	0	0	12	4	1	15
British Columbia	3	7	0	11	6	1	22
Manitoba	0	2	2	4	5	0	12
New Brunswick	0	0	0	0	1	0	1
Newfoundland & Labrador	0	1	0	3	2	0	5
Northwest Territories	0	0	0	0	0	0	0
Nova Scotia	0	0	0	4	2	0	6
Ontario	2	0	0	11	4	2	18
Prince Edward Island	0	0	0	0	0	0	0
Quebec	2	7	0	8	8	2	26
Saskatchewan	2	0	1	2	3	0	8
Yukon Territory	0	0	0	0	0	0	0
Court Martial Appeal Ct	0	0	0	1	0	0	1
Federal Board	0	0	0	0	0	0	0
Federal Court	1	0	0	8	4	0	13
<b>TOTAL</b>	<b>10</b>	<b>17</b>	<b>3</b>	<b>64</b>	<b>39</b>	<b>6</b>	<b>127</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": *Venne v. Quebec (Commission de protection du territoire)*, [1989] 1 S.C.R. 880; *YMHA Jewish Community Centre of Winnipeg Inc. v. Brown*, [1989] 1 S.C.R. 1532; *Tock v. St. John's Metropolitan Area Board*, [1989] 2 S.C.R. 1181; *Just v. British Columbia*, [1989] 2 S.C.R. 1228; and *Rothfield v. Manolakos*, [1989] 2 S.C.R. 1259.

<sup>3</sup> In the following cases, the Court affirmed in part and reversed in part the decision of the lower Court: *Hunter Engineering Co. v. Syncrude Canada Ltd.*, [1989] 1 S.C.R. 426, ("British Columbia - Private"), two actions were allowed and one was dismissed; *Canadian Pacific Air Lines*

*Ltd. v. British Columbia*, [1989] 1 S.C.R. 1133, ("Public"); *R. v. Leaney*, [1989] 2 S.C.R. 393, ("Alberta - Public"), one action was allowed and two were dismissed; *Nelles v. A.G. Ontario*, [1989] 2 S.C.R. 170, ("Public"), the appeal was dismissed against the Crown and the appeal was allowed as against the Attorney General; and *Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161, ("Private").

<sup>4</sup>The following cases have been classified as "Other": *R. v. Ross*, [1989] 1 S.C.R. 3, (where the appeal was allowed and a new trial was ordered); *R. v. Hébert*, [1989] 1 S.C.R. 233, (where the appeals were allowed and a new trial was ordered); *B. (B.) v. Child and Family Services*, 1 S.C.R. 291, (where the appeal was allowed in part); *R. v. Potvin*, [1989] 1 S.C.R. 525, (where the appeal was allowed and a new trial was ordered); *Chonstaedt v. University of Regina*, [1989] 1 S.C.R. 1011, (where the appeal was allowed in part); *R. v. McGinn*, [1989] 1 S.C.R. 1035, (where the appeal was allowed and a new trial was ordered); *R. v. D. (L.E.)*, [1989] 2 S.C.R. 111, (where the appeal was allowed and a new trial was ordered); *Watkins v. Olafson*, [1989] 2 S.C.R. 750, (where the appeal was allowed in part); and *R. v. D. (G.C.)*, [1989] 2 S.C.R. 878, (where the appeal was quashed).

**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 of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
<b>ORIGINAL JURISDICTION</b>					
References					
Reported Motions <sup>3</sup>	7	1-7:0			1
		2-5:0			2
		4-1:0			4
<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	2	1-7:0	0	1	0
		1-3:2	1	0	0
Assignments					
Bankruptcy	1	1-6:1	1	0	0
Banks & Banking					
Bills & Notes					
Companies					
Contract	5	5-5:0 <sup>4</sup>	1	3	1 <sup>5</sup>
		2-3:2	1	1	0
Debtor & Creditor					
Guarantees & Sureties	1	1-9:0	1	0	0
Insurance	3	1-9:0	1	0	0
		1-5:0	0	1	0
		1-4:3	1	0	0
Interest					

