



October 1992

[1990] S. C. R. Statistical Analysis

John H. Kim

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

Article

Citation Information

Kim, John H.. "[1990] S. C. R. Statistical Analysis." *Osgoode Hall Law Journal* 30.4 (1992) : 1001-1028.

DOI: <https://doi.org/10.60082/2817-5069.1711>

<https://digitalcommons.osgoode.yorku.ca/ohlj/vol30/iss4/12>

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.

[1990] S. C. R. Statistical Analysis

[1990] S.C.R. STATISTICAL ANALYSIS[®]

GENERAL TABLES

I. VOLUME OF WORK	1002
II. BREAKDOWN BY SOURCE	1003
III. SUBJECT MATTER OF LITIGATION	1005
IV. MAJORITY/DISSENT RATIO	1013
V. TYPE OF WORK	1014
VI. ACTION OF THE JUSTICES	1015

CHARTER TABLES

VII. SUCCESS RATE OF <i>CHARTER</i> CLAIMANTS	1017
VIII. OBJECT OF <i>CHARTER</i> LITIGATION	1018
IX. <i>CHARTER</i> LITIGATION BY SOURCE	1019
X. SUBJECT OF <i>CHARTER</i> LITIGATION	1020
XI. ACTION OF THE JUSTICES	1024
XII. VOTING BEHAVIOUR OF JUSTICES	1025
XIII. TYPE OF <i>CHARTER</i> CLAIMANTS	1027
XIV. MAJORITY/DISSENT RATIO	1028
XV. LEGAL RIGHTS AND SECTION 24(2)	1029

TABLE I¹
VOLUME OF WORK

			TOTAL ²
Reported Judgments³			
Private	Public		
29	110		134
Reported Motions⁴			
Granted	Refused	Other	
1	3	2	5
Unreported Motions			
Granted	Refused	Other	
82	300	199	581

¹ All data represented in this table derive from the [1990] *Supreme Court Reports* and the [1990] *Bulletin of Proceedings taken in the Supreme Court of Canada*.

² The following cases have been included under both "Private" and "Public" categories but only once under "Total": *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121; *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005; *McClurg v. Canada*, [1990] 3 S.C.R. 1020; and *Whitbread v. Walley*, [1990] 3 S.C.R. 1273.

³ 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."

⁴ In *Reekie v. Messervey*, [1990] 1 S.C.R. 219, the application to vary orders refusing leave to appeal was granted to one applicant but refused to two others. This case has been included under "Granted" and "Refused" but only once under "Total." In *R. v. A.*, [1990] 1 S.C.R. 992, the order to release the file, which included the judgment and reasons for judgment, was delivered. In *R. v. Pilon*, [1990] 3 S.C.R. 1422, an application to quash an appeal was granted.

TABLE II¹
BREAKDOWN BY SOURCE

	PRIVATE ²			PUBLIC			Total From Source
	Affirmed	Reversed	Other	Affirmed	Reversed ³	Other ⁴	
Alberta	0	0	0	8	5	0	13
British Columbia	3	1	0	13	4	2	21
Manitoba ⁵	1	2	0	6	6	1	15
New Brunswick	1	0	0	1	0	0	2
Newfoundland & Labrador	0	0	0	1	0	0	1
Northwest Territories	0	0	0	1	0	0	1
Nova Scotia	0	1	0	0	2	0	3
Ontario ⁵	2	3	0	26	6	1	38
Prince Edward Island	0	0	0	0	0	0	0
Quebec	5	4	0	11	3	1	22
Saskatchewan	2	1	0	3	2	0	8
Yukon Territory	0	0	0	0	1	0	1
Court Martial Appeal Ct	0	0	0	0	0	0	0
Federal Board	0	0	0	0	0	0	0
Federal Court	3	0	0	4	3	0	10
TOTAL	17	12	0	74	32	5	135

¹ 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.

² The following cases have been included under both "Private" and "Public" categories but only once under "Total From Source": *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121; *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005; *McClurg v. Canada*, [1990] 3 S.C.R. 1020; and *Whitbread v. Walley*, [1990] 3 S.C.R. 1273.

³ In the following cases, the Court affirmed in part and reversed in part the decision of the lower court: *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451, ("Public") and *R. v. J.(J.T.)*, [1990] 2 S.C.R. 755, ("Manitoba - Public").

⁴ The following cases have been classified as "Other": *R. v. A.*, [1990] 1 S.C.R. 995, ("British Columbia"), (where the appeal was allowed and a new hearing before a judge of the Superior Court was directed); *R. v. Sparrow*, [1990] 1 S.C.R. 1075, ("British Columbia"), (where the court sent the constitutional questions back to trial to be answered); *R. v. Askov*, [1990] 2 S.C.R. 1199, ("Ontario"), (where the appeal was allowed and a stay of proceedings was directed); *Stoffman v. Vancouver General Hospital*, [1990] 3 S.C.R. 483, (where the appeal was allowed and the plaintiffs' action was dismissed); and *R. v. Chaulk*, [1990] 3 S.C.R. 1303, (where the appeal was allowed and a new trial was ordered).

