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# [1972] S. C. R. Statistical Analysis

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# STATISTICAL ANALYSIS OF [1972] S.C.R.\*

## TABLES

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\*Statistics compiled by Jennifer K. Bankier, B.A. (Toronto), a member of the 1974 graduating class, Osgoode Hall Law School.

TABLE I  
SUBJECT MATTER OF LITIGATION

|   | No. of Cases<br>Reported* | Exchequer Court or<br>Court of Appeal |           | No. of Judges<br>Sitting |
|---|---------------------------|---------------------------------------|-----------|--------------------------|
|   |                           | Affirmed*                             | Reversed* |                          |
| <b>ORIGINAL JURISDICTION</b>                    |                           |                                       |           |                          |
| References                                      |                           |                                       |           |                          |
| Reported Motions                                | 3                         |                                       |           | 2.4x1<br>1.3x2           |
| <b>APPELLATE</b>                                |                           |                                       |           |                          |
| <b>(a) PRIVATE</b>                              |                           |                                       |           |                          |
| <b>(i) <i>Administration and Succession</i></b> |                           |                                       |           |                          |
| Devolution                                      |                           |                                       |           |                          |
| Executors &<br>Administrators                   |                           |                                       |           |                          |
| Wills   | 2                         | 1                                     | 1         | 2.5x0                    |
| <b>(ii) <i>Commercial</i></b>                   |                           |                                       |           |                          |
| Accounts  |                           |                                       |           |                          |
| Agency  | 1                         |                                       | 1         | 1.5x0                    |
| Assignments                                     |                           |                                       |           |                          |
| Banks and Banking                               | 2                         | 2                                     |           | 1.5x0                    |
| Bills & Notes                                   | 1                         |                                       | 1         | 1.4x1                    |
| Bankruptcy                                      |                           |                                       |           |                          |
| Companies                                       |                           |                                       |           |                          |
| Contract  | 2                         | 2                                     |           | 2.5x0                    |
| Debtor & Creditor                               | 1                         | 1                                     |           | 1.5x0                    |
| Insurance                                       | 2                         | 1                                     | 1         | 1.5x0<br>1.3x2           |
| Interest  |                           |                                       |           |                          |
| Partnership                                     | 1                         |                                       | 1         | 1.5x0                    |
| Sale of Goods                                   | 1                         | 1                                     | 1         | 1.4x1                    |
| Subrogation                                     |                           |                                       |           |                          |
| <b>(iii) <i>Domestic Relations</i></b>          |                           |                                       |           |                          |
| Adoption  |                           |                                       |           |                          |
| Annulment                                       |                           |                                       |           |                          |
| Breach of Promise                               |                           |                                       |           |                          |
| Child Welfare                                   |                           |                                       |           |                          |
| Divorce   |                           |                                       |           |                          |
| Judicial Separation                             |                           |                                       |           |                          |
| Support   | 1                         | 1                                     |           | 1.3x2                    |
| <b>(iv) <i>Industrial Property</i></b>          |                           |                                       |           |                          |
| Copyrights                                      | 1                         | 1                                     | 1         | 1.5x0                    |
| Industrial Designs                              |                           |                                       |           |                          |
| Patents   | 2                         | 2                                     | 1         | 2.5x0                    |
| Trademarks                                      |                           |                                       |           |                          |