	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
Sale of Goods	1	2-5:0 <sup>4</sup> 1-3:2	1 0	1 1	0 0
(iii) <i>Family Law</i>					
Adoption					
Child Welfare, Custody & Access	1	1-7:0	0	0	1 <sup>6</sup>
Divorce					
Judicial Separation					
Maintenance & Support					
Matrimonial Property	1	1-7:0	0	1	0
Family Law - Other					
(iv) <i>Intellectual Property</i>					
Copyrights					
Industrial Designs					
Patents	1	1-5:0	1	0	0
Trademarks					
Intellectual Property - Other	1	1-3:2	1	0	0
(v) <i>Land</i>					
Hypothecs & Mortgages					
Landlord & Tenant					
Construction & Mechanics' Liens					
Real Property					
(vi) <i>Torts</i>					
Assault & Battery					
Bailment					
Conspiracy & Intimidation					
Conversion & Detinue					
False Imprisonment					
Libel & Slander					
Negligence	2	1-6:1 1-5:2	0 0	1 1	0 0
Nuisance	1	1-6:0	0	1	0
Occupiers' Liability					
Trespass					
Vicarious Liability					
(vii) <i>Other</i>					
Associations					
Barristers & Solicitors	1	1-7:0	1	0	0
Charities					
Choses in Action					
Conflict of Laws					

	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
Damages	4	2-9:0 1-5:0 1-3:2	0 0 1	1 1 0	1 <sup>7</sup> 0 0
Maritime, Admiralty & Shipping	1	1-7:0	0	1	0
Master & Servant	1	1-7:0	0	1	0
Natural Resources					
Pensions					
Privilege					
Trusts & Trustees	1	1-3:2	1	0	0
Unjust Enrichment & Restitution	3	3-5:0 <sup>4</sup> 2-3:2	2 1	1 1	0 0
<b>(b) PRIVATE (Civil Law)</b>					
Preliminary Title					
I Persons & Moral Persons	1	1-9:0	0	1	0
I Marriage, Separation & Divorce					
II Property					
II Dismemberments of Property					
III Succession & Liberalities	1	1-9:0	0	1	0
III Obligations	5	1-6:0 3-5:0 1-4:0	0 2 0	1 1 1	0 0 0
III Proof					
III Sale, Exchange & Lease					
III Mandate, Partnerships & Suretyships	2	1-7:0 1-5:0	0 0	1 1	0 0
III Pledges, Privileges & Hypothecs					
III Registration & Prescription	1	1-5:0	1	0	0
III Minor Nominate Contracts					
IV Commercial Law & Insurance	1	1-5:0	0	1	0
Civil Law - Other					
<b>(c) PUBLIC</b>					
Aboriginal Rights	1	1-4:0	1	0	0
Administrative Boards	4	1-7:0 1-5:0 1-4:2 1-3:2	0 1 0 1	1 0 1 0	0 0 0 0
Assessment <i>Certiorari</i>					



	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
<i>Charter</i>	35	5-9:0	1	4	0
		9-7:0	7	2	0
		2-6:0	2	0	0
		7-5:0	4	2	1 <sup>8</sup>
		1-6:1	1	0	0
		2-5:1 <sup>9</sup>	1	1	0
		1-4:1	1	0	0
		2-5:2	1	1	0
		2-4:2	1	0	1 <sup>10</sup>
		3-3:2	2	1	0
		2-4:3	1	1	0
Civil Rights	6	1-9:0	0	1	0
		2-7:0	0	2	0
		2-6:0	0	2	0
		1-3:2	0	1	0
Combines Communications Constitutional	13	3-7:0	2	1	0
		4-6:0	3	1	0
		2-4:0	2	0	0
		1-5:1	0	1	0
		1-5:2	1	0	0
		1-3:2	0	1	0
Criminal	41	1-4:3	0	1	0
		2-9:0	0	2	0
		7-7:0	5	2	0
		3-6:0	3	0	0
		22-5:0 <sup>9</sup>	14	4	4*
		1-8:1	0	1	0
		3-4:1	2	0	1
		2-7:2	2	0	0
		1-3:2	1	0	0
Crown & Sovereign Immunity	5	1-4:3	1	0	0
		2-7:0	1	1	0
		1-6:0	0	1	0
		1-6:1	0	1	0
		2-5:1 <sup>9</sup>	0	1	0
Elections Environmental Expropriation	3	3-4:0	2	1	0

