2000

Intervenors before the Supreme Court of Canada, 1997--1999: A content analysis.

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INTERVENORS BEFORE THE SUPREME COURT OF CANADA, 1997-1999: A CONTENT ANALYSIS

by

AMANDA JANE BURGESS

A Thesis
Submitted to the Faculty of Graduate Studies and Research
through the Department of Political Science
in Partial Fulfillment of the Requirements for
the Degree of Master of Arts at the
University of Windsor

Windsor, Ontario, Canada

2000

ABSTRACT

The increased appearance of intervenors at the Supreme Court of Canada has received much attention since the advent of the *Canadian Charter of Rights and Freedoms*. Political scientists have studied the quantitative increase in cases with intervenor presence, but have yet to take the next logical step. The next step is to analyse the influence of intervenors at the Supreme Court and this requires that a new method of data analysis be utilized.

This thesis investigates the influence of intervenors before the Supreme Court of Canada and poses the following research questions: (1) do intervenors attract the attention of the Supreme Court Justices within the Justices' written decisions? and (2) if the jurists are found to acknowledge the intervenors in their decisions, what is the form of this acknowledgement? In other words, is the intervenor acknowledged independently or is the intervenor linked to the arguments put forth by the appellant or the respondent?

The answers to these questions concern the impact of intervenors. Intervenors offer a broader view of the affects of a decision, beyond the narrower concerns of the parties at trial. Should the Supreme Court jurists focus on the arguments of an intervenor, they are acknowledging the broader context of the case at bar. This would represent a marked departure from the historical decision-making role of the Supreme Court.

The methodology chosen to evaluate the influence of intervenors before the Supreme Court will be a content analysis of the Supreme Court decisions in

which one or more intervenors appeared.

The first chapter of this thesis begins with a discussion of the political impact of interventions and continues with a review of the history and purpose of interest group intervention at the Supreme Court of Canada. Chapter Two describes the methodology of the case content analysis. Chapter Three analyses the results. Lastly, Chapter Four examines the results of this research and explains its importance within the context of political science.

ACKNOWLEDGEMENTS

I am very thankful to the Department of Political Science and the College of Graduate Studies for permitting me to write my thesis and complete my Master's Degree so many years after I took my first course at the Master's level. Although I always enjoyed political science as an undergraduate, my sights had been set on law school for as long as I could remember. I had to go to law school; I had to try practising law. I thank you for the opportunity to challenge myself in a new direction.

I am so very grateful for Professor Howard Pawley and his gentle support. Professor Pawley both encouraged my new goals and understood my present obligations. Dr. Heather MacIvor was a rigorous advisor who provided excellent critical analysis of my thesis. Her comments ensured the creation of a quality product. Dr. Leigh West willingly participated in this project and encouraged me with my future plans.

None of the work on my thesis would have been possible without the assistance of my secretary and friend, Margaret Siddall. She eagerly took on new responsibilities in my office in order to free my time to research and write this thesis. Due to her efforts, I could hide in my basement and read and write in peace. I cannot express how thankful I am for her presence in my life.

Lastly, my parents have always been my greatest supporters. They raised me to believe I could accomplish anything. I watched my father go back to school when he was in his forties to complete a second master's degree and

then a doctorate in education. He dedicated evenings, weekends and vacations in order to complete these degrees. I am very proud of him. My father died prior to my finishing my thesis, but he knew it would be completed. And I know he is proud of me.

My mother shares in this accomplishment. She encouraged me through every word and she continues to encourage me as I make future plans. My mother's support for all that I do has been my secret weapon. It is a wonderful thing to be loved absolutely. Thank you, Mom.

DEDICATION

This thesis is for my parents.

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INTRODUCTION

The entrenchment of the *Canadian Charter of Rights and Freedoms*[1] in 1982 has caused and continues to cause ripples throughout the Canadian legal system. Judicial interpretation of the new Canadian rights and freedoms, culminating in precedent-setting decisions from the members of the Supreme Court of Canada, has transformed Canadian constitutional law. The Supreme Court has moved from an adjudicative function to a more oracular function. The Court need no longer centre on the originating dispute; the Court need no longer treat the constitutional issue as a secondary concern. Thus, any person or group who can influence the Supreme Court possesses both legal and political power.

1. WHO ARE INTERVENORS?

Intervenors are interested individuals or groups who wish to insert their view on an existing case within the court system. The intervenors present arguments or ideas about the case which are broader or have a different focus than the ones presented by the parties. The federal attorney general and the provincial attorneys general are also frequent intervenors. This public interest intervention stems from the English law concept of *amicus curiae* or "friend of the

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[1] Constitution Act, 1982, Schedule B to the Canada Act 1982

court." American jurisprudence offers a rich history of *amicus curiae* participation. The Supreme Court of Canada has provided for intervenors since its first set of rules were issued in 1878.

A special interest group might also seek standing to bring an action in its own right. As the plaintiff in an action, the group would have a greater degree of control over the direction of the case. An intervenor is restricted to responding to the claims of the plaintiff and the defensive arguments of the respondent; the intervenor does not add new claims, rather, the intervenor may offer new arguments either in support of or against the plaintiff's claims.

The originating litigation may be a dispute between two individuals and/or groups, and may concern either civil or criminal law. While these parties have an interest in the outcome of the matter before the courts, there is also a wider interest to consider. A precedent is set. Decisions build upon decisions and form a body of law. This body of law acts as a standard by which citizens can judge the limits of their rights. Thus, every decision may potentially affect people over and above the parties of the originating action. The adversarial approach to litigation leaves out the concerns of other interested parties. Various interest groups, for example, groups advancing gay rights, women's rights, environmental concerns or language equity concerns, foresee the impact of a decision on their own lives; they may seek intervenor status in an attempt to influence the decision before a precedent is set.

