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[1973] S. C. R. Statistical Analysis

STATISTICAL ANALYSIS OF [1973] S.C.R.*

TABLES

1. Subject Matter of Litigation
2. Volume of Work
3. Provincial Breakdown
4. Action of Individual Judges
Type of Work
5. Cases and Majority Ratio
6. Action of the Justices

* Statistics compiled by John Bankes, Brian McClellan, and Joseph Steiner, students at Osgoode Hall Law School of York University. All Tables, other than Table II, deal with reported cases only.

TABLE ISUBJECT MATTER OF LITIGATION¹

	No. of Cases Reported	Exchequer Court or Court of Appeal		No. of Judges Sitting
		Affirmed	Reversed	
ORIGINAL JURISDICTION				
References				
Reported Motions	1			1.9x0
APPELLATE				
(a) PRIVATE				
(i) <i>Administration and Succession</i>				
Devolution				
Executors & Administrators				
Wills	1	1		1.5x0
(ii) <i>Commercial</i>				
Accounts				
Agency				
Assignments				
Banks & Banking				
Bills & Notes				
Bankruptcy				
Companies				
Contract	7	5	3	6.5x0 1.3x2
Debtor & Creditor				
Insurance	6	2	5	4.5x0 1.4x1 1.3x2
Interest				
Partnership				
Sale of Goods				
Subrogation				
(iii) <i>Domestic Relations</i>				
Adoption				
Annulment				
Breach of Promise				
Child Welfare	1		1	1.5x4
Divorce	2		2	1.9x0 1.7x0
Judicial Separation				
Support				

		Exchequer Court or Court of Appeal		No. of Judges Sitting
		No. of Cases Reported	Affirmed Reversed	
(iv)	<i>Industrial Property</i>			
	Copyrights			
	Industrial Designs			
	Patents			
	Trademarks			
(v)	<i>Land</i>			
	Landlord & Tenant	1	1	1.5x0
	Mechanics Liens	1	1	1.5x0
	Mortgages	1	1	1.3x2
	Real Property	2	1	2.5x0
(vi)	<i>Natural Resources</i>	1	1	1.5x0
(vii)	<i>Torts</i>			
	Assault & Battery			
	Bailment			
	Conspiracy & Intimidation	1	1	1.7x0
	False Imprisonment	1	1	1.5x0
	Libel & Slander	1	1	1.5x0
	Negligence	10	7	5.5x0 2.4x1 3.3x2
	Nuisance	1	1	1.5x0
	Occupier's Liability			
	Vicarious Liability	1	1	1.5x0
(viii)	<i>Other</i>			
	Animals			
	Associations			
	Charities			
	Choses in Action			
	Conflicts	1	1	1.5x0
	Damages	3	3	2.5x0 1.3x2
	Privileges			
	Shipping			
	Trusts			
(b)	PUBLIC			
	Administrative Boards	2	1	1.5x4 1.5x0
	Certiorari	1	1	1.7x0
	Civil Rights			
	Constitutional	3	1	1.9x0 1.5x4 1.7x0

	No. of Cases Reported	Exchequer Court or Court of Appeal		No. of Judges Sitting
		Affirmed	Reversed	
Criminal	2	1	1	1.5x4 1.5x0
Crown & Sovereign Immunity	1	1		1.4x3
Elections				
Expropriation	2	1	1	2.5x0
Habeas Corpus				
Immigration	1	1		1.5x0
Labour	2	2		1.8x1 1.4x1
Mandamus	1		1	1.5x0
Municipal Law	5	1	4	1.8x1 4.5x0
Native Rights	1	1		1.4x3
Prohibition				
Public Utilities				
Taxation	3	1	2	1.4x1 2.3x2

(c) PROCEDURAL

Appeal				
Costs				
Declaratory Action				
Evidence	1	1		1.5x0
Injunction				
Limitation Period				
Jurisdiction	1		1	1.5x4
Procedure	1		1	1.5x0

KEY

As an example of how this table operates look to the taxation classification and note:

- (1) Three "Taxation" cases were reported.
- (2) The lower courts were affirmed once and reversed twice.
- (3) One case was decided by a 4 to 1 majority, and two cases 3 to 2.

¹ Multiple entries have been made where a case contained more than one subject matter of importance. One case was entered twice within the "PRIVATE" heading; three cases were entered twice within the "PUBLIC" heading; two cases were entered once under "PUBLIC" and once under "PROCEDURAL"; one case was entered once under "PRIVATE" and once under "PUBLIC".

