The Evolution of Coordinate Precedential Authority in Canada: Interprovincial Citations of Judicial Authority, 1922-92

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Abstract
It comes as no surprise that the provincial courts of appeal frequently cite as authority the decisions of the Supreme Court of Canada or the prior decisions of the court of appeal itself. However, the citation practices of these courts also show (emerging before, and persisting after, 1970) a striking reliance on their counterparts in other provinces. Both the simple existence of this interprovincial conversation and the details of its provenance—such as the dominance of Ontario, the persistent isolation of Quebec, the recent emergence of British Columbia—constitute an important and distinctive element of judicial decision making in Canada.
THE EVOLUTION OF COORDINATE PRECEDENTIAL AUTHORITY IN CANADA: INTERPROVINCIAL CITATIONS OF JUDICIAL AUTHORITY, 1922-92

BY PETER MCCORMICK*

It comes as no surprise that the provincial courts of appeal frequently cite as authority the decisions of the Supreme Court of Canada or the prior decisions of the court of appeal itself. However, the citation practices of these courts also show (emerging before, and persisting after, 1970) a striking reliance on their counterparts in other provinces. Both the simple existence of this interprovincial conversation and the details of its provenance—such as the dominance of Ontario, the persistent isolation of Quebec, the recent emergence of British Columbia—constitute an important and distinctive element of judicial decision making in Canada.

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I. INTRODUCTION

This paper proposes to look at the decision making of the provincial courts of appeal over a period of seven-and-a-half decades, beginning in 1920, in terms of the citations to judicial authority that appear within the reasons for judgment. More specifically, it will focus on a particular kind of authority—namely "interprovincial citations"—meaning by this term the practice of one provincial court of appeal citing as an authority the decision of another. The logical basis of this inquiry is twofold: first, the idea that the statistical study of the citation patterns of particular courts is a useful way of assessing the official sources thus identified by the judges themselves as carrying authoritative, or at least persuasive, weight; and second, the suggestion that such a statistical study of the Canadian courts identifies the emergence (between 1920 and 1970) and the maturation (after 1970) of an unusual kind of judicial authority, in the form of a conversation between coordinate equals that has no counterpart in the decision making of, for example, the United States' state supreme courts.

II. JUDICIAL CITATIONS AND JUDICIAL DECISION MAKING

It is a critical feature of judicial decision making that judges, unlike other public officials, are expected to give reasons for their decisions.1 Equally, an important feature of the decisions delivered by Canadian judges (like their counterparts in Britain and the United States) is the fact that they are typically organized around citations to judicial authority: that is, judges explain what they have done by relating it to what other judges have written to explain what they have done. From this it follows that the use of judicial citations is an important aspect of law as it functions in each of its several dimensions—as it is presented to parties as advice before or explanation afterward, as it is argued by lawyers defending or advancing a client's interests, and as it is

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fashioned by judges in the conference room or in the written reasons for judgment. And from this it similarly follows that the very fact of citation is a clear indication of real influence: the courts that are cited exhibit influence over the judges that cite them in decisions, the lawyers that use them in their arguments, and the clients that accept them as reasons for taking action or accepting an outcome.

To record, measure, and compare the frequency with which a court or a set of courts is cited as an authority is simply to take judges' reasons for judgment at their face value, as a rationally crafted explanation of why one side deserved to prevail and what authoritative statements of legal doctrine contributed to making one side the stronger. To make implicit logic obvious, a judge cites prior cases for a reason: because of the fact circumstances or the legal principles they embody, because of the clarity of the explanation or insight they provide, because of the status that particular judges or courts enjoy among legal professionals, and (more generally and pervasively) because of the extent to which the citation carries a persuasive power that enhances the legitimacy of the immediate decision. Judges seek to connect their own decisions to the established background of law, and in the process they reveal their own reasoned professional judgements about where the best insights and the clearest statements of that law are to be found. Citation practices are therefore the visible records of an important part of the decision-making process.

But these judicial citations are clearly not all of a kind. The most straightforward type is what we might call hierarchical citations—that is, references to the decisions of courts that stand “above” the citing court, courts to which the immediate decision could be appealed if one or both of the litigants so wished. If a higher court had clearly pronounced on a question of law directly relevant to the immediate case, it would constitute a kind of judicial insubordination to ignore it. In the decisions of the provincial courts of appeal, citations of the Supreme Court of Canada and of the Judicial Committee of the Privy Council (which was until 1949 the highest court of appeal for Canada) make up the largest single element of the citations to judicial authority. Almost as straightforward is the type of citation that we might refer to as consistency citations; that is, references to the prior decisions of the immediate court. Although the courts of the various provinces have articulated differing versions of how strong the presumption in favour of such prior decisions might be, the general principles of continuity and consistency, and the legal value of predictability in the law, require that

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such pronouncements carry considerable weight. In the decision-making practices of the provincial courts of appeal, such “self-citations” make up the second largest element of references to judicial authority. However, although hierarchical and consistency citations together account for the bulk of citations to judicial authority, they still leave a significant part of the story untold.

A third type of citation, and the one that this paper will consider in more detail, is what we might label \textit{coordinate citations}; that is, references to the prior decisions of courts that occupy parallel positions within the judicial hierarchy. This type of citation is all the more interesting because it represents \textit{persuasive} rather than \textit{binding} precedent. Because they are courts of coordinate jurisdiction occupying parallel positions within the Canadian judicial hierarchy, provincial courts of appeal are free to follow, to disagree with, or simply to ignore the law as stated by their counterparts from other provinces. Flowers\textsuperscript{3} cites no less an authority than the Supreme Court of Canada for the proposition that

\begin{quote}
[a] provincial appellate Court is not obliged, as a matter either of law or of practice, to follow a decision of the appellate Court of another Province unless it is persuaded that it should do so on its merits or for other independent reasons.\textsuperscript{4}
\end{quote}

Indeed Laskin J., speaking for the Court, concluded even more bluntly that “[t]he only required uniformity among provincial appellate Courts is that which is the result of the decisions of this Court.”\textsuperscript{5}

However, because they tend to deal with a similar range of problems at a similar level, courts of coordinate jurisdiction obviously provide a fruitful source of ideas in the event that other more obvious sources fail to supply a definitive precedent. For this reason, interprovincial citations may provide a useful and significant source even if they do not predominate the citation lists: in the explanatory and precedential arsenal of appeal court judges, the decisions of fellow judges in other provinces rank lower than Supreme Court citations, or references to earlier decisions of their own court, or (for many of the courts over the early part of the period considered) citations to such English courts as the House of Lords or the Court of Appeal. However, the voluntary and optional nature of the relationship, and the mutual respect between coordinate actors it implies, make it an indicator of the

\begin{flushright}
\textsuperscript{5} \textit{Ibid.}
\end{flushright}
changing attitudes of appeal court judges and illuminates an important
dimension of the influence they acknowledge in their written reasons.