⁵ In *R. v. Hess*, *R. v. Nguyen*, [1990] 2 S.C.R. 906, multiple appeals from Manitoba and Ontario were joined together and have been included under "Total From Source" for each jurisdiction.

TABLE III¹
SUBJECT MATTER OF LITIGATION²

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
ORIGINAL JURISDICTION					
References ³	1	1-7:0			1
Reported Motions ⁴	5	1-9:0			1
		1-7:0			1
		1-5:0			1
		2-3:0			2
APPELLATE					
(a) PRIVATE (Common Law & Civil Law)					
(i) Administration & Succession					
Dependent's Relief					
Devolution					
Executors & Administrators					
Wills					
(ii) Commercial					
Accounts					
Agency & Partnership					
Assignments					
Bankruptcy	1	1-7:0	1	0	0
Banks & Banking	1	1-5:0	1	0	0
Bills & Notes					
Companies	2	1-7:0	1	0	0
		1-4:3	1	0	0
Contract					
Debtor & Creditor					
Guarantees & Sureties					
Insurance	8	3-7:0	1	2	0
		4-5:0	2	2	0
		1-3:2	0	1	0
Interest					
Sale of Goods	1	1-6:1	0	1	0

	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
<i>(iii) Family Law</i>					
Adoption					
Child Welfare, Custody & Access					
Divorce					
Judicial Separation					
Maintenance & Support	1	1-5:0	0	1	0
Matrimonial Property	2	1-7:0 1-4:3	0 1	1 0	0 0
Family Law - Other					
<i>(iv) Intellectual Property</i>					
Copyrights	2	1-9:0 1-5:0	1 1	0 0	0 0
Industrial Designs					
Patents					
Trademarks					
Intellectual Property - Other					
<i>(v) Land</i>					
Hypothecs & Mortgages	1	1-7:0	1	0	0
Landlord & Tenant					
Construction & Mechanics' Liens					
Real Property					
<i>(vi) Torts</i>					
Assault & Battery					
Bailment					
Conspiracy & Intimidation					
Conversion & Detinue					
False Imprisonment					
Libel & Slander					
Negligence	4	1-5:4 2-7:0 1-5:0	0 2 0	1 0 1	0 0 0
Nuisance					
Occupiers' Liability					
Trespass					
Vicarious Liability					
<i>(vii) Other</i>					
Associations					
Barristers & Solicitors	1	1-7:0	0	1	0
Charities					
Choses in Action					
Conflict of Laws					

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

	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
<i>Charter</i>	53	4-9:0	2	1	16
		1-7:2	0	0	17
		1-6:3	0	0	18
		1-5:4	1	0	0
		20-7:0	16	4	0
		7-6:1 ^{9,10}	5	2	0
		5-5:2 ⁹	1	4	0
		7-4:3	2	4	11
		4-4:2	3	1	0
		2-5:0	2	0	0
		3-3:2	3	0	0
Civil Rights	2	1-7:0	0	1	0
		1-5:2	1	0	0
Combines	2	2-3:2	2	0	0
Communications					
Constitutional	16	1-9:0	1	0	0
		1-8:1	0	1	0
		8-7:0	6	2	0
		2-6:1 ⁹	1	1	0
		2-5:2 ⁹	1	1	0
		1-4:3	1	0	0
		1-6:0	0	0	15
		1-5:0	1	0	0
Criminal	52	1-6:3	0	0	18
		1-5:4	1	0	0
		23-7:0	17	6	0
		6-6:1 ¹⁰	4	2	0
		5-5:2	1	4	0
		3-4:2	2	1	0
		13-5:0	13	0	0
		1-3:2	0	1	0
Crown & Sovereign Immunity					
Elections					
Environmental					
Expropriation					
Extradition					
Habeas Corpus					
Human Rights					
Immigration					
International					
Judicial Review					

	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
Labour	4	1-8:1 1-5:4 1-7:0 1-6:0	0 1 0 0	1 0 1 1	0 0 0 0
Mandamus Municipal & Planning	2	1-9:0 1-6:3	1 1	0 0	0 0
Prohibition Public Utilities Securities Statutory Interpretation Taxation	1 4	1-7:0 1-8:0 2-4:3 1-5:0	1 0 2 1	0 1 0 0	0 0 0 0
Transportation Unemployment					
(d) PROCEDURAL Appeal	8	6-7:0 2-5:0	5 0	1 2	0 0
Costs Declaratory Action Evidence	15	1-6:3 3-7:0 4-6:1 ¹⁰ 1-5:2 1-4:3 4-5:0 2-3:2	0 2 2 1 0 4 2	0 1 2 0 1 0 0	1 ⁸ 0 0 0 0 0 0
Injunctions Jurisdictions	7	4-7:0 1-4:3 1-5:0 1-3:0	2 1 1 1	2 0 0 0	0 0 0 0
Limitation Period Procedural - Other	13	1-9:0 1-5:4 5-7:0 1-6:1 4-5:0 1-3:2	0 1 4 0 4 0	1 0 1 1 0 1	0 0 0 0 0 0

	Number of Cases Reported	Majority/ Dissent Ratio	Affirmed	Reversed	Other
Procedure	4	2-7:0 2-5:0	1 2	1 0	0 0
Res Judicata Standing					

¹ 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 or importance. Appeals from decisions on reference, brought before lower courts are classified according to subject matter under "Appellate."