Intervenors may seek leave to intervene on a case at any appeal level. A

group granted intervenor status at a lower court level will automatically be granted status as an intervenor before the Supreme Court. They may also seek leave to intervene at the Supreme Court level, even if not previously granted intervenor status.[2]

Intervenors may be categorized into six distinct groups: 1) government intervenors; 2) public interest intervenors; 3) corporate intervenors; 4) trade union intervenors; 5) aboriginal group intervenors; and 6) individual intervenors.

Government intervenors include both the federal attorney general and the various provincial attorneys general. Public interest intervenors include registered charities (for example, the Easter Seal Society or the Women's Legal Education and Action Fund); non-profit organizations (the League for Human Rights of B'nai Brith Canada); law-related agencies (such as the Canadian Bar Association); and industry groups (such as the Retail Council of Canada or Pollution Probe Inc.).

2. POLITICAL PARTICIPATION THROUGH INTERVENTION

Viewing litigation as a form of political participation explains why certain groups find litigation attractive. Inglehart's theory of postmaterialism links

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[2] Rules of the Supreme Court of Canada, Rule 18.

political participation to the emergence of new political agendas.[3] Political outsiders are attracted to the court system. Interest groups use litigation as a form of political participation in order to promote their issues.

Morton and Knopff report that interest groups in Canada which organize their activities around the issues of postmaterialist politics, choose to focus their activities on the courts.[4] Neil Nevitte confirms that postmaterialist values have spread to Canada and that issues such as sex, race, native rights and environmental concerns have become politicized.[5]

Litigation as political participation does not require widespread organization. Litigation does not require political lobbying. Success through litigation, however, forces a government response. The response may vary from a repeal of legislation to the creation of new legislation or to the amendment of legislation. Even a failure through litigation may be used to mobilize interest group activities and attract media attention.

The Women's Legal Education and Action Fund (LEAF) and its members

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[3] Ronald Inglehart. 1971. "The Silent Revolution in Europe: Intergenerational Change in Post-Industrial Societies." 65 American Political Science Review at p. 991; 1981. "Post-Materialism in an Environment of Insecurity," 75 American Political Science Review at p. 880.

[4] F.L. Morton and Rainer Knopff. 1991. "The Supreme Court as the Vanguard of the Intelligentsia: The Charter Movement as Postmaterialist Politics." In Janet Ajzenstat ed. Canadian Constitutionalism: 1791-1991. Ottawa: Canadian Study of Parliament Group.

[5] Neil Nevitte. 1992. "New Politics, the Charter and Political Participation." In Representation, Integration and Political Parties in Canada, Herman Bakvis, ed. Toronto: Dundurn Press; 1996. The Decline of Deference: Canadian Value Change in Cross-National Perspective. Peterborough, Ont.: Broadview Press.

fit the post-materialist definition: predominantly white, middle-class, professional women. LEAF, from its inception, pursued a policy of influencing the judiciary and the legal profession. LEAF's activities centred on "judicial education,"[6] which concerned "...informing judges through the publication of legal articles and conferences."[7] LEAF's founders were convinced that true equality required participation in both law reform and constitutional litigation.[8]

Lynn Smith, a LEAF activist and law professor, explains the LEAF preference for litigation as political participation. She explains that when the political process fails to produce change, litigation is a short-cut which forces a decision to be made. Litigation may also be a more cost-effective method to focus media attention. Lastly, litigation focuses the activities of the interest group members on a specific objective and the means to accomplish that objective.[9] Smith concludes, "...the Charter critics fail to explain why a group, such as gays and lesbians, should refrain from utilizing a litigation strategy when there appears to be no alternative means of achieving a resolution of their

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[6] Sherene Razack. 1991. Canadian Feminism and the Law: The Women's Legal Education and Action Fund and the Pursuit of Equality. Toronto: Second Story Press.

[7] Sharene Razack. 1991. Canadian Feminism and the Law: The Women's Legal Education and Action Fund and the Pursuit of Equality. Toronto: Second Story Press.

[8] Women's Legal Education and Action Fund. 1996. Equality and the Charter: Ten Years of Feminist Advocacy Before the Supreme Court of Canada. Toronto: Emond Montgomery Publications Limited, at p.xvi.

[9] Lynn Smith. 1994. "Have the Equality Rights Made Any Difference?" In Philip Bryden, ed. Protecting Rights and Freedoms. Toronto: University of Toronto Press. 60 at 75.

concrete claims."[10]

The Canadian Civil Liberties Association (CCLA) is a non-profit organization which uses both lobbying and law reform in dealing with fundamental civil liberties issues and human rights issues.[11] It does not accept government funding. Postmaterialist professionals provide legal work for the CCLA, similar to the LEAF dependence on such professions. The CCLA describes its participation in the legal process, as both a party and an intervenor, as one of many activities it undertakes. The CCLA also lobbies the government; appears before committees preparing legislation at provincial and federal levels; holds public meetings and rallies; appears before public inquiries; publishes articles; consults with the media; and holds seminars and conducts education programs. It is best known for intervention in cases such as R. v. Keegstra,[12] R. v. Butler,[13] The Church of Scientology of Toronto v. Hill[14] and R. v. Lucas.[15]

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[10] Lynn Smith. 1994. "Have the Equality Rights Made Any Difference?" In Philip Bryden, ed. Protecting Rights and Freedoms. Toronto: University of Toronto Press, 60 at 75.

[11] www.ccla.org

[12] [1990] 3 S.C.R. 697.

[13] [1992] 1 S.C.R. 452.

[14] [1995] 2 S.C.R. 1130.

[15] [1998] 1 S.C.R. 439.