|                               | No. of Cases<br>Reported* | Exchequer Court or<br>Court of Appeal |           | No. of Judges<br>Sitting         |
|-------------------------------|---------------------------|---------------------------------------|-----------|----------------------------------|
|                               |                           | Affirmed*                             | Reversed* |                                  |
| (v) <i>Land</i>               |                           |                                       |           |                                  |
| Landlord & Tenant             |                           |                                       |           |                                  |
| Mechanics Liens               | 1                         | 1                                     |           | 1.4x1                            |
| Mortgages                     | 1                         | 1                                     |           | 1.5x0                            |
| Real Property                 | 3                         | 1                                     | 2         | 2.5x0<br>1.3x2                   |
| (vi) <i>Natural Resources</i> | 2                         | 1                                     | 1         | 1.5x0<br>1.3x2                   |
| (vii) <i>Torts</i>            |                           |                                       |           |                                  |
| Assault & Battery             |                           |                                       |           |                                  |
| Bailment                      |                           |                                       |           |                                  |
| Libel & Slander               |                           |                                       |           |                                  |
| Negligence                    | 11                        | 6                                     | 5         | 6.5x0<br>1.4x1<br>4.3x2          |
| Nuisance                      |                           |                                       |           |                                  |
| Occupier's Liability          |                           |                                       |           |                                  |
| Vicarious Liability           | 2                         | 1                                     | 1         | 2.5x0                            |
| (viii) <i>Other</i>           |                           |                                       |           |                                  |
| Animals                       |                           |                                       |           |                                  |
| Associations                  |                           |                                       |           |                                  |
| Charities                     |                           |                                       |           |                                  |
| Choses in Action              |                           |                                       |           |                                  |
| Conflicts                     |                           |                                       |           |                                  |
| Damages                       |                           |                                       |           |                                  |
| Privileges                    |                           |                                       |           |                                  |
| Shipping                      | 1                         |                                       | 1         | 1.5x0                            |
| Trusts                        | 1                         |                                       | 1         | 1.5x0                            |
| (b) PUBLIC                    |                           |                                       |           |                                  |
| Administrative Boards         |                           |                                       |           |                                  |
| Certiorari                    | 1                         |                                       | 1         | 1.9x0                            |
| Civil Rights                  | 3                         | 2                                     | 1         | 2.9x0<br>1.6x3                   |
| Constitutional                | 2                         | 1                                     | 1         | 2.9x0                            |
| Criminal                      | 7                         | 3                                     | 4         | 3.9x0<br>1.6x3<br>2.5x0<br>1.4x1 |
| Crown & Sovereign<br>Immunity |                           |                                       |           |                                  |
| Habeas Corpus                 |                           |                                       |           |                                  |

|                  | No. of Cases Reported* | Exchequer Court or Court of Appeal |           | No. of Judges Sitting   |
|------------------|------------------------|------------------------------------|-----------|-------------------------|
|                  |                        | Affirmed*                          | Reversed* |                         |
| Immigration      | 4                      | 1                                  | 3         | 1.9x0<br>1.5x0<br>2.3x2 |
| Labour           | 1                      | 1                                  |           | 1.5x0                   |
| Mandamus         |                        |                                    |           |                         |
| Prohibition      |                        |                                    |           |                         |
| Public Utilities | 1                      |                                    | 1         | 1.5x4                   |
| Taxation         | 6                      | 5                                  | 1         | 5.5x0<br>1.3x2          |
| Expropriation    | 5                      |                                    | 5         | 1.5x0<br>3.4x1<br>1.3x2 |
| Elections        |                        |                                    |           |                         |
| Municipal Law    | 3                      |                                    | 3         | 1.7x0<br>1.5x0<br>1.4x1 |

## PROCEDURAL

|                    |   |   |   |       |
|--------------------|---|---|---|-------|
| Appeal             | 1 | 1 |   | 1.5x0 |
| Costs              |   |   |   |       |
| Declaratory Action |   |   |   |       |
| Evidence           |   |   |   |       |
| Injunction         | 1 |   | 1 | 1.5x4 |
| Limitation Period  | 2 |   | 2 | 2.5x0 |
| Jurisdiction       | 1 |   | 1 | 1.5x4 |
| Procedure          |   |   |   |       |

## KEY

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

- (1) Six Tax cases reported.
- (2) The lower courts were affirmed 5 times and reversed once.
- (3) Five cases were decided by a 5 to 0 majority, and one case 3 to 2.

\*Multiple entries have been made where a case contained more than one subject matter of importance. Four cases were entered twice within the "PUBLIC" heading while one case was entered once under "PUBLIC" and once under "PROCEDURAL". One case was entered three times, i.e. once under "PUBLIC" and twice under "PROCEDURAL".

Three other cases were entered twice under a single subject matter because the results of appeal and cross-appeal were different with regard to affirmation and reversal.

Where one decision was handed down to cover two appeals or motions they are treated as one case.