	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
Extradition	1	1-5:20	1	0	
Habeas Corpus					
Human Rights					
Immigration	1	1-5:21	0	0	
International					
Judicial Review					
Labour	3	1-6:00	1	0	
		1-5:00	1	0	
		1-4:21	0	0	
Mandamus					
Municipal & Planning	3	2-6:00	2	0	
		1-5:00	1	0	
Prohibition					
Public Utilities					
Securities					
Statutory Interpretation	2	1-5:0	1	0	0
		2-5:1 <sup>9</sup>	1	1	0
Taxation	2	4-5:1 <sup>9,15</sup>	2	2	0
Transportation					
Unemployment	1	1-5:0	1	0	0
(d) PROCEDURAL					
Appeal	13	3-7:0	2	1	0
		1-6:0	0	1	0
		5-5:0 <sup>9</sup>	3	1	1 <sup>12</sup>
		1-4:1	1	0	0
		1-4:2	0	1	0
		2-3:2	2	0	0
Costs	1	1-6:0	0	1	0
Declaratory Action					
Evidence	13	5-7:0	3	2	0
		3-5:0	2	1	0
		1-8:1	0	1	0
		1-4:1	0	0	1 <sup>13</sup>
		1-3:1	0	1	0
		1-4:2	0	0	1 <sup>10</sup>
		1-4:3	1	0	0
Injunctions	1	1-9:0	0	1	0
Jurisdictions	14	4-7:0	4	0	0
		1-6:0	1	0	0
		5-5:0	5	0	0

	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
Jurisdictions (cont'd)		1-4:0	1	0	0
		2-6:1	2	0	0
		1-4:2	1	0	0
Limitation Period Procedural - Other	6	1-7:0	1	0	0
		5-5:0 <sup>15</sup>	3	2	0
		1-5:2	1	0	0
Procedure	5	2-7:0	1	1	0
		2-5:0	1	0	1
		1-4:0	0	1	0
Res Judicata Standing					

\* See notes 4, 8, 10, 11, and 12.

<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: *R. v. Ross*, [1989] 1 S.C.R. 3, ("Evidence" and "Charter"); *R. v. Amway Corp.*, [1989] 1 S.C.R. 21, ("Evidence" and "Charter"); *R. v. Hayes*, [1989] 1 S.C.R. 44, ("Evidence" and "Criminal"); *R. v. Genest*, [1989] 1 S.C.R. 59, ("Evidence" and "Charter"); *R. v. Duguay*, [1989] 1 S.C.R. 93, ("Jurisdictions" and "Charter"); *R. v. Gill*, [1989] 1 S.C.R. 295, ("Criminal" and "Evidence"); *R. v. Olson*, [1989] 1 S.C.R. 296, ("Criminal" and "Jurisdictions"); *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301, ("Administrative Boards" and "Statutory Interpretation"); *Roberts v. Canada*, [1989] 1 S.C.R. 322, ("Constitutional," "Aboriginal Rights," and "Jurisdictions"); *Borowski v. Canada (A.G.)*, [1989] 1 S.C.R. 342, ("Appeal," "Criminal," and "Charter"); *Hunter Engineering Co. v. Syncrude Canada Ltd.*, [1989] 1 S.C.R. 426, ("Contract," "Sale of Goods," and "Unjust Enrichment & Restitution"); *R. v. Potvin*, [1989] 1 S.C.R. 525, ("Constitutional" and "Criminal"); *Québec Ready Mix Inc. v. Rocois Construction Inc.*, [1989] 1 S.C.R. 695, ("Constitutional" and "Jurisdictions"); *Laurentide Motels Ltd. v. Beauport (City of)*, [1989] 1 S.C.R. 705, ("Municipal & Planning," "Appeal," and "III Obligations"); *Venne v. Quebec (Commission de protection du territoire agricole)*, [1989] 1 S.C.R. 880, ("Environmental" and "III Obligations"); *Irwin Toy Ltd. v. Quebec (A.G.)*, [1989] 1 S.C.R. 927, ("Constitutional," "Charter," and "Civil Rights"); *Maurice v. Priel*, [1989] 1 S.C.R. 1023, ("Jurisdictions," "Barristers & Solicitors," and "Procedural - Other"); *R. v. Lamb*, [1989] 1 S.C.R. 1036, ("Constitutional" and "Evidence"); *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, ("Charter" and "Labour"); *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 S.C.R. 1085, ("Contract" and "Damages"); *Canadian Pacific Air Lines Ltd. v. British Columbia*, [1989] 1