² The following cases have been included under two or more subject categories: *R. v. Duarte*, [1990] 1 S.C.R. 30, ("Charter," "Evidence," and "Criminal"); *R. v. Wiggins*, [1990] 1 S.C.R. 62, ("Charter," "Evidence," and "Criminal"); *Rawluk v. Rawluk*, [1990] 1 S.C.R. 70, ("Matrimonial Property" and "Trusts & Trustees"); *R. v. D'Amours*, [1990] 1 S.C.R. 115, ("Criminal" and "Appeal"); *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121, ("Banks & Banking" and "Constitutional"); *Cloutier v. Langlois*, [1990] 1 S.C.R. 158, ("Criminal" and "Appeal"); *R. v. Van Rassel*, [1990] 1 S.C.R. 225, ("Criminal" and "Charter"); *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Researach, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425, ("Charter," "Combines," and "Evidence"); *Stelco Inc. v. Canada (A.G.)*, [1990] 1 S.C.R. 617, ("Charter," "Combines," and "Evidence"); *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627, ("Charter" and "Taxation"); *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, ("Administrative Boards" and "Labour"); *Rudolf Wolff & Co. v. Canada*, [1990] 1 S.C.R. 695, ("Charter" and "Jurisdictions"); *Dywidag Systems International, Canada Ltd. v. Zutphen Bros Construction Ltd.*, [1990] 1 S.C.R. 705, ("Charter" and "Jurisdictions"); *R. v. B.(C.R.)*, [1990] 1 S.C.R. 717, ("Criminal" and "Evidence"); *C.C.R. Fishing Ltd. v. British Reserve Insurance Co.*, [1990] 1 S.C.R. 814, ("Insurance" and "Maritime, Admiralty & Shipping"); *R. v. Wallen*, [1990] 1 S.C.R. 827, ("Criminal" and "Procedural - Other"); *R. v. Bolianatz*, [1990] 1 S.C.R. 847, ("Criminal" and "Evidence"); *R. v. Suren*, [1990] 1 S.C.R. 849, ("Criminal" and "Procedural - Other"); *Quebec (A.G.) v. Publications Photo-Police Inc.*, [1990] 1 S.C.R. 851, ("Criminal" and "Procedural - Other"); *R. v. Lavallee*, [1990] 1 S.C.R. 852, ("Evidence" and "Criminal"); *Ratyck v. Bloomer*, [1990] 1 S.C.R. 940, ("Negligence" and "Damages"); *Robitaille v. Madill*, [1990] 1 S.C.R. 985, ("Insurance" and "IV Commercial Law & Insurance"); *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005, ("Criminal" and "Bankruptcy"); *R. v. Sparrow*, [1990] 1 S.C.R. 1075, ("Constitutional" and "Aboriginal Rights"); *Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Manitoba)*, [1990] 1 S.C.R. 1123, ("Charter" and "Criminal"); *R. v. Stagnitta*, [1990] 1 S.C.R. 1226, ("Charter" and "Criminal"); *R. v. Skinner*, [1990] 1 S.C.R. 1235, ("Charter" and "Criminal"); *Starr v. Houlden*, [1990] 1 S.C.R. 1366, ("Constitutional" and "Charter"); *R. v. B.(G.)*, [1990] 2 S.C.R. 3, ("Criminal" and "Evidence"); *R. v. Ostrowski*, [1990] 2 S.C.R. 82, ("Criminal" and "Procedural - Other"); *R. v. S.(S.)*, [1990] 2 S.C.R. 254, ("Criminal" and "Constitutional"); *R. v. S.(G.)*, [1990] 2 S.C.R. 294, ("Appeal" and "Charter"); *R. v. P.(J.)*, [1990] 2 S.C.R. 300, ("Appeal" and "Charter"); *R. v. T.(A.)*, [1990] 2 S.C.R. 304,