TABLE II

## VOLUME OF WORK

|                                 |           |                    |       |
|---------------------------------|-----------|--------------------|-------|
| Reported Judgments <sup>1</sup> |           |                    | TOTAL |
| Public                          | Private   |                    |       |
| 30                              | 40        |                    | 70    |
| Reported Motions <sup>1</sup>   |           |                    |       |
| Allowed                         | Dismissed | Other              |       |
| 2                               | 2         | 0                  | 3     |
| Unreported Judgments            |           |                    |       |
| Allowed                         | Dismissed | Other <sup>2</sup> |       |
| 3                               | 44        | 3                  | 50    |
| Unreported Motions <sup>3</sup> |           |                    |       |
| Allowed                         | Dismissed | Other <sup>4</sup> |       |
| 51                              | 112       | 3                  | 161   |

<sup>1</sup> Where one judgment covers two appeals or motions one entry has been made except where the results of the appeals or motions are contradictory, in which case they are listed under both "Allowed" and "Dismissed" but only once under "Total". See, for example, *Hretchka v. A.G. B.C.*, [1972] S.C.R. 119.

<sup>2</sup> There was one unreported judgment where a new trial was ordered and two where the appeal was quashed and leave to appeal was refused.

<sup>3</sup> All figures under this heading are derived from the [1972] *Bulletin of Proceedings Taken in the Supreme Court of Canada* because the entries in the [1972] S.C.R. are highly incomplete. It should be noted that motions entered under this heading may be reported in subsequent volumes of the Supreme Court Reports. For example, the three motions entered under "Reported Motions" in this table were heard in 1971 but were reported in the [1972] S.C.R.

Since the purpose of this table is to measure volume of work only one entry is made where two motions are argued on the same date by the same lawyers before the same judges (e.g. *Merck & Co. Inc. v. Sherman & Ulster Ltd.* and *Merck & Co. Ltd. v. S. & U. Co. Ltd.* are entered as one dismissal only), except where one of the simultaneous motions is affirmed and the other denied, in which case the rule in footnote one applies. Note the change from last year when such cases were entered twice under "Total".

When the same appeal gives rise to multiple motions that are heard by different judges the result of each motion is entered separately. An example is *Syndicat des Employés de Bureau de l'Hydro Québec v. Proc. Gen. de Québec* where the motion for leave to appeal was originally heard by a panel of three judges who referred it to the full court for decision, thus giving rise to one entry under "Other" and one under "Dismissed".

<sup>4</sup> "Other" covers one motion where it was ruled that leave to appeal was not required, a second motion which was referred to the full court, and a third one which was withdrawn.

TABLE III

## PROVINCIAL BREAKDOWN

|                        | <u>PUBLIC</u> |           |          | <u>PRIVATE</u> |           |          | <u>TOTAL*</u> |
|------------------------|---------------|-----------|----------|----------------|-----------|----------|---------------|
|                        | A             | R         | O        | A              | R         | O        |               |
| Newfoundland           | 0             | 0         |          | 0              | 0         |          | 0             |
| Nova Scotia            | 0             | 0         |          | 0              | 2         |          | 2             |
| Prince Edward Island   | 0             | 0         |          | 0              | 0         |          | 0             |
| New Brunswick          | 1             | 1         |          | 0              | 0         |          | 2             |
| Quebec                 | 2             | 2         |          | 7              | 2         |          | 13            |
| Ontario                | 3             | 8         |          | 9              | 6         |          | 26            |
| Manitoba               | 0             | 1         |          | 1              | 0         |          | 2             |
| Saskatchewan           | 0             | 0         |          | 0              | 2         |          | 2             |
| Alberta                | 0             | 2         |          | 2              | 3         |          | 7             |
| British Columbia       | 2             | 2         |          | 2              | 2         |          | 8             |
| Yukon                  | 0             | 0         |          | 0              | 0         |          | 0             |
| North West Territories | 0             | 0         |          | 0              | 0         |          | 0             |
| Exchequer Court        | 3             | 1         |          | 2              | 2         |          | 8             |
| Federal Boards         | 1             | 2         |          | 0              | 0         |          | 3             |
| Original               |               |           | 2        |                |           | 1        | 3             |
| <b>TOTAL</b>           | <b>12</b>     | <b>18</b> | <b>2</b> | <b>23</b>      | <b>20</b> | <b>1</b> | <b>76</b>     |

\*Three private law decisions (Quebec, British Columbia, and Exchequer Court) were entered twice because the lower court was both affirmed and reversed in a case involving a cross appeal. One purely procedural case was entered under Quebec — public — affirmed and another under Alberta — private — reversed because the underlying subject matter was public and private respectively.