S.C.R. 1133, ("Taxation" and "Procedural - Other"); *Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161, ("Taxation," "Charter," and "Statutory Interpretation"); *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, ("Civil Rights" and "Costs"); *R. v. Turpin*, [1989] 1 S.C.R. 1296, ("Charter" and "Criminal"); *R. v. Mohl*, [1989] 1 S.C.R. 1389, ("Criminal" and "Charter"); *R. v. Lambretta*, [1989] 1 S.C.R. 1391, ("Criminal" and "Charter"); *United States v. Cotroni*, [1989] 1 S.C.R. 1469, ("Charter" and "Extradition"); *YMHA Jewish Community Centre of Winnipeg Inc. v. Brown*, [1989] 1 S.C.R. 1532, ("Constitutional" and "Master & Servant"); *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 S.C.R. 1554, ("Jurisdictions" and "III Obligations"); *MOVSA v. Alberta (Labour Relations Board)*, [1989] 1 S.C.R. 1572, ("Evidence" and "Charter"); *R. v. LeBlanc*, [1989] 1 S.C.R. 1583, ("Criminal" and "Procedure"); *R. v. Leduc*, [1989] 1 S.C.R. 1586, ("Criminal" and "Charter"); *Dupont v. Watier*, [1989] 1 S.C.R. 1588, ("Constitutional" and "Charter"); *R. v. Lavigne*, [1989] 1 S.C.R. 1591, ("Criminal" and "Charter"); *Belcourt Construction Co. v. Roger Marchand Ltée*, [1989] 1 S.C.R. 1593, ("Contract," "Damages," and "III Obligations"); *R. v. Kalanj*, [1989] 1 S.C.R. 1594, ("Charter" and "Appeal"); *Pioneer Hi-Bred Ltd. v. Canada (Commissioner of Patents)*, [1989] 1 S.C.R. 1623, ("Patents" and "Jurisdictions"); *R. v. Pringle*, [1989] 1 S.C.R. 1645, ("Criminal" and "Jurisdictions"); *R. v. Conway*, [1989] 1 S.C.R. 1659, ("Charter" and "Criminal"); *R. v. Meltzer*, [1989] 1 S.C.R. 1764, ("Criminal," "Charter," and "Appeal"); *R. v. Heikel*, [1989] 1 S.C.R. 1776, ("Criminal," "Charter," and "Appeal"); *R. v. Ouellette*, [1989] 1 S.C.R. 1781, ("Criminal," "Charter," and "Appeal"); *R. v. Provo*, [1989] 2 S.C.R. 3, ("Criminal" and "Jurisdictions"); *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, [1989] 2 S.C.R. 49, ("Constitutional" and "Crown & Sovereign Immunity"); *R. v. D.(L.E.)*, [1989] 2 S.C.R. 111, ("Evidence" and "Criminal"); *Alberta Government Telephones v. Canada (Canadian Radio-television and Telecommunications Commission)*, [1989] 2 S.C.R. 225, ("Constitutional" and "Crown & Sovereign Immunity"); *I.B.E.W., Local 348 v. Alberta Government Telephones*, [1989] 2 S.C.R. 318, ("Constitutional," "Crown & Sovereign Immunity," and "Labour"); *R. v. Cassidy*, [1989] 2 S.C.R. 345, ("Criminal" and "Appeal"); *R. v. Leaney*, [1989] 2 S.C.R. 393, ("Criminal" and "Appeal"); *Dallaire v. Paul Émile Martel Inc.*, [1989] 2 S.C.R. 419, ("Procedure," "III Obligations," and "III Registration & Prescription"); *Bank of Montreal v. Kuet Leong Ng*, [1989] 2 S.C.R. 429, ("Contract" and "III Mandate, Partnerships & Suretyships"); *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, ("Injunction," "Civil Rights," "Charter," "I Persons & Moral Persons," and "III Succession & Liberalities"); *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574, ("Unjust Enrichment & Restitution," "Trusts & Trustees," "Intellectual Property - Other," and "Agency & Partnerships"); *Q.N.S. Paper Co. v. Chartwell Shipping Ltd.*, [1989] 2 S.C.R. 683, ("Maritime, Admiralty & Shipping," "Agency & Partnership," and "III Mandate, Partnership & Suretyships"); *Falk Bros. Industries Ltd. v. Elance Steel Fabricating Co.*, [1989] 2 S.C.R. 778, ("Insurance" and "Guarantees & Sureties"); *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796, ("Constitutional" and "Procedural - Other"); *R. v. D.(G.C.)*, [1989] 2 S.C.R. 878, ("Criminal" and "Appeal"); *Caimaw v. Paccar of Canada Ltd.*, [1989] 2 S.C.R. 983, ("Administrative Boards" and "Appeals"); *Lejeune v. Cumis Insurance Society Inc.*, [1989] 2 S.C.R. 1048, ("Insurance" and "IV Commercial Law & Insurance"); *R. v. Hare*, [1989] 2 S.C.R. 1065, ("Criminal" and "Procedural - Other"); *R. v. Nygaard*, [1989] 2 S.C.R. 1074, ("Criminal" and "Evidence"); *R. v. Hall*, [1989] 2 S.C.R. 1117, ("Criminal" and "Procedural - Other"); *R. v. Sarvaria*, [1989] 2 S.C.R. 1118, ("Criminal" and "Procedural - Other"); *R. v. Debot*, [1989] 2 S.C.R. 1140, ("Charter" and "Criminal"); *Tock v. St. John's Metropolitan Area Board*, [1989] 2 S.C.R. 1181, ("Nuisance" and "Municipal & Planning"); *Just v. British Columbia*, [1989] 2 S.C.R. 1228, ("Negligence" and "Crown & Sovereign Immunity"); and *Ruthfield v. Manolakos*, [1989] 2 S.C.R. 1259, ("Negligence" and "Municipal & Planning").