3. THE PURPOSE OF THIS THESIS

This thesis adds to the existing literature by providing an analysis of the content of the decisions of the Supreme Court jurists from 1997-1999. Specifically, the analysis concerns the impact of the intervenors in these cases. This is a relevant analysis because intervenors may influence the decisions of the Supreme Court Justices, who have moved from a strictly adjudicative function to a more oracular function (this will be further discussed in Chapter One). Thus, by participating in litigation, intervenors may influence political policy.

Chapters One and Two comprise a general examination of interventions at the Supreme Court of Canada. Chapter One centres on a review of the political science literature and thus explains the relevance of this thesis within the context of political science. Chapter Two outlines the history of interventions before the Supreme Court of Canada.

Chapter Three describes the methodology utilized in this thesis, namely, the scanning of the 1997-1999 decisions for mentions of intervenors.

Chapter Four is a discussion of the data collected. It surveys the Supreme Court decisions from 1997 through 1999 and systematically examines data such as the number of intervenors, the type of cases heard by the Court and the particular ways intervenors are mentioned within the cases.

Lastly, Chapter Five concludes the thesis by summarizing the data and

answering the hypotheses posed in Chapter One.

CHAPTER ONE

INTERVENTIONS AT THE SUPREME COURT OF CANADA

1. OVERVIEW

This thesis concerns the impact of intervenors before the Supreme Court of Canada. In particular, it asks whether the increase in intervenors before the Supreme Court, both the number of intervenors overall and the number of intervenors per case, indicates an increase in their substantive impact. This question, however, requires a mechanism by which the impact of intervenors is measured. The mechanism used within this thesis is a scanning of the written decisions of the Supreme Court justices for mentions of the intervenors.

Prior to the enactment of the *Charter,* the granting of intervenor status was rare.[16] As the Supreme Court jurists began to interpret the *Charter,* they began to accept more applications to intervene.[17] Political scientists and legal academics have observed with relish the growth in intervener cases, as well as

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[16] Ian Brodie. 1997. "Interest Groups and the Supreme Court of Canada." PhD Thesis. University of Calgary, at 192; F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press, at 55.

[17] Ian Brodie. 1997. "Interest Groups and the Supreme Court of Canada." PhD Thesis. University of Calgary, at 192.; F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press, at 55.

the growth of the number of intervenors involved in cases.[18] From this perspective, the enthusiasm for interventions is "...justified by the tendency of public interest intervention to improve the confidence of society as a whole in our legal system."[19]

2. THE CANADIAN COURT SYSTEM AND THE INTRODUCTION OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

The *Canadian Charter of Rights and Freedoms* has greatly affected both the legal and political arenas in Canada. *Charter* arguments first appeared before the Supreme Court of Canada in 1984. The increase in cases which include *Charter* arguments before the Supreme Court has been well documented by legal scholars and political scientists.[20] The advent of the *Charter* has opened a new legal frontier of Charter rights and freedoms; the definition and scope of these rights has led to the increase in interventions.

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[18] Philip L. Bryden. 1987. "Public Interest Intervention in the Courts." 66 *Canadian Bar Review*, 490; Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27; Jillian Welch. 1985. "No Room at the Top: Interest Group Intervenors and *Charter* Litigation in the Supreme Court of Canada." 43:2 *University of Toronto Faculty of Law Review*, 204.

[19] Philip L. Bryden. 1987. "Public Interest Intervention in the Courts." 66 *Canadian Bar Review*, 490 at 517.

[20] Philip L. Bryden. 1987. "Public Interest Intervention in the Courts." 66 *Canadian Bar Review*, 490; Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation" 2 *National Journal of Constitutional Law*, 27; Jillian Welch. 1985. "No Room at the Top: Interest Group Intervenors and *Charter* Litigation in the Supreme Court of Canada." 43:2 *University of Toronto Faculty of Law Review*, 204.

The Canadian court system is a common law system which adjudicates the rights of two parties in a dispute: the plaintiff, or claimant, and the respondent. Following the initial decision, one party may seek to appeal the decision. The dispute continues with the original two parties, one now called the appellant and the other now called the respondent (for example, the plaintiff in the originating action may be the respondent in the appeal). The appeals court hears the claims of the two parties and rules in favour of one party. The system is not designed to handle input from outside parties. Yet, as the growth of the presence of intervenors before the courts suggests, interest groups have a very strong desire to have their opinions reach the Justices of the Supreme Court.

3. THE ORACULAR APPROACH

Mr. Justice Sopinka wrote in 1988 (prior to his appointment to the Supreme Court) that, "there can be no doubt that the Charter has swept Canada into a new era of judicial activism in which many decisions the courts will be faced with will have a quasi-political flavour."[21] This declaration by one jurist is exactly what the court sought to avoid in the early years of *Charter* interpretation.

F.L. Morton and Rainer Knopff echoed Mr. Justice Sopinka's sentiment thirteen years later, contending that the Supreme Court fosters incremental

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[21] Mr. Justice John Sopinka. 1987. "Intervention." *The Advocate*, 883 at 884.

constitutional change through judicial interpretation:

> While formal constitutional change is purposely made difficult to achieve and is thus rare, real change can and does occur in an incremental fashion through judicial interpretation. This is especially true for a new constitutional text like the Charter, where each judicial interpretation is analogous to a mini-amendment. The reasoning of judges adds new constitutional meaning that can expand or contract the rights, and thus the policy influence, of the groups involved. *Since it is the courts that most directly influence the content and scope of their Charter provisions, the Charter groups have a vested interest in judicial power.*[22] [emphasis added]

Traditionally, judicial law making was confined to adjudication.[23] There has been a ninety degree turn from this traditional view and they conclude that the Supreme Court views itself as the "authoritative oracle of the constitution."[24] This new oracular function for the Supreme Court permits the Court to comment on policy issues. Further, this oracular function has transformed the very nature of the Supreme Court: "the Supreme Court is no longer a court, but an overtly political censor, an oracle ready to second-guess disputable political judgments

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[22] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party, Peterborough: Broadview Press Ltd., at 28.