The author acknowledges the inspiration of similar pieces on the
communication of precedent and the patterns of influence between the
United States' state supreme courts, although the different scale
involved (fifty actors in paired relationships in the U.S., six to ten in
Canada as the period develops), and the different scope of the
phenomenon (interprovincial citations are more frequent in Canada
than interstate citations in the U.S.), make their methodology of limited
applicability. Quite simply, they are too ponderous, too complex, and
too tentative for the purpose at hand. However, they share and tend
very much to confirm the basic assumptions of this paper: that the
citation of such coordinate authority represents one way in which
judicial principles and innovations are diffused across the country, and
that persistent patterns of leadership and dependency characterize the
resulting intellectual relationships.

To the extent that this can be demonstrated, it points to an
interesting phenomenon, namely, the non-hierarchical coordination of a
relatively unified set of policies among independent actors. Nor, of
course, is the phenomenon purely and exclusively a North American
one; Weiler has noted that the growing influence of the European
Court of Justice has been accompanied by a tendency for national high
courts to show an increased interest in the decisions and the reasons of
their counterparts in other nations. Coordinate persuasion is clearly as
much a part of the modern practice of judicial decision making as is
hierarchical authority.

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Supreme Courts” (1977-78) 76 Mich. L. Rev. 961; B.C. Canon & L. Baum, “Patterns of Adoption of
Pol. Sci. Rev. 975; L.M. Friedman et al., “State Supreme Courts: A Century of Style and Citation”
Structures of Communication Between State Supreme Courts” (1988) 10 Soc. Networks 29
[hereinafter “Legal Precedent”].


8 J.H.H. Weiler, “A Quiet Revolution: The European Court of Justice and Its Interlocutors”
III. THE DATABASE

This paper will examine the citation practices of the provincial courts of appeal over a period of seventy-five years on the basis of statistics compiled from all reported decisions of the provincial courts of appeal in the second and seventh years of each decade from 1922 to 1992. The research net for the data collection covers the full range of provincial, regional, and national law reports, and many of the more specialized topical reports. Care was taken not to "double count" those cases that were reported in multiple sources.

The date that opens the period under consideration defines itself, as does the date of 1970 that will be used to divide the seventy-five years, into two sub-periods. In the 1920s, for the first time, most of the provinces had full-time specialized "standalone" courts of appeal. Ontario and Quebec had such courts since Confederation; Manitoba and British Columbia created theirs in 1906 and 1907 (British Columbia's first appeal judges were appointed in November 1909); and Saskatchewan and Alberta followed in 1915 and 1919 (the initial judicial appointments dating from 1918 and 1921, respectively). The late 1960s, however, mark the further expansion of the provincial courts of appeal, with the establishment of specialized appeal courts in New Brunswick and Nova Scotia in 1967, Newfoundland in 1975, and Prince Edward Island in 1987. The 1920-70 sub-period therefore includes the entire "six-court era" of the provincial courts of appeal.

The 1970s also saw important changes in the Canadian judicial system, including an extended period of pronounced and dramatic increases in appellate case-loads that Russell identifies as a "general North American phenomenon" which began sometime in the 1960s. The result was a sharp increase not only in the number of appeal courts, but even more so in the total number of appeal court judges (from 37 in 1933 and 43 in 1953, to 62 in 1973 and 96—plus 28 supernumeraries—in 1993), a development that has both dramatically transformed the decision processes of many appeal courts (for example, by shrinking the normal size of an appellate panel to three) and expanded the number of judges taking part in the interprovincial conversation. Finally, the late 1960s and 1970s also saw the expansion of legal reporting services—in the form of both the establishment of new specialized reports and the resurrection of discontinued provincial reports—that has completely

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changed the number of provincial appeal decisions reported each year, and presumably the biases and emphases that go into the selection process as well. The half-century between 1920 and 1970 constitutes a period of relative continuity in appeal court scale and practices, logically delimited from the periods preceding and following it; the period since 1970 takes us into the eight-, nine- and, finally, the ten-court era, with an accompanying greater volume of reported cases.

Covering two years out of a decade, rather than all ten, is a straightforward and legitimate method of creating a rather large random sample of the broader universe. The larger problem is that the universe from which the sample is drawn includes only the reported cases of each court of appeal rather than all decided cases. In recent years, roughly one-sixth of all appeal court decisions are reported (about one thousand from a total of just over six thousand in 1987, for example), but the ratio is not the same for all provinces, and it would be unrealistic to assume that it has remained constant over several decades. The rationale is practicality in a double sense: first, because comparable information on the total universe is simply not available; and second, because the prevalence of surprisingly high levels of routine cases even in the appellate case-load means that many cases are resolved with short written reasons devoid of authorities or even without written reasons at all.\textsuperscript{10} Reported cases probably include a very high proportion of all the decisions sufficiently important to call for a reasoned judgment based on authority, and it is the citation of authorities rather than the total case-load that underlies the phenomenon to be discussed here.

As well, treating as a single body the entirety of decisions from all provincial appeal courts glosses over the very real differences of the case-loads to which these courts respond. Some appeal courts (such as those of Ontario, Quebec, and Alberta) are high-volume courts, handling more than a thousand cases annually in recent years. Others (such as those of Prince Edward Island, Newfoundland, and New Brunswick) have case-loads that do not exceed 100 or 150 cases per year. In some provinces (such as Quebec and British Columbia), the appellate case-load is predominantly composed of civil cases. In others (Alberta, Ontario, and Manitoba), the bulk of the case-load consists of criminal cases. These variations confirm Blom-Cooper and Drewry's observation that the apparently straightforward phenomenon of appeal is actually a far more complex amalgam, dependent upon the local legal culture, on

the relative reputations of trial and appeal judges, on the formal and informal processes that surround the appeals process, and on perceptions (calculated or impressionistic) of the prospects of success. These are relationships of such complexity, they dryly suggest, that we might as well attribute it "to 'historical accident', a term whose use excuses the scholar from seeking more sophisticated answers."

