
[1971] S. C. R. Statistical Analysis

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STATISTICAL ANALYSIS OF [1971] 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
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* Statistics compiled by Jennifer K. Bankier, a member of the 1974 graduating class, Osgoode Hall Law School.

TABLE I

SUBJECT MATTER OF LITIGATION

	No. of Cases Reported*	Exchequer Court or Court of Appeal		No. of Judges Sitting
		Affirmed*	Reversed*	
ORIGINAL JURISDICTION				
References				
Jurisdiction of Supreme Court	2			1.9x0 1.3x0
APPELLATE				
(a) PRIVATE				
<i>(i) Administration and Succession</i>				
Devolution				
Executors & Administrators				
Wills	1		1	1.5x0
<i>(ii) Commercial</i>				
Accounts				
Agency				
Assignments				
Banks & Banking	1		1	1.3x2
Bills & Notes				
Bankruptcy	1		1	1.5x0
Companies				
Contracts	7	4	3	5.5x0 2.3x2
Debtor & Creditor				
Insurance	3	1	2	3.5x0
Interest				
Partnership	1		1	1.5x0
Sale of Goods	3	1	2	2.5x0 1.3x2
Subrogation				
<i>(iii) Domestic Relations</i>				
Adoption				
Annulment				
Breach of Promise				
Child Welfare				
Divorce				
Judicial Separation				
<i>(iv) Industrial Property</i>				
Copyrights				
Industrial Designs	1	1		1.5x0
Patents	1		1	1.5x0
Trademarks	1	1		1.5x0

	No. of Cases Reported*	Exchequer Court or Court of Appeal		No. of Judges Sitting
		Affirmed*	Reversed*	
(v) <i>Land</i>				
Landlord & Tenant	2	1	1	2.5x0
Mechanics Liens	1	1		1.5x0
Mortgages	1	1		1.5x0
Real Property	2	1	1	1.5x0 1.4x1
(vi) <i>Natural Resources</i>	1	1		1.5x0
(vii) <i>Torts</i>				
Assault & Battery				
Bailment				
Libel & Slander				
Negligence	3	2	1	2.5x0 1.3x2
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				
Damages	2		2	1.5x0 1.4x1
Privileges				
Shipping	8	4	4	3.5x0 4.4x1 1.3x2
(b) PUBLIC				
Administrative Boards	1		1	1.5x4
Certiorari				
Civil Rights	2	1	1	1.7x0 1.5x2
Constitutional	3	3		3.9x0
Criminal	17	10	7	3.9x0 1.8x1 1.7x2 4.6x3 1.7x0 1.5x2 4.5x0 2.3x2

	No. of Cases Reported*	Exchequer Court of Appeal Affirmed*	Court or Reversed*	No. of Judges Sitting
Crown & Sovereign Immunity	1		1	1.7x2
Habeas Corpus				
Immigration				
Labour	3		3	2.5x0 1.4x1
Mandamus				
Prohibition	1		1	1.5x2
Public Utilities				
Taxation	11	7	4	2.7x0 9.5x0
Expropriation	3	1	2	3.5x0
Elections				
Municipal Law	3	2	1	1.9x0 1.5x0 1.3x2
PROCEDURAL				
Appeal	1		1	1.9x0
Costs				
Declaratory Action				
Evidence	8	5	3	1.9x0 1.7x2 3.6x3 1.5x2 2.5x0
Injunction				
Limitation Period				
Jurisdiction	1		1	1.5x0
Procedure	1		1	1.5x0

KEY

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

- (1) 11 labour cases reported.
- (2) The lower courts were affirmed 7 times and reversed 4 times.
- (3) Two cases were decided by a 7 to 0 majority, and nine cases 5 to 0.

* Multiple entries have been made where a case contained more than one subject matter of importance. Three cases were entered twice within the "PRIVATE" heading for this reason, together with two dual entries under "PUBLIC". Double cross entries are as follows: "PUBLIC" and "PRIVATE" — 2; "PRIVATE" and "PROCEDURAL" — 1; "PUBLIC" and "PROCEDURAL" — 8. One case was entered three times, i.e. twice under "PUBLIC" and once under "PROCEDURAL".

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.

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

TABLE II

VOLUME OF WORK

			TOTAL
Reported Judgments ³			
Public ¹	Private ¹		
42	39		79
Reported Motions ³			
Allowed	Dismissed	Other ²	
0	1	1	2
Unreported Judgments			
Allowed	Dismissed	Other ⁴	
6	42	2	50
Unreported Motions ⁵			
Allowed	Dismissed	Other ⁶	
57	115	1	173

¹ Two judgments are classified as both public and private.

² Motion to determine jurisdiction.

³ Where one judgment covers two appeals or motions one entry has been made.

⁴ There was one unreported judgment where the appeal was quashed and one where the Court apportioned responsibility equally.

⁵ All figures under this heading are derived from the 1971 *Bulletin of Proceedings Taken in the Supreme Court of Canada* because the entries in the [1971] S.C.R. are highly incomplete.

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. *Depoe v. Judges of the Provincial Court* and *Nevin v. Judges of the Provincial Court* are entered as one dismissal only) except where one of the simultaneous motions is affirmed and the other denied. The eight cases that fall into this latter category and are therefore entered twice all involve motions to quash that were allowed and motions for leave to appeal that were refused at the same hearing.