<sup>3</sup> Motions were disposed in the following manner: *R. v. Chaulk*, [1989] 1 S.C.R. 369, the application regarding the appeal to the Supreme Court of Canada was refused; *Greater Montreal Protestant School Board v. (A.G.)*, [1989] 2 S.C.R. 167, the motion for a rehearing was refused; *Reference Re Workers' Compensation Act, 1983 (Newfoundland)*, [1989] 2 S.C.R. 335, the motion for leave to appeal was granted; *Neveu v. Côte Estate*, [1989] 2 S.C.R. 342, the motion for an extension of time to file an application for leave to appeal was granted; *Arthur D. Little Inc. v. Coopers & Lybrand*, [1989] 2 S.C.R. 981, the application to vary a judgment was granted; *Canadian Pacific Air Lines Ltd. v. British Columbia*, [1989] 2 S.C.R. 1067, the application to vary judgment on re-hearing was allowed; and *Tétrault-Gadoury v. Canada (Employment and Immigration Commission)*, [1989] 2 S.C.R. 1110, the motion to state constitutional questions was granted in part.

<sup>4</sup> In *Hunter Engineering Co. v. Syncrude Canada Ltd.*, [1989] 1 S.C.R. 426, two actions were allowed and one was dismissed.

<sup>5</sup> In *Cohnstaedt v. University of Regina*, [1989] 1 S.C.R. 1011, the appeal was allowed in part.

<sup>6</sup> In *B. (B.) v. Child and Family Services*, [1989] 1 S.C.R. 291, the appeal was allowed in part.

<sup>7</sup> In *Watkins v. Olafson*, [1989] 2 S.C.R. 750, the appeal was allowed in part.

<sup>8</sup> In *R. v. Potvin*, [1989] 1 S.C.R. 525, the appeal was allowed and a new trial was ordered.

<sup>9</sup> In *R. v. Leaney*, [1989] 2 S.C.R. 393, one action was allowed and two were dismissed.

<sup>10</sup> In *Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161, one appeal was allowed and one was dismissed.

<sup>11</sup> In *R. v. Ross*, [1989] 1 S.C.R. 3, the appeal was allowed and a new trial was ordered.

<sup>12</sup> In *R. v. Hébert*, [1989] 1 S.C.R. 233, the appeals were allowed and a new trial was ordered.

<sup>13</sup> In *R. v. McGinn*, [1989] 1 S.C.R. 1035, the appeal was allowed and a new trial was ordered.

<sup>14</sup> In *R. v. D.(G.C.)*, [1989] 2 S.C.R. 878, the appeal was quashed.

<sup>15</sup> In *R. v. D.(L.E.)*, [1989] 2 S.C.R. 111, the appeal was allowed and a new trial was ordered.

<sup>16</sup> In *Nelles v. Ontario (A.G.)*, [1989] 2 S.C.R. 170, the appeal was dismissed against the Crown but the appeal was allowed as against the Attorney General.

<sup>17</sup> In *Canadian Pacific Air Lines Ltd. v. British Columbia*, [1989] 1 S.C.R. 1133, one appeal was allowed and one was dismissed.

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

Total Number of Cases Reported .....				134 <sup>2</sup>			
Unanimous Decisions .....				101			
Split Decisions .....				37			
9:0 .....	8	8:0 .....	0	7:0 .....	30	6:0 .....	12
8:1 .....	1	7:1 .....	0	6:1 .....	4	5:1 .....	4
7:2 .....	2	6:2 .....	0	5:2 .....	5	4:2 .....	4
6:3 .....	0	5:3 .....	0	4:3 .....	5	3:3 .....	0
5:4 .....	0	4:4 .....	0				
5:0 .....	40	4:0 .....	6	3:0 .....	0	1:0 .....	4
4:1 .....	2	3:1 .....	1	2:1 .....	0		
3:2 .....	6	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 *Hunter Engineering Co. v. Syncrude Canada Ltd*, [1989] 1 S.C.R. 426, the appeal was dismissed (5:0) and the cross-appeal was allowed (3:2). In *R. v. Leaney*, [1989] 2 S.C.R. 393, three appeals were heard together: one was allowed (5:0) and two were dismissed (4:1 and 3:2).