[23] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., at 53.

[24] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., at 54.

whenever it sees the need."[25]

4. THE POLITICAL IMPACT OF INTERVENTIONS

Five years prior to the enactment of the *Charter*, the Supreme Court's acceptance of intervenors was acknowledged as a move away from British court procedure toward American court procedure.[26] This move away from British tradition continued after the enactment of the *Charter*. By the mid 1980s, the extent of the *Charter*'s impact on Canadian judges was the production of "bold new constitutional jurisprudence."[27] The Supreme Court of Canada presides at the top of this "new constitutional mandate."[28]

Morton contended that, "The most significant impact of the Charter would seem to be the creation of a new forum for interest group activity."[29] Prior to the *Charter*, litigation was rarely used as a political tactic by interest groups.

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[25] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., at 56.

[26] Bernard Dickens. 1977. "A Canadian Development: Non-Party Intervention." 40 *Modern Law Review*, 666-676.

[27] F. L. Morton. 1987. "The Political Impact of the Canadian Charter of Rights and Freedoms." XX:1 (March 1987) Canadian Journal of Political Science, p.31 at 34.

[28] F. L. Morton. 1987. "The Political Impact of the Canadian Charter of Rights and Freedoms." XX:1 (March 1987) Canadian Journal of Political Science, p. 31 at 34.

[29] F. L. Morton. 1987. "The Political Impact of the Charter of Rights and Freedoms." XX:1 (March 1987) Canadian Journal of Political Science, p.31 at 39.

Instead, they relied on lobbying. Intervenors usually failed in their applications for leave to intervene between 1982 and 1984. However, the potential offered by this political tactic was anticipated. The potential to expand the focus of the Court beyond the narrow context of the case at bar ensures the continued use of this tactic: "The unmet expectations in the area of intervenors do not diminish either the scope or the novelty of interest group use of the Charter."[30]

Alan Cairns has observed the decline of Canadian federalism and commented on the growth of interest groups as a contributing factor to the development of "fragmentation politics."[31] He argued that the Charter empowers specific groups such as women, aboriginals, ethnic groups and official language minorities. These new "Charter Canadians"[32] overnight became legitimate political actors, no longer spectators, who might pursue constitutional change.[33]

In 1989 Michael Mandel examined the previous five years of Charter litigation before the Supreme Court and concluded that it represents a

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[30] F. L. Morton. 1987. "The Political Impact of the Charter of Rights and Freedoms." XX:1 (March 1987) *Canadian Journal of Political Science*, p.31 at 43.

[31] Alan C. Cairns. 1988. "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake." XIV *Canadian Public Policy*, pp.121-145.

[32] Alan C. Cairns. 1988. "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake." XIV *Canadian Public Policy*, pp.121.

[33] Alan C. Cairns. 1988. "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake." XIV *Canadian Public Policy*, p.121 at 122.

"fundamental change in the structure of Canadian political life."[34] He labelled this phenomenon the "legalization of politics,"[35] and explained that the judicial process is replacing representative government to a new and unprecedented degree.

Christopher Manfredi identifies the "paradox of liberal constitutionalism."[36] The protection of constitutional supremacy demands the growth of judicial supremacy. Constitutional supremacy is explicitly mandated by Section 52(1) of the *Constitution Act, 1982* and Section 24(1) of the *Charter.* The judiciary is empowered to enforce constitutional supremacy. Judicial supremacy is controversial because this power is given to a small group which is not elected and which is counter-majoritarian. Manfredi writes, "Although the Court has deferred to legislative policy choices in specific instances, it has shown little restraint in building up its own powers of judicial review or in asserting its own pre-eminent authority over the development of Charter-related constitutional

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[34] Michael Mandel. 1989. The Charter of Rights and the Legalization of Politics in Canada. Toronto: Wall & Thompson, Inc., p.71.

[35] Michael Mandel. 1989. The Charter of Rights and the Legalization of Politics in Canada. Toronto: Wall & Thompson, Inc., p. 71.

[36] Christopher P. Manfredi. 1993. Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism. Toronto: McClelland & Stewart Inc. pp.36-37.

principles."[37] Manfredi calls this "the legal seduction of politics."[38] In other words, the concept of constitutional supremacy allows the judiciary to arbitrate policy decisions without the public debate and political fallout associated with political decision-making.

> The willingness of interest groups to pursue their political agendas through Charter litigation and the general acquiescence of both the public and government to Supreme Court of Canada decisions reflect the relatively new assumption that *almost every issue, and certainly the most divisive moral issues, is better resolved through the judicial process than through the conventional process.*[39] [emphasis added]

5. SECTION 1

Section 1 of the *Charter* caused concern from its inception; a legislative override recognizes not only that rights are not absolute but that there may be competing rights which conflict.[40] A choice may have to be made. Rights may have to be limited. Section 1 leaves this choice to the members of the Supreme

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[37] Christopher P. Manfredi. 1993. Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism. Toronto: McClelland & Stewart Inc., p.212.

[38] Christopher P. Manfredi. 1993. Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism. Toronto: McClelland & Stewart Inc. p.213.

[39] Christopher P. Manfredi. 1993. Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism. Toronto: McClelland & Stewart Inc. p.213.

[40] Janet L. Hiebert. 1996. Limiting Rights: The Dilemma of Judicial Review. Montreal & Kingston: McGill-Queen's University Press, p. 52.