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 *Kootnay and Elk Railway v. C.P.R.* which involve a reported motion to determine questions of jurisdiction and two motions for leave to appeal which were heard on different occasions, thus giving rise to one entry under "Reported Motions" and two others under "Unreported Motions".

⁶ "Other" covers a motion where it was ruled that leave to appeal was not required.

TABLE III

PROVINCIAL BREAKDOWN

	PUBLIC			PRIVATE			TOTAL*
	A	R	O	A	R	O	
Newfoundland	0	0		0	0		0
Nova Scotia	2	1		1	0		4
Prince Edward Island	0	0		0	0		0
New Brunswick	0	1		0	1		2
Quebec	3	3		2	3		11
Ontario	4	5		5	2		16
Manitoba	3	1		2	1		7
Saskatchewan	0	0		2	1		3
Alberta	3	1		0	3		7
British Columbia	1	1		2	5		9
Yukon	1	0		0	0		1
North West Territories	0	0		0	0		0
Exchequer Court	6	5		6	4		21
Federal Boards	0	1		0	0		1
Original			1			1	2
TOTAL	23	19	1	20	20	1	84

* One decision (Exchequer Court—private) was entered twice because the lower court was both affirmed and reversed in a case involving a cross appeal. Two decisions (one Nova Scotia reversed, one Manitoba affirmed) were entered under both public and private. One purely procedural case was entered under Manitoba-private-reversed since the original dispute was private.

TABLE IV

ACTION OF INDIVIDUAL JUDGES

	Majority			Dissent			TOTAL
	J*	C	T	J*	C	T	
Cartwright	2	1	3	3	0	3	6
Fauteux	8	24	32	0	3	3	35
Abbott	2	36	38	1	1	2	40
Martland	13	46	59	2	0	2	61
Judson	12	42	54	2	1	3	57
Ritchie	15	44	59	0	1	1	60
Hall	10	36	46	4	6	10	56
Spence	6	49	55	8	1	9	64
Pigeon	13	32	45	5	0	5	50
Laskin	13	22	35	8	1	9	44

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 Law**</u>	<u>Civil Law**</u>	<u>Criminal***</u>	<u>Constitutional***</u>	<u>Other Public Law***</u>
Cartwright	2	0	4	0	0
Fauteux	0	7	16	3	10
Abbott	4	8	10	3	16
Martland	26	2	16	3	16
Judson	21	3	16	3	16
Ritchie	25	4	14	3	17
Hall	25	2	13	3	15
Spence	28	2	15	3	19
Pigeon	11	8	12	3	18
Laskin	18	2	9	3	15

* Procedural decisions are classified according to their underlying subject matter. For example, *Frank v. Alpert*, [1971] S.C.R. 637, was classified in Table 1 as a procedure case. Since the procedural issue arose in a Manitoba personal injury case, the appeal was entered under "Common Law" 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, *Silver's Garage v. Bridgewater*, [1971] S.C.R. 577 is both a sale of goods and a municipal law appeal and is classified under both "Common Law" and "Other Public".

TABLE V

CASES AND MAJORITY RATIO

Total Number of Cases Reported	81						
Unanimous Decisions	57						
Split Decisions	24						
9x0	7	7x0	3	5x0	46	3x0	1
8x1	1	6x1	0	4x1	6	2x1	0
7x2	2	5x2	2	3x2	8		
6x3	4	4x3	0				
5x4	1						

TABLE VI

ACTION OF THE JUSTICES*

	Cartwright	Fauteux	Abbott	Martland	Judson	Ritchie	Hall	Spence	Pigeon	Laskin
Cartwright										
MO	2									
C		0	0	0	0	1	0	0	0	0
DO	3									
C		0	0	0	0	0	0	0	0	0
Fauteux										
MO		8								
C	0		1	6	2	5	1	1	6	3
DO		0								
C	0		0	0	2	0	0	0	1	0
Abbott										
MO			2							
C	0	6		4	3	8	3	1	9	3
DO			1							
C	0	0		0	1	0	0	0	0	0
Martland										
MO				13						
C	0	6	0		10	6	6	4	5	9
DO				2						
C	0	0	0		0	0	0	0	0	0
Judson										
MO					12					
C	0	6	1	9		6	4	2	6	8
DO					2					
C	0	0	0	1		0	0	0	0	0
Ritchie										
MO						15				
C	0	6	0	9	8		6	3	5	7
DO						0				
C	0	0	0	0	1		0	0	0	0
Hall										
MO							10			
C	0	4	1	5	9	5		5	2	6
DO							4			
C	0	0	0	0	0	0		2	0	4

	Cartwright	Fauteux	Abbott	Martland	Judson	Ritchie	Hall	Spence	Pigeon	Laskin
Spence										
MO								6		
C	1	3	1	8	9	10	10		2	6
DO								8		
C	0	0	0	0	0	0	0		0	1
Pigeon										
MO									13	
C	0	6	1	2	2	8	4	5		4
DO									5	
C	0	0	0	0	0	0	0	0		0
Laskin										
MO										13
C	0	2	1	4	5	2	5	2	1	
DO										8
C	0	0	0	0	0	0	0	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 12 majority judgments.
- (2) He concurred with Fauteux 6 times, Abbott one time, Martland 9 times, etc.
- (3) He wrote 2 dissenting judgments, and concurred with Martland's dissenting opinion once.

* 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 dissenting judgment (as Spence did in *Piché v. The Queen*, [1971] S.C.R. 23) he would be entered once under "C" in Table IV while in this table two concurrences would be indicated (Cartwright and Hall).

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.