(“Appeal” and “Charter”); *R. v. B.(J.)*, [1990] 2 S.C.R. 307, (“Appeal” and “Charter”); *Knox Contracting Ltd. v. Canada*, [1990] 2 S.C.R. 338, (“Taxation,” “Jurisdictions,” and “Constitutional”); *Canadian Indemnity Co. v. Canadian Johns-Marville Co.*, [1990] 2 S.C.R. 549, (“Insurance” and “IV Commercial Law & Insurance”); *R. v. Martineau*, [1990] 2 S.C.R. 633, (“Charter” and “Criminal”); *R. v. Rodney*, [1990] 2 S.C.R. 687, (“Charter” and “Criminal”); *R. v. Arkell*, [1990] 2 S.C.R. 695, (“Charter” and “Criminal”); *R. v. Luxton*, [1990] 2 S.C.R. 711, (“Charter” and “Criminal”); *R. v. Logan*, [1990] 2 S.C.R. 731, (“Charter” and “Criminal”); *R. v. J.(J.T.)*, [1990] 2 S.C.R. 755, (“Charter,” “Criminal,” and “Evidence”); *R. v. Penno*, [1990] 2 S.C.R. 865, (“Criminal” and “Charter”); *R. v. Hess*, *R. v. Nguyen*, [1990] 2 S.C.R. 906, (“Charter” and “Criminal”); *Caisse populaires des Deux Rives v. Société mutuelle d’assurance contre l’incendie de la Vallée du Richelieu*, [1990] 2 S.C.R. 995, (“Insurance” and “IV Commercial Law & Insurance”); *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 S.C.R. 1029, (“Insurance,” “IV Commercial Law & Insurance,” and “III Mandate, Partnerships & Suretyships”); *Danson v. Ontario (A.G.)*, [1990] 2 S.C.R. 1086, (“Charter” and “Jurisdictions”); *R. v. Paquette*, [1990] 2 S.C.R. 1103, (“Constitutional,” “Criminal,” and “Procedural - Other”); *R. v. Huang*, [1990] 2 S.C.R. 1105, (“Criminal” and “Evidence”); *R. v. Tremblay*, [1990] 2 S.C.R. 1106, (“Criminal” and “Procedural - Other”); *R. v. Thompson*, [1990] 2 S.C.R. 1111, (“Criminal” and “Charter”); *General Trust of Canada v. Artisans Coopvie, Société coopérative d’assurance-vie*, [1990] 2 S.C.R. 1185, (“Insurance” and “IV Commercial Law & Insurance”); *Lacroix v. Valois*, [1990] 2 S.C.R. 1259, (“Maintenance & Support,” “II Dismemberments of Property,” and “Appeal”); *R. v. Chambers*, [1990] 2 S.C.R. 1293, (“Criminal,” “Procedural - Other,” and “Evidence”); *National Corn Growers Assn v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324, (“Administrative Boards” and “Statutory Interpretation”); *R. v. Garofoli*, [1990] 2 S.C.R. 1421, (“Criminal” and “Charter”); *R. v. Lachance*, [1990] 2 S.C.R. 1490, (“Criminal” and “Charter”); *Dersch v. Canada (A.G.)*, [1990] 2 S.C.R. 1505, (“Criminal” and “Charter”); *R. v. Zito*, [1990] 2 S.C.R. 1520, (“Criminal” and “Charter”); *R. v. Wong*, [1990] 3 S.C.R. 36, (“Charter,” “Evidence,” and “Criminal”); *Houle v. Canadian National Bank*, [1990] 3 S.C.R. 122, (“III Obligations,” “Companies,” and “Damages”); *Fletcher v. Manitoba Public Insurance Co.*, [1990] 3 S.C.R. 191, (“Insurance,” “Negligence,” and “Appeal”); *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, (“Charter” and “Civil Rights”); *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451, (“Charter” and “Constitutional”); *Douglas/Kwantlen Faculty Assn v. Douglas College*, [1990] 3 S.C.R. 570, (“Charter” and “Constitutional”); *R. v. Kuldip*, [1990] 3 S.C.R. 618, (“Charter” and “Evidence”); *Lester (W.W.) (1978) Ltd. v. U.A.J.A.P.P.I., Local 740*, [1990] 3 S.C.R. 644, (“Administrative Boards” and “Labour”); *R. v. Scott*, [1990] 3 S.C.R. 979, (“Criminal,” “Charter,” and “Procedural - Other”); *McClurg v. Canada*, [1990] 3 S.C.R. 1020, (“Taxation” and “Companies”); *United Transport Union v. Central Western Railway Corp.*, [1990] 3 S.C.R. 1112, (“Constitutional” and “Labour”); *Whitbread v. Walley*, [1990] 3 S.C.R. 1273, (“Constitutional” and “Maritime, Admiralty & Shipping”); and *R. v. Chaulk*, [1990] 3 S.C.R. 1303, (“Charter,” “Criminal,” and “Evidence”).

³ In *Re Manitoba Language Rights Order*, [1990] 3 S.C.R. 1417, the Court held that they had the jurisdiction to entertain the application, to hold a hearing, and to determine the questions submitted by the parties.

⁴ Motions were disposed in the following manner: *Oregon Jack Creek Indian Band v. Canadian National Railway Co.*, [1990] 1 S.C.R. 117, the motion for a rehearing of an appeal was refused; *Reekie v. Messervey*, [1990] 1 S.C.R. 219, the application to vary orders refusing leave to appeal was granted to one party but refused to two other parties; *R. v. Thomas*, [1990] 1 S.C.R. 713, the application for an extension of time and leave to appeal was refused; *R. v. A.*, [1990] 1 S.C.R. 992, the order to release the file, which included the judgment and reasons for judgment, was delivered; and *R. v. Pilon*, [1990] 3 S.C.R. 1422, the application to quash an appeal was granted.

⁵ See *R. v. Sparrow*, *supra* Table II ([1990] S.C.R. General Tables), note 4.

⁶ See *R. v. Askov*, *supra* Table II ([1990] S.C.R. General Tables), note 4.

⁷ See *R. v. A.*, *supra* Table II ([1990] S.C.R. General Tables), note 4.

⁸ See *R. v. Chaulk*, *supra* Table II ([1990] S.C.R. General Tables), note 4.

⁹ In *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451, the Court allowed the appeal (5:2) but dismissed the cross-appeal (6:1).