Court. They must determine which limits to rights are "demonstrably justified."[41]

The wording of section 1 gives little indication to the Court regarding the wishes of the framers of the *Charter*. The interpretation is left to the Court. By leaving the interpretation open, the framers passed the responsibility, and the ensuing power, to the members of the Supreme Court: "As a result of the Charter, judges are now engaged directly in one of the most difficult tasks facing liberal democracies: how does a democratic society distinguish between allowable state action and the protected sphere of human activity?"[42]

The Supreme Court designed a mechanism for section 1 analysis in its decision R. v. Oakes.[43] The Oakes test provides this mechanism. The evaluation of "reasonableness" necessitates the Court analyse policy:

> This analysis of alternative means incorporates the uncertain task of assessing expert analysis of conflicting social science evidence, comparative experience and informed best estimates, all of which may reflect choices between numerous alternatives, make distinctions between who will benefit or be affected by the policy, anticipate circumstances that may undermine objectives and represent part of a complex system of incentives and objectives.[44]

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[41] Constitution Act, 1982, Schedule B of the Canada Act, 1982, section 1.

[42] Janet L. Hiebert. 1996. Limiting Rights: The Dilemma of Judicial Review. Montreal & Kingston: McGill-Queen's University Press, p. 53.

[43] [1985] 1 S.C.R. 103.

[44] Janet L. Hiebert. 1996. Limiting Rights: The Dilemma of Judicial Review. Montreal & Kingston: McGill-Queen's University Press, p. 71.

The adjudicative nature of the Supreme Court has shifted. Although the Charter does not expressly pass policy-making power to the Court, the absence of explicit wording had the effect of passing this power to the Court. As Hiebert's remark above indicates, the Court is left with a tremendous responsibility: it must reconcile the needs of the case at bar with the effect the decision will have on the rest of Canadians. Thus, the adjudicative function transforms into an oracular function. This transformation demands that the Court canvass many sources for their opinions and observations, interests and fears. This opens the door for intervenors to influence the Court.

6. THE COURT PARTY: DANGEROUS LIAISONS

Morton and Knopff first advanced the concept of a "Court Party" in 1992.[45] The Court Party membership resembles Cairns' concept of "Charter Canadians." The Court Party concept has been used to explain the mobilization of organized interests around the rights and freedoms guaranteed in the Charter. The use of litigation by interest groups permits the expression of their ideas and concerns.

The conclusions to be drawn from the political science literature are that the Charter has had far-reaching effects on the legal and political systems, and has altered the relationships between the various actors in these systems.

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[45] F.L. Morton and Rainer Knopff. 1992. "The Supreme Court as the Vanguard of the Intelligentsia: The Charter Movement as Postmaterialist Politics." In J. Ajzenstat, ed. Canadian Constitutionalism, 1791-1991. Ottawa: Canadian Study of Parliament Group, p.57.

Judges have been empowered and their decisions produce profound effects. Interest groups have also been empowered. The Charter, in effect, has levelled the playing field and allowed special interest groups, with small followings and little or no traditional political clout, to influence the legal and political systems. An interest group which chooses to pursue their goals through litigation, either as a party to a case or as an intervenor in a case, is using this new tool to achieve its goals.

Morton and Knopff first proposed the concept of a Court Party as "an alternative sociological-interest group explanation for the phenomenon of the "Charter Revolution" - both the mobilization of organized societal interests around and through the *Charter* and also the courts' new activist approach to interpreting rights claims."[46] The Court Party, an intellectual grouping of public interest advocates, is "...characterized by higher levels of education and income, ...more urban than suburban or rural, and are more likely to be professionals and/or work in the service sector or public sector of the economy (rather than manufacturing or agriculture)."[47] This new coalition of interests extends beyond theory:

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[46] F.L. Morton, Peter H. Russell and Troy Riddell. 1994. "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992." 5 *National Journal of Constitutional Law*, 1 at 44.

[47] F.L. Morton, Peter H. Russell and Troy Riddell. 1994. "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992." 5 *National Journal of Constitutional Law*, 1 at 44.

> The Court Party coalition is not so fragmented, however, that its coherence or identity exists mainly in the mind of the analyst; when galvanized into action, it can pull together as a self-conscious and highly effective political force.[48]

The Court Party's agenda has been described as "minoritarian and equality-seeking."[49] It includes "...feminism, Aboriginal claims, linguistic and other minorities, environmentalism, gay rights, peace and disarmament."[50] As we have seen, Alan Cairns called these groups "Charter Canadians."[51] Frequent intervenors such as the CCLA and LEAF would be considered core members.

This new theory has been used to analyse and explain the voting records of the various Supreme Court justices. It was found that there is little predictability with respect to the particular judges and the cases before them: "...this aggregate measurement [coding the result of cases as a 'win' or a 'loss'] is not a valid measurement of their [L'Heureux-Dubé's and Sopinka's] voting records because it masks what in reality is multidimensional behaviour: activism

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[48] F.L. Morton and Rainer Knopff, 2000, The Charter Revolution and the Court Party, Peterborough: Broadview Press Ltd., 27.

[49] F.L. Morton, Peter H. Russell and Troy Riddell, 1994, "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992," 5 *National Journal of Constitutional Law*, p.1 at 44.

[50] F.L. Morton, Peter H. Russell and Troy Riddell, 1994, "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992," 5 *National Journal of Constitutional Law*, p.1 at 44.