The inclusion of Quebec is not intended to ignore or to downplay the extent to which the role of authority differs in the civil code and common law traditions, the difference being not in what authorities are cited but in the uses that are made of authority and the way it informs the decision. In Chief Justice Anglin's classic phrase, it is the difference between deciding "by reason of authority" and deciding "by authority of reason." The fact that this study focuses on persuasive precedent between coordinate authorities, rather than on binding authority between hierarchically-organized benches, already shifts the language away from the traditional legal terms of stare decisis toward something akin to comparing citations in social sciences articles: judges, like authors, have to get their ideas from somewhere, and their citations show to whom they are acknowledging the receipt of these ideas. Further, citation practices allow one to focus on specific sub-categories of those sources. As it happens, the findings will simply confirm the uniqueness of Quebec's practices. Like the province of which it is a part, the Quebec Court of Appeal (for the first sub-period, the label is anachronistic: until 1974 it was called the Court of Queen's Bench) is not in any simple or straightforward way comme les autres, and the process in this analysis is intended less to beg the question of this distinctness than to demonstrate it empirically.

No attempt has been made to codify citations as positive or negative. All that is recorded is the fact that a judge on court A referred to a decision rendered by court B. This may appear to be a serious omission, but it is probably less so for interprovincial citations than for most of the other authorities that appeal courts might draw on. That is, if a court of appeal is going to modify its own prior decision, or if it wishes to highlight the error in a lower court's decision other than the one immediately before them, then it has an obligation to the courts that rely on its precedents to do so directly and explicitly; but a varying

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12 Ibid. at 45.
decision of another court of appeal carries no comparable obligation either to conform to the doctrine or to justify disagreement. In a parallel situation, U.S. research suggests that “appellate judges so seldom use interstate references in a negative fashion”\textsuperscript{14} that it seems reasonable to assume that the same holds true of interprovincial references in Canada.

IV. THE FINDINGS

A. Period A: The Six-Court Era

The first question to be tackled is the obvious one, and it must be answered simply to justify pursuing the analysis: to what extent did the provincial courts of appeal cite each other between 1920 and 1970? If the numbers are unduly low, then there is no phenomenon to discuss; if they are unrealistically high, then (frankly) the database is suspect. By way of establishing a baseline for purposes of comparison, the indications are that interstate citations make up 7 or 8 per cent (for some states, much less) of the citations by U.S. state supreme courts.\textsuperscript{15}

As Table 1 demonstrates, the frequency of interprovincial citation starts from a relatively modest level, comparable to that of interstate citations in the United States, and grows gradually but steadily through the period to achieve much more substantial levels. From one citation in fifteen in the 1920s, interprovincial citations grow to account for more than one citation in eight by the 1960s. Indeed, we are prevented from generalizing a steady growth of 2 per cent per decade only by the understandably atypical decade of the 1940s. The numbers strongly support the assumption on which this analysis is based: interprovincial citations constitute a substantial element of the decision practices of Canadian provincial appeal court judges, and this practice has developed gradually over the middle decades of this century.

\footnotesize
\textsuperscript{14} “Legal Precedent,” supra note 6 at 32.

\textsuperscript{15} Merryman, supra note 6 at 401-04. See also “State Supreme Courts,” and “The Business of State Supreme Courts,” supra note 6.
TABLE 1
Frequency of Interprovincial Citations, by Decade
Reported Decisions of Provincial Courts of Appeal, 1920-70

<table>
<thead>
<tr>
<th>Decade</th>
<th>Interprovincial Citations</th>
<th>All Citations to Judicial Authority</th>
<th>Percentage of Interprovincial Citations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920s</td>
<td>386</td>
<td>5,596</td>
<td>6.9%</td>
</tr>
<tr>
<td>1930s</td>
<td>451</td>
<td>4,876</td>
<td>9.2%</td>
</tr>
<tr>
<td>1940s</td>
<td>431</td>
<td>4,546</td>
<td>9.5%</td>
</tr>
<tr>
<td>1950s</td>
<td>587</td>
<td>5,004</td>
<td>11.7%</td>
</tr>
<tr>
<td>1960s</td>
<td>626</td>
<td>4,854</td>
<td>12.9%</td>
</tr>
<tr>
<td>Total:</td>
<td>2,481</td>
<td>24,876</td>
<td>Average 10.0%</td>
</tr>
</tbody>
</table>

But aggregate figures are always suspect: clearly not all of the provincial courts of appeal were equally prepared to turn to their colleagues on coordinate benches as sources of inspiration or insight. The three tiers logically implied by the gradual establishment of specialized courts of appeal—the established benches of Ontario and Quebec, the more recent courts of Manitoba and British Columbia, and the “baby appeal courts” in Alberta and Saskatchewan—have logical implications for the search for helpful authority, and raise the question of the extent to which interprovincial citation has been a general, as opposed to a localized, phenomenon. Did all courts, or only some of them, supplement their own stores of judicial precedent by drawing on that of their counterparts in other provinces? More specifically, which among the courts of appeal were the greatest “consumers” of the persuasive precedent generated by their counterparts in other provinces, and which, if any, held back? The data is broken down in Table 2 to tackle this question.
TABLE 2
Citations to Interprovincial Authority as a Percentage of the Total Judicial Citations by Each Court
Reported Provincial Court of Appeal Decisions, 1920-70