¹⁰ In *R. v. J. (J.T.)*, [1990] 2 S.C.R. 755, the crown appeal was dismissed while the respondent cross-appeal was allowed.

¹¹ See *Stoffman v. Vancouver General Hospital*, *supra* Table II ([1990] S.C.R. General Tables), note 4.

TABLE IV¹
MAJORITY/DISSENT RATIO

Total Number of Cases Reported	140 ²
Unanimous Decisions	97
Split Decisions	45
9:0	10
8:1	1
7:2	1
6:3	2
5:4	3
8:0	1
7:1	0
6:2	0
5:3	0
4:4	0
7:0	57
6:1	8
5:2	9
4:3	12
6:0	2
5:1	0
4:2	4
3:3	0
5:0	25
4:1	0
3:2	5
4:0	0
3:1	0
2:2	0
3:0	2
2:1	0
1:0	0

¹ 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.

² In *Lanificio Fratelli Bettazzi S.N.C. v. Tissus Ranchar Inc.*, [1990] 2 S.C.R. 1109, the appeal of a motion to rectify or retract the judgment was refused (7:0) but the appeal was allowed (6:1). In *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451, the appeal was allowed (5:2) while the the cross-appeal was dismissed (5:2).

TABLE VI¹
TYPE OF WORK

	Common Law	Civil Law	Constitutional	Criminal	Other Public Law	Reported Motions
Cory	18	9	43	31	14	2
Dickson	12	0	52	28	15	3
Gonthier	13	8	56	40	15	2
La Forest	16	8	57	35	21	3
Lamer	10	5	53	44	16	1
L'Heureux-Dubé	17	8	59	44	22	3
McIntyre	0	0	5	3	2	0
McLachlin	14	6	38	35	12	5
Sopinka	16	3	63	47	20	5
Stevenson	0	1	1	3	0	0
Wilson	15	3	55	30	22	3

¹ 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."

TABLE VII¹
SUCCESS RATE OF CHARTER CLAIMANTS²

	Number	Per cent
Charter Claimant Wins ³	17	30.4
Charter Claimant Loses	34	60.7
Other ⁴	5	8.9
Total	56	100.0

¹ "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.

² In *Starr v. Houlden*, [1990] 1 S.C.R. 1366, the majority held that it was not necessary to discuss sections 7 to 14 of the *Charter* but allowed the appeal on other grounds. L'Heureux-Dubé J. (dissenting) did pronounce on sections 7, 11(c) and 1, holding that no violation had occurred. Since the majority of the Court did not find it necessary to pronounce on the *Charter* question, this case has not been included in the tables.

³ *R. v. Nguyen* and *R. v. Hess*, [1990] 2 S.C.R. 906, were heard and decided together. These two appeals will be noted together except in Table IX ([1990] S.C.R. Charter Tables).

⁴ In *R. v. Luxton*, [1990] 2 S.C.R. 711, the Court considered three *Charter* issues. The claimant succeeded in one but lost two, and thereby lost the appeal. In *R. v. Arkell*, [1990] 2 S.C.R. 695, the Court considered two *Charter* issues. The claimant succeeded in one but lost the other, and thereby lost the appeal. In *R. v. Garofoli*, [1990] 2 S.C.R. 1421, and *R. v. Lachance*, [1990] 2 S.C.R. 1490, the claimants lost the *Charter* arguments but won the appeal and the right to a new trial. In *R. v. Chaulk*, [1990] 3 S.C.R. 1303, the claimant lost the *Charter* argument but won a new trial on other grounds.

TABLE VIII
OBJECT OF CHARTER LITIGATION¹

		Number	Per cent	Success Rate (%)
Legislation ²	Federal	25	44.6	20
	Provincial	6	10.7	33.3
	Territorial	1	1.8	0
	Municipal			
Administrative: Decisions		3	5.4	33.3
	Rules ³	5	8.9	0
Conduct or Decisions ⁴ of Public Officials		28	50	32.1
Common Law		1	1.8	100

¹ The following cases have been included under more than one category: *R. v. Duarte*, [1990] 1 S.C.R. 30, and *R. v. Wiggins*, [1990] 1 S.C.R. 62, ("Federal Legislation" and "Conduct or Decisions of Public Officials"); *Mahe v. Alberta*, [1990] 1 S.C.R. 342, ("Provincial Legislation" and "Conduct or Decisions of Public Officials"); *R. v. Ladouceur*, [1990] 1 S.C.R. 1257, and *R. v. Wilson*, [1990] 1 S.C.R. 1291, ("Provincial Legislation" and "Conduct or Decisions of Public Officials"); *R. v. Herbert*, [1990] 2 S.C.R. 151, ("Conduct or Decisions of Public Officials" and "Common Law"); *R. v. S.(S.)*, [1990] 2 S.C.R. 254, *R. v. S.(G.)*, [1990] 2 S.C.R. 294, *R. v. P.(J.)*, [1990] 2 S.C.R. 300, *R. v. T.(A.)*, [1990] 2 S.C.R. 304, and *R. v. B.(J.)*, [1990] 2 S.C.R. 307, ("Federal Legislation" and "Conduct or Decisions of Public Officials"); and *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, and *Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451, ("Provincial Legislation" and "Administrative Rules.")