[51] Alan Cairns. 1988. "Citizens (Outsiders) and Governments (Insiders) in Constitution Making: The Case of Meech Lake." XIV *Canadian Public Policy*, p.121.

in certain types of cases and self-restraint in others."[52] However, the data examined demonstrates that "the number of unanimous decisions has steadily decreased while the number of dissenting and concurring opinions continues to rise."[53]

Morton and Knopff find that the courts became more activist after the *Charter*'s advent in 1982."[54] The *Charter* has been, in effect, the trigger (or, as Morton and Knopff call it, the "occasion for judicial policymaking"[55]) which has allowed the judges of the Supreme Court to influence the Canadian legal and political systems as a whole:

> ...the Supreme Court has multiplied the opportunities for judicial policymaking by substantially redesigning itself - changing its rules of evidence, relevance, standing, mootness, and intervener status - from a constitutional adjudicator to a constitutional oracle... The Supreme Court now functions more like a *de facto* third chamber of the legislature than a court. *The nine Supreme Court justices are now positioned to have more influence on how Canada is governed*

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[52] F.L. Morton, Peter H. Russell and Troy Riddell, 1994, "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992," 5 National Journal of Constitutional Law, p.1 at 48.

[53] F.L. Morton, Peter H. Russell and Troy Riddell, 1994, "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992," 5 National Journal of Constitutional Law, p.1 at 50.

[54] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., at 15.

[55] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., at 57.

> *than are all of the parliamentarians who sit outside of cabinet.*[56] [emphasis added]

However, it is not the Charter itself that transferred power to the judges; the judges themselves willingly accepted a more activist role in the adjudicative process.[57]

Morton and Knopff are not proponents of the Court Party, but observers who wish to point out that the Court Party may insinuate itself into the existing relationship between the courts and the legislative process and produce some unwanted effects. Political debates, especially on "hot" or "politically charged" issues, can be usurped by the courts. And legislators may be quite relieved to dodge the heat and to have such "hot" issues determined by another source. Morton and Knopff warn:

> *To transfer the resolution of reasonable disagreements from legislatures to courts inflates rhetoric to unwarranted levels and replaces negotiated, majoritarian compromise policies with the intensely held policy preferences of minorities.* Rights-based judicial policymaking also grants the policy preferences of courtroom victors an aura of coercive force and permanence that they do not deserve. *Issues that should be subject to the ongoing flux of government by discussion are presented as beyond legitimate debate, with the partisans claiming the right to permanent victory.* As the morality of rights displaces the morality of consent,

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[56] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., at 57-58.

[57] F.L. Morton and Rainer Knopff. April 2000. "Judges, the Court Party and the *Charter* Revolution." *Policy Options*, 55 at 56.

> the politics of coercion replaces the politics of persuasion.[58] [emphasis added]

Thus, the *Charter* has increased the power of judges in Canadian society. The Court Party has encouraged judges in their new role and positioned itself to influence the Court in this new and demanding role.

7. HYPOTHESES

Based on my general knowledge of Supreme Court decisions and the adversarial nature of the court system (a two position system with an appellant and a respondent, and little or no room in a decision for an outside or intervening party), I was hesitant to accept what I considered superficial statistics such as the increased number of intervenors every year before the Supreme Court and the increase in the number of intervenors per case as indicators of the influence of intervenors.

In an April 2000 conference discussing the 1999 Constitutional cases before the Supreme Court, Patrick Monahan stated, "Intervenors appear in over half of the constitutional cases before the Supreme Court: [the] high court has

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[58] FL Morton and Rainer Knopff, 2000, The Charter Revolution and the Court Party, Peterborough: Broadview Press Ltd., 166.

become [the] major focus for interest group activity."[59] However, the presence of an intervenor alone does not set a precedent; it is reference to the argument of an intervenor's argument within a Supreme Court decision itself that makes a lasting impact.

The literature reviewed in the previous sections of this chapter demonstrates a concentration on superficial statistics such as the number of intervenors appearing in a case and the number of cases in which an intervenor is present. Further, the literature reviewed demonstrates a lack of quantitative analysis conducted on Supreme Court cases. The cases have been superficially examined; the case content has not been examined.

The speculations offered by political scientists and legal scholars with respect to the impact of intervenors have not, to date, been confirmed by the various authors in follow-up studies. The legitimacy of Cairn's "Charter Canadians" in their pursuit of constitutional change has not been clearly demonstrated; Mandel's "legalization of politics" requires more quantitative support to prove his hypothesis. The *Charter* has opened the door to new constitutional challenges; the Supreme Court has gradually become the dominant arena for political change. However, there has been less than twenty years worth of cases to back up the claims and speculations of scholars.

This thesis attempts to fill in the gaps in the research with respect to

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[59] Patrick Monahan, April 7, 2000, 1999 Constitutional Cases: An Analysis of the 1999 Constitutional Decisions of the Supreme Court of Canada, Osgoode Hall Law School, York University.

Supreme Court interventions. This thesis looks at the impact of intervenors in Supreme Court cases in a new way. Previous research centres on the presence of an intervenor in a case as the indicator of the impact of that intervenor. I believe that the presence of an intervenor is not a true measure of the intervenor's impact.

This thesis is based on the fact that it is the written decision of the Supreme Court judges which makes law and sets a precedent. Thus, it is the mention of an intervenor within a written decision handed down by a Supreme Court judge that is the true measure of the impact of the intervenor. This is not to say that an intervenor's argument may not have an influence on the judge or may influence his or her final decision. However, unless the intervenor is specifically mentioned within the decision, the influence cannot be assessed.

Several hypotheses regarding the impact of intervenors on Supreme Court cases are offered. The presence of intervenors is not disputed. The impact of intervenors is at question. The impact of the intervenors can best be measured by a case content analysis which scans the case for a mention of the intervenor and also scans for the context within which the intervenor is mentioned.