TABLE VI  
TYPE OF WORK

	Common Law	Civil Law	Constitutional	Criminal	Other Public Law	Reported Motions
Beetz	1	2	11	1	11	0
Cory	9	7	17	24	8	1
Dickson	13	1	36	19	20	3
Estey	1	0	2	0	0	0
Gonthier	9	6	16	21	6	2
La Forest	17	6	41	30	26	3
Lamer	14	9	43	36	24	4
Le Dain	1	0	3	0	2	0
L'Heureux-Dubé	16	6	40	32	24	2
McIntyre	6	1	21	10	11	0
McLachlin	4	2	6	10	1	0
Sopinka	13	5	24	31	13	2
Wilson	17	5	39	32	28	4

<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 of Cases	Judgments	Concurrences	The Court	Beetz	Cory	Dickson	Gonthier	La Forest	Lamer	L'Heureux-Dubé	McIntyre	McLachlin	Sopinka	Wilson
110	20 4	77 3	6	6 0	4 0	15 0	4 0	16 0	5 3	4 0	5 0	10 0	8 0	
112	32 3	69 3	5	6 0	11 0	6 0	6 0	6 0	3 0	4 1	7 0	13 0	7 0	
107	9 12	77 4	5	0 0	3 0	13 0	6 0	6 2	14 0	1 0	6 1	8 0	11 0	
41	11 3	22 3	2	2 0	8 0	0 0	0 0	2 0	3 0	1 1	0 0	0 0	4 2	
23	13 0	9 0	1	0 0	2 0	0 0	0 0	0 0	3 0	0 0	0 0	0 0	2 0	
81	22 5	46 3	5	0 0	4 0	4 0	5 0	2 2	15 0	2 0	0 0	7 0	7 1	
110	25 10	67 3	5	5 0	6 0	9 0	3 0	6 1	11 0	5 2	3 0	7 0	12 0	

Mr. Justice Estey and Mr. Justice Le Dain were present for three and five cases respectively, but took no part in the judgments.

TABLE VII<sup>1</sup>  
SUCCESS RATE OF CHARTER CLAIMANTS<sup>2</sup>

	Number	Per cent
Charter Claimant Wins	10	27.8
Charter Claimant Loses	23	63.9
Other <sup>3</sup>	3	8.3
Total	36	100.0

<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 *Tétreault-Gadoury v. Canada (Employment and Immigration Commission)*, [1989] 2 S.C.R. 1110, the Court granted a motion in part and held that under the *Rules of the Supreme Court of Canada*, SOR/83-74, s. 32(1), a constitutional question under the *Charter* is no different from any other constitutional question. Thus, a question shall be stated only when the constitutional validity or the constitutional applicability of a statute or regulation is raised, or that the inoperability thereof is urged. Since no *Charter* provisions were discussed, this case has not been included in the tables.

<sup>3</sup> In *Borowski v. Canada (A.G.)*, [1989] 1 S.C.R. 342, the appeal was moot and, therefore, *Charter* issues were not decided. In *R. v. Potvin*, [1989] 1 S.C.R. 525, the appeal was allowed and a new trial was ordered, but not as a result of the *Charter* arguments. In *R. v. Lambretta*, [1989] 1 S.C.R. 1391, the Court did not refer to the *Charter* but allowed the appeal in "the interests of justice" and ordered a new trial. Sections 7 and 11(d) were argued in the court below.

**TABLE VIII**  
OBJECT OF *CHARTER* LITIGATION<sup>1</sup>

	Number	Per cent	Success Rate (%)
Legislation: <sup>2</sup>	Federal	7	19.4
	Provincial	7	19.4
	Territorial		
	Municipal		
Administrative: Decisions		1	2.8
	Rules	1	2.8
Conduct or Decisions of Public Officials	18	50	33.3
Common Law	4	11.1	50

<sup>1</sup> The following cases have been included under more than one category: *R. v. Amway Corp.*, [1989] 1 S.C.R. 21, (“Administrative Rules” and “Common Law”); and *R. v. Black*, [1989] 2 S.C.R. 139, (“Conduct or Decisions of Public Officials” and “Common Law.”)