² "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."

³ In *Stoffman v. Vancouver General Hospital*, [1990] 3 S.C.R. 483, the object of the claim was a Medical Staff Regulation, which was approved by the hospital board and subsequently by the Minister of Health, as required by statute. In *Douglas/Kwantlen Faculty Association v. Douglas College*, [1990] 3 S.C.R. 570, aff'g (1988) 21 B.C.L.R. (2d) 175 (C.A.), the issue was whether a provision in the collective agreement or its application was "law" as that term is used in section 15(1). These cases have been included under "Administrative Rules."

⁴ In *R. v. Askov*, [1990] 2 S.C.R. 1199, the claimant challenged the systemic and institutional delays in the trial process. This case has been included under "Conduct or Decisions of Public Officials" for the purposes of this table.

TABLE IX
CHARTER LITIGATION BY SOURCE

Source	# of Cases	% of Cases	Lower Decisions			Claimant		
			Affirmed	Reversed	Other	Wins	Losses	Other
Alberta	8	14.3	4	4		4	3	1 ¹
British Columbia	11	19.6	7	3	1 ²	5	5	1 ³
Manitoba ⁴	4	7.1	1	2	1 ⁵	2	1	1 ⁶
New Brunswick								
Newfoundland								
Nova Scotia	2	3.6		2			2	
Ontario ⁴	26	46.4	20	6		4	20	2 ⁷
P.E.I.								
Quebec	2	3.6	1	1		2		
Saskatchewan								
N.W.T. & Yukon	2	3.6	1	1		1	1	
Federal Court	2	3.6	2				2	
Federal Reference								
Total	57	100.0	36	19	2	18	34	5

¹ See *R. v. Luxton*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4.

² In *Harrison v. University of British Columbia*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, the University's appeal was allowed and the individuals' cross appeal was dismissed.

³ See *R. v. Arkell*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4.

⁴ See *R. v. Nguyen* and *R. v. Hess*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 3.

⁵ In *R. v. J.(J.T.)*, [1990] 2 S.C.R. 755, the Crown appeal was dismissed and the accused's cross-appeal was allowed.

⁶ See *R. v. Chaulk*, *supra* Table VII, ([1990] S.C.R. Charter Tables), note 4.

⁷ See *R. v. Garofoli* and *R. v. Lachance*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4.

Section	# of Cases	Claimant			Right or Freedom		Section 1		
		Wins	Loses	Other	Limited	Not Ltd	Saves Limit	Doesn't Save	Other
(h) Double jeopardy	1		1			1			
(i) Benefit of lesser punishment									
12. Treatment or Punishment	2	1		1 ¹⁰	1	1			
13. Self-incrimination	3 ^{4,11}		3				2		
14. Interpreter									
15. Equality Rights									
(1) Race									
National or ethnic origin									
Colour									
Religion									
Sex									
Age	4	1 ¹²	3 ¹³		4		3		1 ¹²
Mental or physical disability									
Aboriginal peoples									
Other ¹⁴	9	1 ¹⁵	8 ⁶				8		
s. 15(1) SUBTOTAL	13	2	11		4	8	3		1
(2) Affirmative action									
16. - 22. Official Languages									
23. Minority Language									
Educational Rights	1	1			1			1	
24(1) Enforcement	1 ¹⁶	1							
(2) Exclusion of Evidence									
25. Aboriginal Rights									
26. Other Rights & Freedoms									
27. Multicultural Heritage									
28. Rights Guaranteed Equally	1	1 ¹⁵				1			
29. Rights Respecting Schools									
30. Application to Territories									
31. Legislative Powers									
32. Application of <i>Charter</i>	4		4 ¹⁷						
33. Exception									

¹ 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.

² In *R. v. Ladouceur*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, the Court held that it was unnecessary to consider section 7. The outcome depended on sections 8 and 9.

³ In *Dywidag Systems International, Canada Ltd. v. Zutphen Brothers Construction Ltd.*, [1990] 1 S.C.R. 705, the Court held that a corporation cannot be deprived of life, liberty, and security of the person and cannot avail itself of the protection offered by section 7.

⁴ In *R. v. Hicks*, [1990] 1 S.C.R. 120, *aff'g* (1988) 28 O.A.C. 118 (Ont. C.A.), the Court agreed with the decision of the Ontario Court of Appeal. In that judgment, Mr. Justice Lacourcière held that sections 7, 11(c), and 13 were not infringed.

⁵ In *R. v. Arkell*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4, the Court considered section 7 in two separate issues. Section 7 was found to be limited and not saved in one issue and not limited in the other. In *R. v. Luxton*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4, section 7, "fundamental justice," was considered in two issues. These cases have been noted twice under "Principles of Fundamental Justice" but only once in the subtotal.

⁶ In *Danson v. Ontario (A.G.)*, [1990] 2 S.C.R. 1086, the Court held that the challenge lacked a proper factual background and dismissed the appeal.

⁷ In *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425, the Court considered sections 7 and 8. Sopinka J. held that the provisions of the *Combines Investigation Act*, R.S.C. 1970, c. C-23, s. 17, relating to the production of documents, do not contravene section 7 of the *Charter*. Those provisions relating to the compelling of testimony, however, do violate section 7. While this latter point constitutes a partial dissent, and because Lamer J. declined to deal with section 7, a 2:2 decision results. Due to section 8, however, the appeal was nevertheless dismissed.