One other case was entered twice under a single subject matter because the results of appeal and cross-appeal were different with regard to affirmation and reversal. Two other cases were entered twice under a single subject matter because the lower court judgment was affirmed with respect to some respondents and reversed with respect to others.

Where one decision was handed down to cover two or more appeals (including

appeal and cross-appeal) or motions, they are treated as one case, subject to the exceptions in the preceding paragraph.

Three new subject matter headings have been introduced this year. "Conspiracy & Intimidation" and "False Imprisonment" under the "Torts" section of "PRIVATE", and "Native Rights" under "PUBLIC".

TABLE II

VOLUME OF WORK

			TOTAL
Reported Judgments ¹			
Public	Private		
22	42		63
Reported Motions ²			
Allowed	Dismissed	Other	
0	1	0	1
Unreported Judgments ³			
Allowed	Dismissed	Other	
5	52	0	57
Unreported Motions ⁴			
Allowed	Dismissed	Other ⁵	
69	132	1	201

¹ Where one judgment covers two or more appeals (including appeal and cross-appeal) they are treated as one case. If a case is classed both "Public" and "Private" it is entered under each of those heads, but only once under "TOTAL". See, e.g., *Zacks v. Zacks*, [1973] S.C.R. 891. Procedural cases are classified according to underlying subject matter.

² Where one judgment covers two or more motions, one entry has been made except where the results of the motions are not the same in which case they are entered under "Allowed", "Dismissed", and/or "Other", as appropriate, but only once under "TOTAL".

³ The rules for multiple entries with respect to unreported judgments are as in note 2.

⁴ All data under this heading are derived from the [1973] *Bulletin of Proceedings Taken in the Supreme Court of Canada* because the entries in the [1973] S.C.R. are highly incomplete. It should be noted that motions entered under this heading may be reported in subsequent volumes of S.C.R.

Since the purpose of this table is to measure volume of work, only one entry is made where two or more motions are argued on the same date by the same lawyers before the same judges (e.g. *Chief Robt. Kanatewat v. James Bay Development Corp.* and *Chief Robt. Kanatewat v. Quebec Hydro Electric Co.*, 21-12-73), except where one of the simultaneous motions is allowed and the other denied, in which case the rule in note 2 applies (e.g. *Central Bearing Corp. v. V/O Stankoimport*, 23-1-73).

⁵ Three motions to quash appeals (*Larissa Development Corp. v. Comm. Scolaire Regionale Royer*, *Les Entreprises LaFleur v. Comm. Scolaire Regionale Le Royer*, and *Eastern Development Corp. v. Comm. Scolaire Regionale Le Royer*, 8-11-73) were heard together and referred to the Court for hearings on the merits.

TABLE III

PROVINCIAL BREAKDOWN

	<u>PUBLIC</u>			<u>PRIVATE</u>			<u>TOTAL¹</u>
	A	R	O	A	R	O	
Newfoundland					1		1
Nova Scotia				1			1
Prince Edward Island							0
New Brunswick							0
Quebec	2	3		8	9		22
Ontario	3	4		5	5		17
Manitoba		1					1
Saskatchewan				1	2		3
Alberta				3	1		4
British Columbia	5	1		4	4		13
Yukon							0
North West Territories							0
Exchequer Court					1		1
Federal Boards	1	1					2
Original			1 ²				1
TOTAL	<u>11</u>	<u>10</u>	<u>1</u>	<u>22</u>	<u>23</u>		<u>65</u>

¹ Three private law cases (two from Quebec and one from British Columbia) have been entered twice as results of an appeal and cross appeal differed or because the lower court was affirmed with respect to some respondents and reversed with respect to others. One case from British Columbia was entered both under "PUBLIC" and "PRIVATE", but only once under "TOTAL". Procedural cases are classified according to their underlying subject matter.

² This refers to *Hydro Quebec v. A.-G. Quebec*, [1973] S.C.R. 790, a motion for leave to appeal which was dismissed.

TABLE IVACTION OF INDIVIDUAL JUDGES¹

	<u>Majority</u>			<u>Dissent</u>			<u>TOTAL</u>
	J	C ²	T	J	C	T	
Fauteux	9	18	27	1		1	28
Abbott	2	29	31		3	3	34
Martland	8	30	38	1	1	2	40
Judson	4	26	30	5	2	7	37
Ritchie	8	31	39	2	3	5	44
Hall	2	34	36	2	2	4	40
Spence	10	30	40	4	2	6	46
Pigeon	13	25	38	3	1	4	42
Laskin	11	23	34	5	3	8	42

J—Judgment, either majority or dissenting

C—Concurred

T—Total

¹ A justice is entered only once for each case on which he sat. If he wrote an opinion, he is entered under "J" (whether "Majority" or "Dissent") only, even if he also concurred with one or more justices. The other justices sitting on the case will each be entered once under "C" (whether "Majority" or "Dissent"). Thus the "TOTAL" column gives the number of reported cases in which each justice was involved.