<table>
<thead>
<tr>
<th>Decade</th>
<th>Ont.</th>
<th>Que.</th>
<th>Man.</th>
<th>B.C.</th>
<th>Alta.</th>
<th>Sask.</th>
<th>Atlantic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920s</td>
<td>3.1%</td>
<td>3.5%</td>
<td>15.6%</td>
<td>4.3%</td>
<td>8.9%</td>
<td>7.2%</td>
<td>3.6%</td>
</tr>
<tr>
<td>1930s</td>
<td>1.4%</td>
<td>6.1%</td>
<td>14.7%</td>
<td>10.9%</td>
<td>8.1%</td>
<td>14.1%</td>
<td>5.5%</td>
</tr>
<tr>
<td>1940s</td>
<td>4.7%</td>
<td>4.6%</td>
<td>20.0%</td>
<td>10.0%</td>
<td>15.7%</td>
<td>11.1%</td>
<td>10.7%</td>
</tr>
<tr>
<td>1950s</td>
<td>5.2%</td>
<td>3.2%</td>
<td>22.3%</td>
<td>10.8%</td>
<td>12.2%</td>
<td>13.2%</td>
<td>19.0%</td>
</tr>
<tr>
<td>1960s</td>
<td>5.4%</td>
<td>3.9%</td>
<td>23.0%</td>
<td>14.5%</td>
<td>14.6%</td>
<td>20.2%</td>
<td>20.8%</td>
</tr>
<tr>
<td>Average</td>
<td>4.1%</td>
<td>4.3%</td>
<td>18.1%</td>
<td>10.4%</td>
<td>10.9%</td>
<td>12.1%</td>
<td>13.2%</td>
</tr>
</tbody>
</table>

The inclusion of the Atlantic (before 1949, the Maritime) superior courts en banc in the right-hand column is something of a procedural liberty. Given the lack of institutional continuity even within each province lumping them casually into a single category compounds the logical problems. However, they are in some sense functionally parallel to the courts of appeal (they hear appeals from provincial superior trial courts and their own decisions are subject to appeal to the Supreme Court of Canada), and they demonstrably participate in the interprovincial conversation—by using decisions handed down by the courts of appeal (in the rather small number of their cases that were reported), and by providing decisions for similar use by the courts of the other provinces. Consequently, they will appear in some tables and calculations as a sort of “shadow” seventh appeal court.

If we can treat 10 per cent as a useful, if arbitrary, benchmark, then the practice of interprovincial citation is relatively infrequent in the 1920s except for Manitoba, joined by Saskatchewan and British Columbia in the 1930s, and by Alberta (and the en banc Atlantic courts) in the 1940s. The gradual upward trend of the all-province figures is reflected with striking consistency in the figures for each of the individual courts: the interprovincial conversation of coordinate citation is a very minor factor in the 1920s for every court except Manitoba, but a substantial factor for every court except Quebec and Ontario by the 1960s; and the growth pattern is steady and consistent for all the courts.
The general patterns of interprovincial citation suggested by Table 2 also make logical sense. The established senior appeal courts of Ontario and Quebec cite coordinate courts much less frequently: Quebec's isolation (not surprisingly) enduring through the period while Ontario exhibits a gradual increase that usually keeps its citation rate around one-half of the all-province figure. This is perfectly plausible: the "younger" courts, without established reputation or expertise, and without a large body of accumulated precedent, need to "go shopping" more often than the "older" courts, although ideas begin to flow in the other direction as well once the "younger" courts have had the opportunity to establish their credibility. The exchanges between the two senior courts that might have made their own figures somewhat higher are, of course, dampened by both the language and the civil code issues. The early and continuing enthusiasm of Manitoba (the third of the courts to be established) for the citation of its sister courts is a distinctive and intriguing feature, but one that comes progressively to be shared by the other junior courts.

But if Table 2 shows, in a sense, where the persuasive precedent of interprovincial citation is going, this simply raises the other half of the question: where is it coming from? Which court or courts tend to supply the rulings and the insights that are picked up and emulated by others? Given the uneven playing field—the unequal seniority, the different sizes of the bench, the different calibres of the bars from which judges are recruited—any assumption of egalitarianism would be highly unrealistic. Just as the U.S. research on interstate citation16 reveals the high prestige and reputation of the state supreme courts of California and New York (the former replacing Massachusetts early in this century), so the practices of interprovincial citation will identify the most respected and influential courts.

TABLE 3
Citations to Specific Provincial Courts of Appeal, by Decade, as a Percentage of All Interprovincial Citations
Reported Provincial Appeal Court Cases, 1920-70

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1920s</td>
<td>40.2%</td>
<td>11.9%</td>
<td>9.8%</td>
<td>15.0%</td>
<td>12.4%</td>
<td>0.8%</td>
<td>9.8%</td>
</tr>
<tr>
<td>1930s</td>
<td>45.0%</td>
<td>16.6%</td>
<td>11.1%</td>
<td>8.9%</td>
<td>10.4%</td>
<td>2.9%</td>
<td>5.1%</td>
</tr>
<tr>
<td>1940s</td>
<td>41.8%</td>
<td>14.2%</td>
<td>10.4%</td>
<td>12.3%</td>
<td>10.0%</td>
<td>2.8%</td>
<td>8.6%</td>
</tr>
<tr>
<td>1950s</td>
<td>39.4%</td>
<td>13.5%</td>
<td>18.9%</td>
<td>10.7%</td>
<td>7.0%</td>
<td>1.4%</td>
<td>9.2%</td>
</tr>
<tr>
<td>1960s</td>
<td>44.2%</td>
<td>10.4%</td>
<td>12.8%</td>
<td>9.1%</td>
<td>11.0%</td>
<td>3.0%</td>
<td>9.4%</td>
</tr>
<tr>
<td>Average</td>
<td>42.2%</td>
<td>13.1%</td>
<td>13.1%</td>
<td>10.9%</td>
<td>10.0%</td>
<td>2.2%</td>
<td>8.5%</td>
</tr>
</tbody>
</table>

Caldeira performs complex operations on inter-citation frequencies to generate an evolving rank ordering of the prestige of the various state supreme courts. For the Canadian provincial courts of appeal during the half-century before 1970, the findings are much simpler: the Ontario Court of Appeal stands head and shoulders above its counterparts in the other provinces throughout the period, providing precedent to others, but receiving little in return. Generally, over the whole period, eight or nine out of every twenty interprovincial citations are accounted for by some other province citing Ontario, and one or less represents Ontario’s citations of all other provinces, although these ratios begin to soften in the later decades. The top ten state supreme courts combined do not account for so high a percentage of interstate citations. Alberta and British Columbia constitute something of a distant second rank (Alberta before the war, British Columbia gradually supplanting it thereafter), although by no means to such an extent as to rival Ontario’s predominance. At the same time, the expected isolation of Quebec, as both a consumer and a supplier of precedent, is clearly demonstrated.