TABLE IV

## ACTION OF INDIVIDUAL JUDGES

|          | <u>Majority</u> |    |    | <u>Dissent</u> |   |    | <u>TOTAL</u> |
|----------|-----------------|----|----|----------------|---|----|--------------|
|          | J*              | C  | T  | J*             | C | T  |              |
| Fauteux  | 7               | 14 | 21 | 0              | 0 | 0  | 21           |
| Abbott   | 7               | 23 | 30 | 1              | 2 | 3  | 33           |
| Martland | 13              | 30 | 43 | 1              | 2 | 3  | 46           |
| Judson   | 7               | 38 | 45 | 2              | 4 | 6  | 51           |
| Ritchie  | 14              | 32 | 46 | 2              | 2 | 4  | 50           |
| Hall     | 11              | 38 | 49 | 2              | 3 | 5  | 54           |
| Spence   | 6               | 42 | 48 | 4              | 1 | 5  | 53           |
| Pigeon   | 7               | 28 | 35 | 6              | 2 | 8  | 43           |
| Laskin   | 18              | 20 | 38 | 8              | 2 | 10 | 48           |

J—Judgment, either majority or dissenting

C—Concurred

T—Total

\*In some cases more than one judge gave an opinion. "The leading judgment" terminology previously used in this table has been abandoned because of its vagueness and all reported judgments are now entered under "J".

TYPE OF WORK\*

|          | <u>Common<br/>Law**</u> | <u>Civil<br/>Law**</u> | <u>Criminal***</u> | <u>Constitutional***</u> | <u>Other<br/>Public<br/>Law***</u> |
|----------|-------------------------|------------------------|--------------------|--------------------------|------------------------------------|
| Fauteux  | 0                       | 8                      | 6                  | 2                        | 8                                  |
| Abbott   | 4                       | 9                      | 6                  | 2                        | 15                                 |
| Martland | 21                      | 5                      | 6                  | 2                        | 15                                 |
| Judson   | 23                      | 3                      | 6                  | 2                        | 20                                 |
| Ritchie  | 24                      | 4                      | 7                  | 2                        | 16                                 |
| Hall     | 25                      | 6                      | 5                  | 2                        | 19                                 |
| Spence   | 25                      | 1                      | 6                  | 2                        | 22                                 |
| Pigeon   | 12                      | 8                      | 5                  | 2                        | 19                                 |
| Laskin   | 26                      | 1                      | 4                  | 5                        | 18                                 |

\*Procedural decisions are classified according to their underlying subject matter. For example, *Ace Holdings v. Montreal Catholic School Board*, [1972] S.C.R. 268, was classified in Table 1 as a procedural case. Since the procedural issue arose in an expropriation case, the appeal was entered under "Other Public" in this table.

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

\*\*\*Three cases were entered twice in this table because their multiple subject matter made them fall into two categories. For example, *Curr v. The Queen*, [1972] S.C.R. 889 is both a civil rights and a criminal law appeal, and is classified under both "Criminal" and "Other Public".

TABLE V

## CASES AND MAJORITY RATIO

|                                |           |            |           |    |
|--------------------------------|-----------|------------|-----------|----|
| Total Number of Cases Reported |           |            |           | 73 |
| Unanimous Decisions            |           |            |           | 47 |
| Split Decisions                |           |            |           | 26 |
| 9x0.....6                      | 7x0.....1 | 5x0.....40 | 3x0.....0 |    |
| 8x1.....0                      | 6x1.....0 | 4x1.....11 | 2x1.....0 |    |
| 7x2.....0                      | 5x2.....0 | 3x2.....13 |           |    |
| 6x3.....1                      | 4x3.....0 |            |           |    |
| 5x4.....1                      |           |            |           |    |