⁸ In *R. v. Greffe*, [1990] 1 S.C.R. 755, the Crown conceded that sections 8, 10(a) and 10(b) were limited. The case was decided by section 24(2), although the Court further considered the above sections.

⁹ See *R. v. Garofoli* and *R. v. Lachance*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4.

¹⁰ In *R. v. Luxton*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4, as well as considering section 7, the Court examined sections 9, 11(d) "presumption of innocence," and 12.

¹¹ In *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, *supra* note 7, sections 11(c) and 13 were discussed by La Forest and Lamer JJ., but the outcome was decided by sections 7 and 8.

¹² In *Douglas/Kwantlen Faculty Association v. Douglas College*, *supra* Table VIII (1990 Charter Tables), note 3, the Court held that the *Charter* does apply to community colleges, affirming the decision of the British Columbia Court of Appeal and the arbitrator appointed under the collective agreement. Because the arbitrator did not consider section 1 in the preliminary award, the Court did not have to consider that issue.

¹³ In *Stoffman v. Vancouver General Hospital*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 3, the Court, in considering whether the hospital regulation in question did limit section 15(1) of the *Charter*, assumed that the hospital was part of government. The issue was decided 3:3, with Sopinka J. holding that this question should not be decided on the basis of the aforementioned assumption. Because the majority held that the *Charter* did not apply to hospitals, the claimants lost their challenge. See also *McKinney v. University of Guelph* and *Harrison v. University of British Columbia*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1.

¹⁴ In *Rudolf Wolff & Co. v. Canada*, [1990] 1 S.C.R. 695 and *Dywidag Systems International, Canada Ltd. v. Zutphen Brothers Construction Ltd*, *supra* note 3, the claimants asserted section 15 equality rights as they pertained to individuals claiming relief against the federal Crown. In *R. v. S.(S.)*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, the claimant asserted equality rights on the basis of province of residence. In *R. v. S.(G.)*, *R. v. P.(J.)*, *R. v. T.(A.)*, and *R. v. B.(J.)*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, the claimants asserted their right to equal benefit of the law under the *Young Offenders Act*, S.C. 1980-81-82-83, c. 110, s. 4. In *Danson v. Ontario (A.G.)*, *supra* note 6, the claimant asserted section 15 equality rights as they pertained to the legal profession in Ontario. In *R. v. Nguyen* and *R. v. Hess*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 3, the claimants argued that their section 15 equality rights were infringed by a prohibition applicable only to men, which dealt with having intercourse with female persons under the age of 14.

¹⁵ In *R. v. Nguyen* and *R. v. Hess*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 3, the claimants succeeded on the basis of section 7.

¹⁶ In *R. v. A.*, [1990] 1 S.C.R. 995, the Court held that section 24(1) is applicable to persons living outside of Canada. In this instance, however, no section 7 violation was proven at trial. A new trial, therefore, was ordered.

¹⁷ In *McKinney v. University of Guelph* and *Harrison v. University of British Columbia*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, the majority of the Court held that the *Charter* does not apply to universities. *Wilson* and *Cory JJ.* dissented, holding that the *Charter* does apply to universities. In *Stoffman v. Vancouver General Hospital*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 3, the majority of the Court held that the *Charter* does not apply to hospitals. In *Douglas/Kwantlen Faculty Association v. Douglas College*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 3, the Court held that the *Charter* did apply to community colleges.

TABLE XI
ACTION OF THE JUSTICES

Justice	# of Cases	Judgments Written for the		Judgments Co-Written for the		Concurrences with the Court Maj Diss	Concurrences with Another Justice										
		Court Maj	Diss	Court Maj	Diss		Cory	Gonthier	Dickson	La Forest	Lamer	L'Heureux-Dubé	McLachlin	Sopinka	Wilson		
Cory ¹	35	3	9	6		6	10	2		1	8	7			1	1	
Dickson	46	6	7	2		5	26			7	1	7	7		2	7	
Gonthier ²	47		2			11	32	2	11	9	7	9			5	5	
La Forest	46		13	3		9	18	3	4	1	9				4	7	2
Lamer	43	1	19	1		7	13	2	5		5				4	6	2
L'Heureux-Dubé ^{1,2}	46		9	6		4	22	7	8		6	5	1		6	2	6
McLachlin	31	1	6	9		4	11		6	1		4	2			2	
Sopinka ³	51		26	4		11	8	3	3	1	9	2	1		6		
Wilson ²	48		7	11		11	17	2	8		9	8			1	5	

¹ In *R. v. A.*, *supra* Table X ([1990] S.C.R. Charter Tables), note 16, L'Heureux-Dubé, Wilson, and Gonthier JJ. concurred with the judgments of both Sopinka and Cory JJ.

² In *McKinney v. University of Guelph* and *Harrison v. University of British Columbia*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, L'Heureux-Dubé and Cory JJ. wrote majority and dissenting judgments on different issues.