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17 Ibid. at 85-92.
18 Ibid. at 89; and “Legal Precedent,” supra note 6 at 35-38.
B. *Period B: The Modern Era*

The increase in reported cases after 1970—the result of the increases in provincial and specialized law reports, and of the general increases in case-loads that began in the late 1960s—makes it feasible to consider each data-collection year separately, rather than combining them into a single set of figures with which to characterize an entire decade.

The six-court era demonstrated interprovincial citation rates that were significantly higher than the interstate citation rates of the American state supreme courts, at least for the appeal courts of provinces other than Ontario and Quebec. However, it was logically possible that these rates were to some extent the result of the youthfulness of these courts—that they were citing other courts (principally Ontario, the oldest and most firmly established of the anglophone appeal courts) primarily because they themselves had not yet built up the full range of relevant precedents to bring to bear on new issues, using Ontario's accumulated decisions to fill their own empty shelves. If this were the case, the obvious implication is that the citation rates for the more established courts would decline toward the lower Ontario rates (although they might be high for the first few decades for the newer ones) and, therefore, that interprovincial citation would fade as these appeal courts reached their maturity.

**TABLE 4**

*Frequency of Interprovincial Citations, by Decade*  
Reported Decisions of Provincial Courts of Appeal, 1972-92

<table>
<thead>
<tr>
<th>Decade</th>
<th>Interprovincial Citations</th>
<th>All Citations to Judicial Authority</th>
<th>Percentage of Interprovincial Citations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>377</td>
<td>2,370</td>
<td>15.9%</td>
</tr>
<tr>
<td>1977</td>
<td>663</td>
<td>4,025</td>
<td>16.5%</td>
</tr>
<tr>
<td>1982</td>
<td>697</td>
<td>4,360</td>
<td>16.0%</td>
</tr>
<tr>
<td>1987</td>
<td>963</td>
<td>6,191</td>
<td>15.6%</td>
</tr>
<tr>
<td>1992</td>
<td>782</td>
<td>5,816</td>
<td>13.5%</td>
</tr>
<tr>
<td>Total:</td>
<td>3,482</td>
<td>22,762</td>
<td>Average 15.3%</td>
</tr>
</tbody>
</table>
Table 4 shows that in the most general terms this has not been the case—the rate of interprovincial citation that had built steadily from the 1920s through the 1970s continued to increase after 1970. Although this might have peaked in the early 1980s, the rate for 1992 was still substantially higher than that for any decade before 1970. The citation of other provincial courts of appeal is not a transitional phenomenon, fading with the younger courts’ coming of age (and the development of indigenous precedents this implies), but is, rather, a stable and persistent aspect of appeal court decision making in Canada. A part of the normal repertoire of appeal court precedents, less frequent than either citations of the Supreme Court or the particular appeal court itself, but more frequent than any other type of citation, consists of references to the decisions of the appeal courts of the other nine provinces.

Table 5 suggests that only one aspect of the thesis linking interprovincial citation to the youthfulness of appeal courts can be sustained; specifically, that the newer courts (those of the four Atlantic provinces) would use such citations more often than the more established courts, and the most recently established courts (those of Newfoundland and Prince Edward Island) would do so with yet higher frequency. This aspect aside, the gradual and modest decline of interprovincial citation after 1977/82 is a feature of all ten of the courts, and not one that can be attributed to some smaller subset of them.

Even more significant, however, is the change in the citation patterns of the two oldest and most established appeal courts—Ontario and Quebec. For both courts, the rate of interprovincial citation for the period since 1970 is roughly double the rate for any decade before 1970, although it is still usually lower than that of any other province’s court—one in every ten citations, compared with the one in every four, five, or six exhibited by the others. For the past quarter-century, more than for any earlier period, the relatively frequent citation of other courts of appeal has become a regular feature of the decision-making practices of all the courts, a conversation to which all contribute and to which all listen.
TABLE 5
Citations to Interprovincial Authority as a Percentage of the Total Judicial Citations by Each Court
Reported Provincial Court of Appeal Decisions, 1972-92

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ont.</td>
<td>7.0%</td>
<td>9.3%</td>
<td>12.5%</td>
<td>12.1%</td>
<td>10.5%</td>
<td>10.8%</td>
</tr>
<tr>
<td>Que.</td>
<td>11.3%</td>
<td>11.8%</td>
<td>8.8%</td>
<td>7.9%</td>
<td>10.7%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Man.</td>
<td>17.3%</td>
<td>20.0%</td>
<td>17.6%</td>
<td>16.1%</td>
<td>25.5%</td>
<td>19.8%</td>
</tr>
<tr>
<td>B.C.</td>
<td>14.6%</td>
<td>17.7%</td>
<td>10.4%</td>
<td>13.7%</td>
<td>8.3%</td>
<td>12.1%</td>
</tr>
<tr>
<td>Alta.</td>
<td>17.6%</td>
<td>17.9%</td>
<td>17.7%</td>
<td>20.4%</td>
<td>17.2%</td>
<td>18.3%</td>
</tr>
<tr>
<td>Sask.</td>
<td>19.8%</td>
<td>13.6%</td>
<td>16.8%</td>
<td>17.9%</td>
<td>13.7%</td>
<td>16.5%</td>
</tr>
<tr>
<td>N.B.</td>
<td>18.9%</td>
<td>21.4%</td>
<td>22.1%</td>
<td>18.6%</td>
<td>16.9%</td>
<td>20.2%</td>
</tr>
<tr>
<td>N.S.</td>
<td>21.7%</td>
<td>21.0%</td>
<td>16.5%</td>
<td>18.9%</td>
<td>16.3%</td>
<td>18.7%</td>
</tr>
<tr>
<td>Nfld.</td>
<td>30.8%</td>
<td>11.7%</td>
<td>24.5%</td>
<td>25.5%</td>
<td>20.0%</td>
<td>22.5%</td>
</tr>
<tr>
<td>P.E.I.</td>
<td>32.9%</td>
<td>29.4%</td>
<td>54.7%</td>
<td>31.7%</td>
<td>24.4%</td>
<td>33.5%</td>
</tr>
</tbody>
</table>

Average 15.9% 16.5% 16.0% 15.6% 13.5% 15.3%

There have been both continuity and discontinuity in terms of citation sources; that is, the courts cited, as opposed to the courts which do the citing. Not surprisingly, Ontario continues to dominate, supplying just under four citations in every ten (compared with just over four in every ten before 1970), far more than any other court. This seems to be a logical result in view of the size of the provincial bar from which a powerful court can be recruited. Indeed, given that there are now nine other appeal courts from which to seek relevant precedents, rather than the five courts that existed before the late 1960s, Ontario's predominance has, if anything, increased. That is, if we compare citation patterns and assume that each province contributes equally, which would imply that each appeal court provided one-sixth of the precedents in the six-court era and one-tenth in the modern era, then Ontario's share has grown from two-and-a-half times its share in the six-court era to four times its share in the modern ten-court era. The single most significant effect of interprovincial citation is the transmission of judicial doctrine from the Ontario Court of Appeal to its counterparts in other provinces, and this is as true in the 1980s as it was in the 1930s.