It is my observation, based on a general reading of Supreme Court decisions, that intervenors are rarely mentioned within the written decisions. It is also my observation that government intervenors are most often mentioned in the written decisions. Starting from these observations, I will examine the 1997-

1999 cases for specific mentions of intervenors.

This thesis draws from the observations of Morton and Knopff, Brodie, Lavine and Welch and attempts to examine aspects of interventions not discussed in the literature. Attempting to go beyond the superficial measures such as the number of intervenors appearing in a case, this thesis examines Supreme Court decisions for mentions of intervenors. The following hypotheses are offered:

1. There is a correlation between the presence of one or more intervenors in a case and the likelihood that an intervenor will be mentioned in the case.

2. There is a correlation between the number of intervenors in a case and the likelihood of at least one intervenor being mentioned in a decision.

3. Government agencies and Attorneys General are more likely to be mentioned in a decision than interest group intervenors.

4. Intervenors who present the same argument as the appellant or the respondent are more likely to be mentioned in a decision.

5. The degree of intervenor influence on the substance of Court rulings is minimal.

Chapter two continues with a history of Supreme Court interventions. In Chapter Three, the methodology of case content analysis will be explained. Then, the data collected from the 1997-1999 Supreme Court cases is analysed in Chapter Four.

8. CONCLUSION

Intervenors have let their presence be known at the Supreme Court of Canada. After a bumpy start in the early to mid 1980s, applications for leave to intervene have become more frequent and more successful. Intervenors appreciated this new avenue for promoting their agendas. The precedential decisions of the Supreme Court jurists appeal to interest groups who may feel that traditional lobbying methods are too slow. Although litigation may prove financially prohibitive, mounting a national campaign to promote their ideas may be both slow and financially challenging. Through litigation, intervenors only have to introduce a small group of jurists to their ideas and interests.

CHAPTER TWO

THE HISTORY OF SUPREME COURT INTERVENTIONS

1. OVERVIEW

This chapter examines the history of Supreme Court interventions. First, the process by which a party might apply to intervene is discussed. This is followed by a summary of interventions prior to the enactment of the Charter. The history of Interventions subsequent to the *Charter* followed a rocky course: the Court was cautious with respect to accepting applications for leave to intervene. However, by the late 1980s the Court became more welcoming and the presence of intervenors has steadily increased.

The chapter concludes by discussing the Court Challenges Program. This program was started to provide financial aid to parties wishing to participate in the litigation process.

2. APPLICATIONS FOR LEAVE TO INTERVENE

Applications for leave to intervene have always been permitted before the Supreme Court of Canada. The procedure for such an application was initially governed by Rule 60 of the Supreme Court Rules (see Appendix 2:1). The Supreme Court Rules were enacted in 1878, revised in 1905, and then remained

unchanged until the introduction of the *Charter*. Intervention, according to Rule 60, was "by leave of the Court."

According to Rule 60 (refer to Appendix 2:1), a successful application to intervene has two requirements: first, the intervenor must prove it has a direct interest in the case before the Court; and second, the intervenor must demonstrate that the interest it puts forth cannot be adequately represented by the original parties in the action. These two criteria are further balanced by two considerations on behalf of the original parties to the action, namely, an increase in the cost of the litigation due to the addition of the intervenor; and any prejudice to the original parties incurred through the addition of the intervenor.

One of the greatest allies for intervenors was Mr. Justice Bora Laskin, who became a Supreme Court Justice in 1970 and served as Chief Justice of the Supreme Court from December 1973 to March 1984. Mr. Justice Laskin led the dissent from the restrictive view of the majority of the Court in Attorney-General of Canada v. Lavell.[60] The value of the Lavell case with respect to interventions was the perceived movement in the consciousness of the Court[61] in admitting arguments from a wide range of groups, including Indian committees and organizations and women's organizations.

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[60] [1974] S.C.R. 1349.

[61] Bernard M. Dickens, "A Canadian Development: Non-Party Intervention," The Modern Law Review, 666 at 674.

In Morgentaler v. The Queen,[62] many groups, including the Foundation for Women in Crisis, the Canadian Civil Liberties Association and the Alliance for Life, sought intervenor status. The Court loosened its restrictive stance and permitted these applications for leave to intervene. Mr. Justice Laskin, a founder of the Canadian Civil Liberties Association,[63] favoured the interventions.

2. THE YEARS PRIOR TO THE ENACTMENT OF THE *CHARTER*

Interventions at the Supreme Court of Canada begin to increase momentum in the decade prior to the enactment of the *Charter*. A series of cases[64] indicate that both the Supreme Court and the provincial courts of appeal used the interest test in assessing these applications to intervene. The courts, in applying the interest test to the applications, "address only interests in the specific outcome and not interests in precedential doctrine."[65] However, court decisions, especially from the higher levels, set down precedents which are

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[62] (1975) 20 C.C.C. (2d) 449.

[63] Bernard M. Dickens, "A Canadian Development: Non-Party Intervention," The Modern Law Review, 666 at p.673.

[64] The Queen v. Bolton [1976] 1 F.C. 252 (F.C.A.); Solosky v. The Queen [1978] 1 F.C. 609 (F.C.A.); Re Schofield and Minister of Consumer and Commercial Relations (1980) 28 O.R. (2d) 764 (Ont. C.A.); Re Mannion (No. 2) (1983) 4 D.L.R. (4th) 191 (Ont. C.A.) ; and Re Association for Fairness in Education, Grand Falls District 50 Branch and Societe des Acadiens du Noveau-Brunswick (1984) 8 D.L.R. (4th) 238 (N.B.C.A.).

[65] Jillian Welch. 1985. "No Room at the Top." 43:2 *University of Toronto Faculty of Law Review*, 210-211.

followed in subsequent cases; interest groups are concerned with the precedents which might be set and might affect their particular interests in the future.