<sup>2</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	7	19.4	5	2		2	4	<sup>1</sup>
British Columbia	7	19.4	7			1	6	
Manitoba	2	5.6	1	1		1	1	
New Brunswick								
Newfoundland	1	2.8	1				1	
Nova Scotia	1	2.8		1		1		
Ontario	5	13.9	4	1		2	3	
P.E.I.								
Quebec	8	22.2	2	6		2	5	<sup>2</sup>
Saskatchewan	3	8.3	2	1		1	1	<sup>3</sup>
N.W.T. and Yukon								
Federal Court	2	5.6	1	1			2	
Federal Reference								
<b>Total</b>	<b>36</b>	<b>100.0</b>	<b>23</b>	<b>13</b>		<b>10</b>	<b>23</b>	<b>3</b>

<sup>1</sup> See *R. v. Lambretta*, *supra* Table VII ([1989] S.C.R. Charter Tables), note 3.

<sup>2</sup> See *R. v. Potvin*, *supra* Table VII ([1989] S.C.R. Charter Tables), note 3.

<sup>3</sup> See *Borowski v Canada (A.G.)*, *supra* Table VII ([1989] S.C.R. Charter Tables), note 3.



Section	# of Cases	Claimant			Right or Freedom		Section 1		
		Wins	Loses	Other	Limited	Not Ltd	Limit Save	Doesn't Save	Other
(h) Double jeopardy									
(i) Benefit of lesser punishment									
12. Treatment or Punishment									
13. Self-incrimination									
14. Interpreter									
15. Equality Rights									
(1) Race									
National or ethnic origin									
Colour									
Religion									
Sex									
Age	1			1 <sup>6</sup>					
Mental or physical disability	1			1 <sup>6</sup>					
Aboriginal peoples									
Other <sup>10</sup>	4	2 <sup>11</sup>	2		1	2		1	
s. 15(1) SUBTOTAL	5	2	2	1	1	2		1	
(2) Affirmative action									
16. - 22. Official Languages									
23. Minority Language									
Educational Rights									
24(1) Enforcement	6 <sup>12</sup>		1						
(2) Exclusion of Evidence	1 <sup>13</sup>		1						
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>									
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 on another basis; 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 *MacKay v. Manitoba*, [1989] 2 S.C.R. 357, the Court held that the absence of a factual basis was a fatal flaw rather than just a technicality that could be overlooked.

<sup>3</sup> In *Black v. Law Society of Alberta*, [1989] 1 S.C.R. 591, the claimant won on the basis of section 6. The majority held that there was no need to consider section 2(d). The minority held that section 2(d) was limited, but the limit was saved by section 1.

<sup>4</sup> In *Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161, the Court held that section 7 did not apply. In *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, the Court held that the *Charter* could not be raised to support the injunction because the issue was between private parties.

<sup>5</sup> In *Irwin Toy Ltd. v. Quebec (A.G.)*, [1989] 1 S.C.R. 927, the Court considered the meaning of the word "everyone" in section 7. The outcome of this case depended on section 2(b) freedom of expression.

<sup>6</sup> In *Borowski v. Canada (A.G.)*, *supra* Table VII ([1989] S.C.R. Charter Tables), note 3, the Court did not decide the sections 7 and 15(1) *Charter* issues because the appeal was moot.

<sup>7</sup> See *R. v. Lambretta*, *supra* Table VII ([1989] S.C.R. Charter Tables), note 3.

<sup>8</sup> In *R. v. Lamb*, [1989] 1 S.C.R. 1036, the Court assumed, without deciding, that the search was unreasonable. The outcome of this case depended on section 24(2), whether the admission of the evidence would bring the administration of justice into disrepute.

<sup>9</sup> In *R. v. Amway Corp.*, *supra* Table VIII ([1989] S.C.R. Charter Tables), note 1, the Court held that section 11(c) does not apply to corporations.

<sup>10</sup> In *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, the claimant asserted section 15(1) equality rights as they pertained to citizenship. In *Reference Re Worker's Compensation Act, 1983 (Newfoundland)*, [1989] 1 S.C.R. 922, the claimant asserted section 15(1) equality rights as they pertained to workers and dependents. In *R. v. Turpin*, [1989] 1 S.C.R. 1296, the claimant asserted section 15(1) equality rights as they pertained to persons resident and charged outside of Alberta. In *Edmonton Journal v. Alberta (A.G.)*, [1989] 2 S.C.R. 1326, the appellant claimed equality before the law as a corporation.

<sup>11</sup> In *Edmonton Journal v. A.G. Alberta*, *supra* note 10, the majority held that it was not necessary to deal with section 15. The dissenting justices held that section 15 was not infringed because this right does not apply to corporations.