TABLE VI

## ACTION OF THE JUSTICES\*

|                 | Fauteux | Abbott | Martland | Judson | Ritchie | Hall | Spence | Pigeon | Laskin |
|-----------------|---------|--------|----------|--------|---------|------|--------|--------|--------|
| <b>Fauteux</b>  |         |        |          |        |         |      |        |        |        |
| MO              | 7       |        |          |        |         |      |        |        |        |
| C               |         | 6      | 1        | 0      | 3       | 0    | 2      | 1      | 2      |
| DO              | 0       |        |          |        |         |      |        |        |        |
| C               |         | 0      | 0        | 0      | 0       | 0    | 0      | 0      | 0      |
| <b>Abbott</b>   |         |        |          |        |         |      |        |        |        |
| MO              |         | 7      |          |        |         |      |        |        |        |
| C               | 5       |        | 6        | 2      | 3       | 1    | 1      | 2      | 3      |
| DO              |         | 1      |          |        |         |      |        |        |        |
| C               | 0       |        | 0        | 0      | 0       | 0    | 0      | 2      | 0      |
| <b>Martland</b> |         |        |          |        |         |      |        |        |        |
| MO              |         |        | 13       |        |         |      |        |        |        |
| C               | 3       | 3      |          | 5      | 6       | 4    | 4      | 1      | 4      |
| DO              |         |        | 1        |        |         |      |        |        |        |
| C               | 0       | 1      |          | 0      | 1       | 0    | 0      | 0      | 0      |
| <b>Judson</b>   |         |        |          |        |         |      |        |        |        |
| MO              |         |        |          | 7      |         |      |        |        |        |
| C               | 2       | 3      | 12       |        | 7       | 5    | 3      | 2      | 5      |
| DO              |         |        |          | 2      |         |      |        |        |        |
| C               | 0       | 1      | 0        |        | 0       | 1    | 0      | 1      | 1      |
| <b>Ritchie</b>  |         |        |          |        |         |      |        |        |        |
| MO              |         |        |          |        | 14      |      |        |        |        |
| C               | 4       | 1      | 6        | 6      |         | 6    | 4      | 1      | 4      |
| DO              |         |        |          |        | 2       |      |        |        |        |
| C               | 0       | 1      | 0        | 0      |         | 0    | 1      | 0      | 0      |
| <b>Hall</b>     |         |        |          |        |         |      |        |        |        |
| MO              |         |        |          |        |         | 11   |        |        |        |
| C               | 3       | 3      | 5        | 3      | 7       |      | 3      | 3      | 13     |
| DO              |         |        |          |        |         | 2    |        |        |        |
| C               | 0       | 0      | 0        | 0      | 0       |      | 0      | 0      | 3      |
| <b>Spence</b>   |         |        |          |        |         |      |        |        |        |
| MO              |         |        |          |        |         |      | 6      |        |        |
| C               | 0       | 1      | 7        | 4      | 9       | 8    |        | 3      | 10     |
| DO              |         |        |          |        |         |      | 4      |        |        |
| C               | 0       | 0      | 0        | 0      | 0       | 0    |        | 0      | 1      |

|        | Fauteux | Abbott | Martland | Judson | Ritchie | Hall | Spence | Pigeon | Laskin |
|--------|---------|--------|----------|--------|---------|------|--------|--------|--------|
| Pigeon |         |        |          |        |         |      |        |        |        |
| MO     |         |        |          |        |         |      |        | 7      |        |
| C      | 2       | 5      | 1        | 3      | 5       | 4    | 3      |        | 5      |
| DO     |         |        |          |        |         |      |        | 6      |        |
| C      | 0       | 0      | 0        | 0      | 1       | 0    | 0      |        | 1      |
| Laskin |         |        |          |        |         |      |        |        |        |
| MO     |         |        |          |        |         |      |        |        | 18     |
| C      | 0       | 1      | 7        | 1      | 2       | 8    | 1      | 0      |        |
| DO     |         |        |          |        |         |      |        |        | 8      |
| C      | 0       | 0      | 1        | 0      | 0       | 0    | 1      | 0      |        |

## 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 7 majority judgments.
- (2) He concurred with Fauteux 2 times, Abbott 3 times, Martland 12 times, etc.
- (3) He wrote 2 dissenting judgments, and concurred once each with the dissenting judgments of Abbott, Hall, Pigeon and Laskin.

\*The totals in this table are sometimes not in accord with those in Table IV because of different rules of classification reflecting the different purposes of the tables. In Table III a particular judge was only entered once for any given case. For example, if a judge concurred with more than one majority judgment (as Fauteux did in *Quebec Telephone v. Bell Telephone*, [1972] S.C.R. 182) he would be entered once under "C" in Table IV while in this table two concurrences would be indicated. (Pigeon and Laskin).

Where a judge in an opinion indicates approval of another judgment without officially adopting it as his own this is not treated as a concurrence.