³ In *Douglas/Kwantlen Faculty Association v. Douglas College*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 3, Sopinka J. wrote both a majority and dissenting judgment on different issues.

TABLE XII¹
VOTING BEHAVIOUR OF JUSTICES

Justice	Majority			Minority			Support			Section 1 ²								
	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
Cory ³	5	8		5	8	3	5			2			15	19	2	7	10	1
Gonthier		1	1	14	25	4				1	1		15	30	2	11	10	
Dickson	1	12		12	14	5		2					13	31	2	12	10	2
La Forest	2	11		11	13	3	3			3			19	27		9	11	1
Lamer	6	11	3	7	11	2	1			1	1		15	26	2	6	9	
L'Heureux-Dubé ^{3,4,5}	1	8		10	14		3	3		4	4	1	18	30		6	14	2
McLachlin ⁴	5	2		3	12		4	4	1				12	19		2	7	
Sopinka ^{5,6}	12	10	4	2	17		2	1	1	3			19	31	2	7	5	
Wilson	4	2	1	10	16	2	11			2			28	18	2	3	22	1

¹ "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. Thus, a case can be counted twice if there are multiple issues.

² In *R. v. Ladouceur*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, while the majority held that the section 9 violation was saved by section 1, Dickson C.J. and Wilson, La Forest, and Sopinka JJ. held that section 1 did not save the violation. They did agree, however, with the disposition because in their view the evidence would be admissible under section 24(2). The disposition did not depend on section 24(2) and, therefore, this case has not been noted in Table XV ([1990] S.C.R. Charter Tables) under "S. 24(2) used."

In *R. v. Kokesch*, [1990] 3 S.C.R. 3, Dickson C.J. and L'Heureux-Dubé JJ. (dissenting) held that, although section 1 does not save the limit on section 8, the evidence is admissible under section 24(2).

³ In *McKinney v. University of Guelph* and *Harrison v. University of British Columbia*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, L'Heureux-Dubé and Cory JJ. wrote the majority judgments for the government and minority judgments for the claimants, on separate issues. The judgments have been thus noted.

⁴ In *R. v. Garofoli* and *R. v. Lachance*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4, the majority held that the claimants lost the *Charter* argument but won the appeal on other grounds. Hence this case will be noted under "Support for Government." L'Heureux-Dubé and McLachlin JJ. dissented, holding that the claimant lost the *Charter* argument and should lose the appeal. These minority positions have been noted under "Judgment for Government" and "Concurs with Government."

⁵ In *R. v. Arkell*, and *R. v. Luxton*, *supra* Table VII ([1990] S.C.R. Charter Tables), note 4, the majority of the Court held that the claimant's *Charter* arguments were partially successful and, therefore, these decisions have been included under "Judgment for Other" and "Concurs with Other." L'Heureux-Dubé and Sopinka JJ., for the majority, agreed with the disposition, but held that no *Charter* claim was successful. Their judgments have been included under "Judgment for Government" for the purposes of this table.

⁶ In *Douglas/Kwantlen Faculty Association v. Douglas College*, *supra* Table VIII ([1990] Charter Tables), note 3, Sopinka J. wrote both a majority judgment for the claimant and a minority judgment for the government on separate issues. His judgment has been noted as such.

TABLE XIII
TYPE OF CHARTER CLAIMANTS

	# of Cases	% of Cases	Claimant			Interveners Present				
			Wins	Losses	Other	For Claimant # of Cases	For Gov't # of Cases	For Both # of Cases	For Both # of Wins	
Business										
Corporations ¹	5	9	5				5	5		
Individuals	52	93	15	32	5		27	19	3	1
Interest										
Groups ²	1	2	1						1	1
Unions ³	2	4	1	1			2	1		
Other										

¹ *Thomson Newspapers Ltd. v. Canada*, *supra* Table X ([1990] S.C.R. Charter Tables), note 7; and *Stelco Inc. v. Canada (A.G.)*, [1990] 1 S.C.R. 617, have been included under both "Individuals" and "Business Corporations."

² In *Mahe v. Alberta*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, the claimants included the Association de l'école Georges et Julia Bugnet, an incorporated society to improve French-language education in Alberta. This case, therefore, has been included under both "Individuals" and "Interest Groups."

³ In *McKinney v. University of Guelph*, *supra* Table VIII ([1990] S.C.R. Charter Tables), note 1, the claimants included the York University Faculty Association. The case, therefore, has been included under both "Individuals" and "Unions."

TABLE XIV
MAJORITY/DISSENT RATIO

Unanimous Decisions				26			
Split Decisions				30			
9:0	4	8:0	0	7:0	20	6:0	0
8:1	0	7:1	0	6:1	6	5:1	0
7:2	1	6:2	0	5:2	6	4:2	4
6:3	1	5:3	0	4:3	8	3:3	0
5:4	1	4:4	0				
5:0	2	4:0	0	3:0	0	1:0	0
4:1	0	3:1	0	2:1	0		
3:2	3 ¹	2:2	0				

¹ In *Thomson Newspapers Ltd. v. Canada*, *supra* Table X ([1990] S.C.R. Charter Tables), note 7, the decision on the section 7 issue was split 2:2. This case was decided on the basis of section 8 with the justices voting 3:2.