At the other extreme, Quebec is still cited very seldom, scarcely more often than was the case before 1970. This stands in contrast to the fact that interprovincial citations by the Quebec Court of Appeal have
doubled. The combination of the language and the civil code barriers continues to bar the outflow of precedent from Quebec, although it seems to be less of a barrier to the inflow of precedent to Quebec. Quebec is listening to the other provincial courts of appeal more than it is being listened to, an imbalance that is a persistent feature since 1970.

### TABLE 6

Citations to Specific Provincial Courts of Appeal, by Decade, as a Percentage of all Interprovincial Citations

Reported Provincial Appeal Court Cases, 1972-92

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ont.</td>
<td>35.3%</td>
<td>40.1%</td>
<td>41.5%</td>
<td>40.5%</td>
<td>36.7%</td>
<td>39.2%</td>
</tr>
<tr>
<td>B.C.</td>
<td>19.4%</td>
<td>18.4%</td>
<td>17.6%</td>
<td>17.9%</td>
<td>18.8%</td>
<td>18.3%</td>
</tr>
<tr>
<td>Alta.</td>
<td>13.8%</td>
<td>10.1%</td>
<td>7.9%</td>
<td>10.3%</td>
<td>11.8%</td>
<td>10.5%</td>
</tr>
<tr>
<td>Sask.</td>
<td>6.9%</td>
<td>8.4%</td>
<td>7.9%</td>
<td>6.9%</td>
<td>7.7%</td>
<td>7.6%</td>
</tr>
<tr>
<td>Man.</td>
<td>8.5%</td>
<td>7.2%</td>
<td>7.6%</td>
<td>8.3%</td>
<td>6.6%</td>
<td>7.6%</td>
</tr>
<tr>
<td>N.S.</td>
<td>5.8%</td>
<td>5.0%</td>
<td>8.0%</td>
<td>7.8%</td>
<td>7.3%</td>
<td>7.0%</td>
</tr>
<tr>
<td>N.B.</td>
<td>7.2%</td>
<td>7.5%</td>
<td>3.4%</td>
<td>3.4%</td>
<td>3.8%</td>
<td>4.7%</td>
</tr>
<tr>
<td>Que.</td>
<td>2.1%</td>
<td>2.9%</td>
<td>4.2%</td>
<td>3.4%</td>
<td>2.3%</td>
<td>3.1%</td>
</tr>
<tr>
<td>Nfld.</td>
<td>0.5%</td>
<td>0.0%</td>
<td>1.0%</td>
<td>0.6%</td>
<td>2.8%</td>
<td>1.1%</td>
</tr>
<tr>
<td>P.E.I.</td>
<td>0.5%</td>
<td>0.3%</td>
<td>0.9%</td>
<td>0.9%</td>
<td>2.2%</td>
<td>1.1%</td>
</tr>
</tbody>
</table>

Meanwhile, the British Columbia Court of Appeal has emerged as the clear number two, cited only half as often as Ontario's, but almost twice as often as the appeal courts of any other province. The Alberta Court of Appeal, the second most frequently cited court during the inter-war period, is now clearly third. Since there is no apparent structural reason for this—both provinces have had an appeal bench that is larger than average, both draw on a comparably sized population and, therefore, presumably a comparably diverse and competent bar, both perform comparably well in terms of the frequency with which they are reversed by the Supreme Court of Canada\(^\text{19}\)—it can only be attributed to the reputation and performance of the individual judges on the respective benches. However, if Alberta is cited only half as often as British Columbia, it is still a source of influential precedent twice as often as the appeal courts of Manitoba, Saskatchewan, and Nova Scotia, which are in something of a three-way tie for fourth place, with the other

\(^{19}\) McCormick, *supra* note 10.
courts well behind. The newer courts of Newfoundland and Prince Edward Island contribute only about 1 per cent of the citations—one-tenth of their notional share. If interprovincial citation represents a judicial conversation of sorts, it is far from an egalitarian one.

V. ANALYSIS

These general patterns—steadily growing frequency of interprovincial citations (especially by the four more junior courts of appeal) and Ontario’s enduring dominance of the supply of such citations—represent only the tip of the influence iceberg. What really matters is the relationship of each of the six appeal courts to each of the others, in terms of how strong the influence is and which direction it tends to run. The numbers of interprovincial citations for and by each of the courts is large enough to allow them to be examined in greater detail.

In general terms, total citations between any pair of provinces (A citing B, plus B citing A) characterize a relationship between any two courts as strong (with a large number of citations linking the two courts), medium, or weak (with few citations linking the two courts). For the one-year-in-five samples, and for each of the two sub-periods, this translates into about 100 inter-citations for a medium relationship, 150 or more for a strong (and 200+ for a very strong) relationship, and less than 50 for a weak one. If the second and seventh years of each decade are not somehow atypical, this should translate to about five times as many actual citations over the fifty years. Similarly, the ratio between the linked pair of citations allows the relationship to be characterized as dependent (A cites B far more often than B cites A), or balanced/symmetrical (they cite each other comparably often), or influential (B cites A far more often than A cites B). Again, in general terms, if a court cites another more than twice as often as it is cited, the relationship is dependent; if it cites another less than half as often as it is cited, the relationship is influential; and if the cite/cited ratio is close to one, it is balanced or symmetrical. The resulting three-by-three matrix of combinations provides a nuanced vocabulary for characterizing the various relationships over each of the two periods, and this information is summarized in Tables 7 and 8.