<sup>12</sup> In *R. v. Meltzer*, [1989] 1 S.C.R. 1764; *R. v. Heikel*, [1989] 1 S.C.R. 1776; and *R. v. Ouellette*, [1989] 1 S.C.R. 1781; the Court held that the *Charter* does not provide a right of appeal from any legal proceedings at first instance. In *R. v. Smith*, [1989] 2 S.C.R. 1120, the Court held that the superior court judge properly exercised his discretion in refusing to decline jurisdiction to hear and decide the accused's application.

<sup>13</sup> In *R. v. Szlovak*, [1989] 2 S.C.R. 1114, the Court held that there was no error on the part of the Alberta Court of Appeal. The lower Court had decided that sections 9 and 11(a) were violated, but section 24(2) did not exclude the evidence.





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

Justice	Majority			Minority			Support			Section 1								
	Judgment For			Concurs With			Judgment For			Concurs With			Support For					
	Claimant	Gov't	Other	Claimant	Gov't	Other	Claimant	Gov't	Other	Claimant	Gov't	Other	Claimant	Gov't	Other	Saves Limit	Doesn't Save	Other
Beetz		1		2	1		1			1			4	2				2
Cory	1	2		3	10	1							4	12	1		3	1
Dickson	2	4	1	5	12	2			1				8	16	3		5	3
Gonthier		2		3	8	1							3	10	1		3	
La Forest	3	4	1	5	15	2	1	1					9	20	3		5	4
Lamer	3	10		5	10	3	2			1			10	21	3		4	
L'Heureux-Dubé		3		6	17	2		2		2			6	24	2		5	2
McIntyre	1	5		1	1	1	1	2		1			3	9	1		2	1
McLachlin		1		2	2	1							2	3	1			
Sopinka	3	5	1	2	5	2	2		1	1			8	11	3		1	3
Wilson	4	4	1	5	11	2	2	1	1 <sup>2</sup>	1			12	17	3		2	5

<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.

<sup>2</sup> In *Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161, *supra* Table X ([1989] S.C.R. *Charter Tables*), note 4, Wilson J. dissented on the outcome but concurred with the majority on the *Charter* issue. For the purposes of this table, her judgment has been noted under "Minority Judgment for Other" and "Support for Government."



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

Unanimous Decisions .....				23			
Split Decisions .....				13			
9:0 .....	5	8:0 .....	0	7:0 .....	10	6:0 .....	1
8:1 .....	0	7:1 .....	0	6:1 .....	1	5:1 .....	1
7:2 .....	0	6:2 .....	0	5:2 .....	2	4:2 .....	3
6:3 .....	0	5:3 .....	0	4:3 .....	2	3:3 .....	0
5:4 .....	0	4:4 .....	0				
5:0 .....	7	4:0 .....	0	3:0 .....	0	1:0 .....	0
4:1 .....	1	3:1 .....	0	2:1 .....	0		
3:2 .....	3	2:2 .....	0				

**TABLE XV**  
**LEGAL RIGHTS AND SECTION 24(2)**

Legal Rights	# of Cases	Claimant			Section 24(2)			
		Wins	Losses	Other	24(2) Used	Evidence Excluded	Evidence Admitted	Other
7. General (non-distinguished)	5	4 <sup>1</sup> 1 <sup>2</sup>						
Life	1	1						
Liberty								
Security of person	1	1						
Principles of fund. justice	2	2						
8. Search or Seizure	3	1	2		2	1	1	
9. Detention or Imprisonment	1	1			1	1		
10. Arrest or Detention								
(a) Informed promptly of reasons								
(b) Retain & instruct counsel	6	3	3		5	2	2	1 <sup>3</sup>
(c) <i>Habeas corpus</i>								
11. Criminal & Penal Matters								
(a) Informed of offence								
(b) Tried within reasonable time	4	2	2					
(c) Compelled to be a witness	1	1						
(d) Presumption of innocence,	1							1
Fair public hearing,	2							2
Independent impartial tribunal								
(e) Reasonable bail								
(f) Trial by jury	2	2						
(g) Time of act or omission								
(h) Double jeopardy								
(i) Benefit of lesser punishment								
12. Treatment or Punishment								
13. Self-incrimination								
14. Interpreter								

<sup>1</sup> See *supra* Table X ([1989] S.C.R. Charter Tables), note 4.

<sup>2</sup> See *Irwin Toy Ltd v. Quebec (A.G.)*, *supra* Table X ([1989] S.C.R. Charter Tables), note 5.

<sup>3</sup> In *R. v. Black*, *supra* Table VIII ([1989] S.C.R. Charter Tables), note 1, the appellant's statement was excluded but one piece of "real" (meaning physical) evidence was admitted.