² In *Hydro Quebec v. A.-G. Quebec*, [1973] S.C.R. 790, one opinion was rendered without signature as the opinion of the court. All nine justices are entered as having concurred in the majority.

	TYPE OF WORK ¹				
	Common Law ²	Civil Law ²	Criminal	Constitutional	Other Public Law ¹
Fauteux	4	14	2	3	7
Abbott	6	15	2	3	10
Martland	19	8	1	3	11
Judson	18	3	1	3	14
Ritchie	24	3	2	3	14
Hall	18	9	2	3	10
Spence	25	4	1	2	16
Pigeon	13	15	2	2	15
Laskin	21	4	1	3	13

¹ Procedural decisions are classified according to their underlying subject matter. One case was entered under both "Constitutional" and "Other Public Law", and another case was entered under both "Common Law" and "Constitutional" because of multiple subject matter.

² "Common Law" includes equity. Private law cases based upon federal or provincial statutes are classified as common or civil law depending upon their province of origin.

TABLE V

CASES AND MAJORITY RATIO

Total Number of Cases Reported			63
Unanimous Decisions			43
Split Decisions			20
9x0.....2	7x0.....4	5x0.....37	3x0.....0
8x1.....2	6x1.....0	4x1.....5	2x1.....0
7x2.....0	5x2.....0	3x2.....9	
6x3.....0	4x3.....1		
5x4.....3			

TABLE VI
ACTION OF THE JUSTICES¹

	Fauteux	Abbott	Martland	Judson	Ritchie	Hall	Spence	Pigeon	Laskin
Fauteux									
MO	9								
C		2	4	1	1	0	0	7	2
DO	1								
C		0	0	0	0	0	0	0	0
Abbott									
MO		2							
C	9		5	1	1	0	1	9	1
DO		0							
C	1		0	1	0	0	0	1	0
Martland									
MO			8						
C	6	0		4	5	0	6	5	4
DO			1						
C	0	0		1	0	0	0	0	0
Judson									
MO				4					
C	2	1	4		5	0	5	5	3
DO				5					
C	0	0	0		1	0	0	1	0
Ritchie									
MO					8				
C	3	0	6	4		2	5	4	6
DO					2				
C	0	0	0	2		0	0	1	0
Hall									
MO						2			
C	4	1	6	1	4		5	7	5
DO						2			
C	0	0	0	0	0		0	1	1
Spence									
MO							10		
C	0	2	6	2	6	2		4	7
DO							4		
C	0	0	0	0	0	1		0	1

	Fauteux	Abbott	Martland	Judson	Ritchie	Hall	Spence	Pigeon	Laskin
Pigeon									
MO								13	
C	6	2	3	2	3	1	4		4
DO								3	
C	0	0	0	1	0	0	0		0
Laskin									
MO									11
C	3	0	7	1	2	1	5	2	
DO									5
C	0	0	0	0	0	2	0	1	

KEY

M—Majority

D—Dissent

O—Wrote Judgment

C—Concurred

As an example of how this table works, look to Judson and observe:

- (1) He delivered 4 majority judgments.
- (2) He concurred with the majority judgments of Fauteux twice, Abbott once, Martland 4 times, etc.
- (3) He wrote 5 dissenting judgments and concurred once each with the dissenting judgments of Ritchie and Pigeon.

¹ The totals in this Table are sometimes not in accord with those of Table IV because of different rules of classification reflecting different purposes of the tables. In Table IV a particular judge was entered only once for any given case, under "J" if he wrote an opinion, and under "C" otherwise. In this table he would be entered once for his written opinion, if any, and once for each concurrence.

Where a judge in an opinion indicates approval of another judgment without officially adopting it as his own, no concurrence is entered. Where one judgment is delivered as the opinion of the court, all other judges sitting on the case are entered as concurring with the author of the opinion.

No entry was made in this table for *Hydro Quebec v. A.-G. Quebec*, [1973] S.C.R. 790, as one unsigned judgment was delivered as the opinion of the court.