The patterns emerging from this analysis contribute to several striking conclusions. The first, confirming the hypothesis on which this project was predicated, is the growing frequency of interprovincial citations in the decisions of the provincial courts of appeal, rising from
just under 7 per cent in the 1920s to figures that are more than twice as high through the 1980s and 1990s. Nor can this be seen primarily as a result of the “younger” appeal courts importing precedents from the “older” ones, because interprovincial citation rates of the two oldest appeal courts show the steadiest increase, and cross the 10 per cent threshold only within the last two decades. To a significant and persistent extent, the provincial appeal court judges show an interest in what their fellow judges in other provinces are doing, and their citation patterns reflect this interest.

TABLE 7

Strength and Direction of Paired Relationships
Provincial Courts of Appeal (Reported Decisions), 1920-70

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Alta.</td>
<td>weak</td>
<td>weak</td>
<td>strong</td>
<td>v. weak</td>
<td>medium</td>
<td></td>
</tr>
<tr>
<td></td>
<td>infl.</td>
<td>infl.</td>
<td>dep.</td>
<td>infl.</td>
<td>infl.</td>
<td>infl.</td>
</tr>
<tr>
<td>B.C.</td>
<td>weak</td>
<td>medium</td>
<td>v. strong</td>
<td>weak</td>
<td>medium</td>
<td>bal.</td>
</tr>
<tr>
<td></td>
<td>dep.</td>
<td>bal.</td>
<td>dep.</td>
<td>bal.</td>
<td>bal.</td>
<td>bal.</td>
</tr>
<tr>
<td>Man.</td>
<td>weak</td>
<td>medium</td>
<td>v. strong</td>
<td>weak</td>
<td>medium</td>
<td>bal.</td>
</tr>
<tr>
<td></td>
<td>dep.</td>
<td>bal.</td>
<td>dep.</td>
<td>bal.</td>
<td>bal.</td>
<td>bal.</td>
</tr>
<tr>
<td>Ont.</td>
<td>strong</td>
<td>v. strong</td>
<td>v. strong</td>
<td>weak</td>
<td>v. strong</td>
<td>infl.</td>
</tr>
<tr>
<td></td>
<td>infl.</td>
<td>infl.</td>
<td>infl.</td>
<td>infl.</td>
<td>infl.</td>
<td>infl.</td>
</tr>
<tr>
<td>Que.</td>
<td>v. weak</td>
<td>weak</td>
<td>weak</td>
<td>weak</td>
<td>weak</td>
<td>v. weak</td>
</tr>
<tr>
<td></td>
<td>dep.</td>
<td>bal.</td>
<td>bal.</td>
<td>dep.</td>
<td>dep.</td>
<td>dep.</td>
</tr>
<tr>
<td>Sask.</td>
<td>medium</td>
<td>medium</td>
<td>medium</td>
<td>v. weak</td>
<td>v. weak</td>
<td>infl.</td>
</tr>
<tr>
<td></td>
<td>dep.</td>
<td>bal.</td>
<td>bal.</td>
<td>dep.</td>
<td>bal.</td>
<td>bal.</td>
</tr>
<tr>
<td>Atlantic</td>
<td>weak</td>
<td>weak</td>
<td>weak</td>
<td>v. strong</td>
<td>v. weak</td>
<td>weak</td>
</tr>
<tr>
<td></td>
<td>dep.</td>
<td>bal.</td>
<td>bal.</td>
<td>dep.</td>
<td>bal.</td>
<td>dep.</td>
</tr>
</tbody>
</table>
### TABLE 8
Strength and Direction of Paired Relationships
Provincial Courts of Appeal (Reported Decisions), 1972-1992

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alta.</td>
<td>strong weak weak weak weak v. strong v. weak weak medium bal. bal. bal. bal. bal.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B.C.</td>
<td>strong medium weak weak medium v. strong v. weak weak medium bal.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Man.</td>
<td>weak strong weak v. weak weak strong v. weak v. weak weak bal. dep.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N.B.</td>
<td>weak weak weak v. weak v. weak weak strong v. weak v. weak weak bal. dep.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N.S.</td>
<td>weak med. weak v. weak v. strong v. weak v. weak weak bal.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ont.</td>
<td>v. strong v. strong strong strong weak v. strong weak strong strong</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Que.</td>
<td>weak weak v. weak v. weak v. weak v. weak v. weak v. weak bal.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sask.</td>
<td>med. med. weak weak weak weak strong weak v. weak bal.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

A second and equally obvious finding is the predominant, even overwhelming, role of the Ontario Court of Appeal: about 40 per cent of all interprovincial citations, both before and after 1970, represent other provincial appeal courts drawing on the authority of the Ontario court.
Friedman et al. poetically suggest that “[state supreme courts] regard themselves as siblings of a single family, speaking dialects of a common legal language.” In contrast, the Canadian provincial appeal courts make up an uneven chorus, with Ontario booming the antiphon and everyone else whispering the response. The impact of Ontario is so pronounced that it simply washes everything else out: all the courts of appeal (including Quebec and the en banc Atlantic courts before the establishment of specialized appeal courts in those provinces) show a much stronger relationship with Ontario than with the court of any other province.

By the same token, this relationship is always very much a dependent one: Ontario provides, but does not receive, significant precedential leadership in the relationship that it enjoys with each of its fellow appeal courts in both the six-court era and the modern era. The single rather intriguing exception is the British Columbia Court of Appeal which, since 1970, cited Ontario only half as often as it was cited by Ontario. In all, the Ontario court was cited by its coordinate counterparts almost five times as often as it cited them. This is clearly a very favourable “balance of precedential trade,” so much so that in the six-court era Ontario’s was the only court of appeal cited by all others more often than it cited them (although Alberta came close), and it has shared the same distinction only with British Columbia since 1970.

The predominance of Ontario is hardly unexpected: of the established appeal courts in the 1920s, Ontario’s was pre-eminently the one with a lengthy accumulation of English language precedents, and a longstanding reputation as a powerful court drawn from a very strong bar. Indeed, for the early decades of the century its prestige rivalled (and for some periods may have exceeded) that of the Supreme Court itself. However, the enduring nature of this predominance may be surprising once it is put in such specific statistical terms. No state supreme court, indeed no half-dozen state supreme courts, dominate interstate citation in the United States the way the Ontario Court of Appeal dominates interprovincial citation in Canada. No other comparably situated court in either country makes the phrase “first among equals” such a misleading understatement of its influence. To the extent that citation patterns imply doctrinal leadership, it would almost be more to the point to think of the Ontario Court of Appeal as a “junior Supreme Court.”

20 “State Supreme Courts”, supra note 6 at 801.

The third finding is the "double isolation" of Quebec. It seldom
cites other provincial appeal courts and is cited by them even less; if the
former is a declining feature since 1970, the latter persists. In the six-
court era, the Quebec Court of Appeal (before 1974, the Court of
Queen's Bench) had weak or very weak inter-citation linkages with all
the other courts of appeal, and these relationships were generally
dependent (Quebec citing more than twice as often as it was cited) for
every province except British Columbia and Manitoba, with whom the
relationship was surprisingly balanced and symmetrical. In the modern
era, this has given way to a strong and dependent relationship with the
Ontario Court of Appeal, the linkages to the other provinces remaining
weak (with Alberta and British Columbia), or very weak (with all the
others). In other words, the increased frequency of interprovincial
citations by the Quebec Court of Appeal since 1970 is almost entirely the
function of a much greater readiness to draw precedents from the
Ontario Court of Appeal.

Fourthly, there is the unusual situation of the Alberta Court of
Appeal, the sixth of the provincial appeal courts to be created. The
"junior" bench throughout the six-court era, its relationships with the
other courts of appeal were weaker than those of (for example) its
western counterparts, and even its linkage to Ontario, although strong,
was weaker than that of any other province except Quebec. But at the
same time, those relationships tended to be influential (Alberta being
cited more often than it cited) rather than dependent or symmetrical in
all combinations except that with Ontario. In this respect, Alberta can
perhaps be considered as something of an "influential loner" during this
period. Since 1970, it has enjoyed a strong and balanced relationship
with British Columbia, and weak and balanced relationships with the
other two prairie provinces. Both the degree of its influence and the
extent of its aloofness have been eroded by the emergence of the British
Columbia Court of Appeal as the clear "number two" court.

Fifthly, there is the striking appearance before 1970 of a
precedent-sharing bloc constituted by the appeal courts of
Saskatchewan, Manitoba, and British Columbia, citing each other and
being cited by each other with comparable and fairly high frequency. All
of the interrelationships were "medium" and "symmetrical," creating the
only balanced interprovincial bloc to emerge from the data. To be sure,
this relationship was overwhelmed by the dependence on Ontario, which
influenced these three appeal courts just as strongly and surely and
dramatically as it did the others. But the enduring balance is striking, as
is the fact that the third province of the trio was British Columbia rather
than Alberta (as one might have been led to expect by the traditional
regionalism of the prairie provinces). Since 1970, this has yielded to more of a four-province block with the British Columbia Court of Appeal playing something of a leading role: citations within the four-province western region account for more than one-fifth (21.7 per cent) of all interprovincial citations since 1970, down from almost one-third (30.5 per cent) before 1970.

Finally, there is the situation of the four Atlantic provinces, whose specialized appeal courts are the most recently established. Before 1970, the en banc superior courts shared the strong dependent relationship with the Ontario Court of Appeal that characterizes all of the other appeal courts, and showed only weak relationships with any other appeal court, although in some cases (notably, in British Columbia and Manitoba) that relationship was borderline symmetrical. Also striking is the relatively high proportion of interprovincial citations to the younger courts, although this is of necessity based on a smaller number of reported cases and, therefore, a smaller number of total citations.22 Since 1970, the strong dependent relationship with the Ontario Court of Appeal has generated a modest reflection in a moderate and dependent relationship with the British Columbia Court of Appeal. Inter-citations within the Atlantic region are modest, Nova Scotia showing a balanced relationship with New Brunswick and a weak but influential one with Newfoundland and Prince Edward Island. The four Atlantic appeal courts combined are cited slightly more often than Alberta, but less often than British Columbia, with only Nova Scotia having any persistent visibility outside its own region.

VI. CONCLUSION

This paper has tried to demonstrate, through the statistical examination of all reported decisions of the provincial courts of appeal for selected years between 1922 and 1992, that the practice of interprovincial citation gradually developed as a significant component of appeal court decision making and now persists as an ongoing practice. Coordinate precedential authority has complemented rather than replaced the hierarchical citation of Supreme Court decisions and the consistency promotion of self-citation. The patterns of influence that emerge from this examination clearly show the predominant position of

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22 This low volume is the product less of reporting rates than of the low case-load of the four Atlantic appeal courts. In fact, a higher percentage of total cases is reported for the four Atlantic courts than for those of any other province: McCormick, supra note 10.
the Ontario Court of Appeal as something considerably more than a first among equals. At least for the period surveyed, the Ontario court was a powerful provider of judicial precedent to other courts, while seldom acknowledging any reciprocal influences on its own jurisprudence. The secondary patterns that emerge—the "double isolation" of Quebec; Alberta's pre-1970 position as "influential loner," and the more recent emergence of British Columbia; the balanced and collegial western bloc formed by British Columbia, Manitoba, and Saskatchewan (and, more recently, Alberta)—are also instructive.

What remains unexplored is whether the influence is general and pervasive, or whether it focuses on specific areas of law. Might it be the case, for example, that the Ontario Court of Appeal's long-acknowledged excellence in the criminal law accounts for much of the powerful stream of outbound precedent, while the more modest counterstream identifies the significant contributions of the other appeal courts (or of specific noteworthy individuals on them) in more narrowly focused areas of law? Could it be that the citation sharing of Saskatchewan, Manitoba, and British Columbia identifies some common area of mutual interdependence in such areas as tort law or public law, rather than a more diffuse reciprocal awareness? The point is not simply to list speculations but to show the extent to which the identification of the strength and direction of interprovincial influences provides empirical grounding for the more focused research that could answer these questions, and identify specifically the respective expertise of the various courts.

Judicial decisions are distinctive for the way their authors are expected—we cannot quite say required23—to give reasoned explanations for their choices, and this in turn provides the opportunity for a subtle understanding of the judicial decision-making process that locates it in a responsible creative middle ground between the dull clang of binding precedent (which, as Scheingold notes, "[i]n the retelling ... tends to take on a misleading gloss of certainty"24), and the alleged vagaries of judicial whim. The utility of judicial citation research lies in the extent to which it contributes to such an understanding.