The "adequate representation" criterion, that is, whether the interests and concerns of the intervenor were adequately represented by one of the original parties, was applied restrictively to applications for leave to intervene throughout the 1970s.[66] In Re Clark et al v. Attorney-General of Canada,[67] as well as in Re Schofield,[68] the application to intervene was denied on the grounds that the factums filed by the original parties covered the issues raised by the intervenors. In Solosky v. The Queen,[69] an application to intervene by the Criminal Lawyers Association of Ontario (CLAO) was denied because the lawyer representing the appellant was a member of the CLAO and thus was deemed to be in a position where he could present all possible arguments. The presence of the intervenor was not deemed necessary.

The Supreme Court has struggled with the presence of intervenors. The Court has vacillated between permitting intervenors to act as neutral advisors or

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[66] Jillian Welch. 1985. "No Room at the Top." 43:2 *University of Toronto Faculty of Law Review*, 204 at 211.

[67] (1977) 17 O.R. (2d) 593.

[68] (1980) 28 O.R. (2d) 764 (Ont. C.A.).

[69] [1978] 1 F.C. 609 (F.C.A.).

permitting intervenors to act as advocates.[70]

3. THE *CHARTER* AND THE INTRODUCTION OF RULE 18

The introduction of the *Charter* led to an updating of the Rules governing the Supreme Court. The new Rules were more welcoming to intervenors. The new Rules also recognized that the Court's new task in interpreting the *Charter* would require participation and information from various sources.[71]

As of January 23, 1983, Rule 18 dictates the process required to intervene (see Appendix 2:2). Rule 18(2) clearly permits an existing intervenor, that is, an individual or group previously granted intervenor status at a lower court, an automatic right to be an intervenor before the Supreme Court. Rule 18(1) permits any person interested in an appeal or a reference to make an application to the Court for intervenor status. Further, the new Rule 32 permits an attorney-general, federal or provincial, to participate as an intervenor simply by filing a notice with the Court.

Intervenors made their first *Charter* application in Law Society of Upper Canada v. Skapinker,[72] a case which dealt with mobility rights and law society

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[70] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 39.

[71] Kenneth Swan. 1987. "Intervention and Amicus Curiae Status in Charter Litigation." In Robert J. Sharpe, ed. Charter Litigation. Toronto: Butterworths, p.27 at 32.

[72] [1983] S.C.B. 437.

rules restricting membership in the Ontario Bar. An individual, John Calvin Richardson, was granted intervenor status. Skapinker sought membership in the Law Society of Upper Canada but was denied membership because he was not a Canadian citizen. By the time the case reached the Supreme Court level, Skapinker had become a citizen.

The appeal to the Supreme Court was brought by the Law Society of Upper Canada; Skapinker, the respondent, took no part in the Supreme Court appeal. The Court however, continued to hear the appeal, but treated Richardson, the intervenor, as if he was the respondent (that is, in place of Skapinker):

> All this is noted at the outset as a warning to those who may seek to emulate this course in like applications in the future. The current practice of this Court is to require any person seeking to participate in an appeal either to continue as a party with full status as such, or to be brought in as an intervener by order of this Court (references and status of the provinces therein and cases raising constitutional issues being dealt with separately in the Court rules). Because this appeal raised important and novel issues under the Charter of Rights the matter was permitted to proceed as presently constituted.[73]

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[73] *Law Society of Upper Canada* v. *Skapinker* [1984] 1 S.C.R. 357 at 360-1.

4. AMENDING RULE 18(2)

Rule 18(2) came before the scrutiny of the Court in Ogg-Moss v. R.,[74] a case appealed to the Supreme Court from the Ontario Court of Appeal. An intervenor at the Ontario Appeal Court level, the Ontario Association for the Mentally Retarded, anticipated that it would be an automatic intervenor at the Supreme Court according to Rule 18(2). Status was denied the Ontario Association for the Mentally Retarded on the day of the appeal. Mr. Justice Ritchie bluntly decreed: "We are all of the opinion that Rule 18(2) of the Rules of the Supreme Court of Canada has no application to purely criminal appeals. These interventions are therefore disallowed."[75] Rule 18(2) was revoked following the decision in Ogg-Moss v. R.

Chief Justice Dickson suggests the reasons for the revocation of Rule 18(2): "Despite this overlay of social concerns it is important to remember that the case before this Court is a criminal one and its resolution must be based on legal principles."[76] The Supreme Court's position was clear: intervenors have no role in criminal matters, regardless of the reach of the decisions on individuals or groups in Canada.

As a result of the revocation of Rule 18(2) and its effect on interventions

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[74] Ogg-Moss v. R. [1984] 2 S.C.R. 171.

[75] Ogg-Moss v. R. [1984] 2 S.C.R. 171.

[76] [1984] 2 S.C.R. 171 at 173.

in Ogg-Moss v. R., the Canadian Civil Liberties Association applied for leave to intervene before the Supreme Court in R. v. Oakes. The CCLA no longer expected to be automatic intervenors, despite the fact that they had been an intervenor at the Ontario Court of Appeal. The CCLA raised strong societal concerns. They also demonstrated their clear "interest" in the matter, which would have satisfied the old Rule 60 criteria for intervention. Despite these arguments, the CCLA was denied intervenor status. Welch concludes from the results of Ogg-Moss v. R. and R. v. Oakes, that "...the treatment of these two groups [the Ontario Association for the Mentally Retarded and the Canadian Civil Liberties Association] must be read as a clear Supreme Court statement that intervenors have no role in criminal matters, irrespective of the decision's effect on society or any group within society."[77]

The last intervention on the 1983 Supreme Court docket, contrary to the Court's stated position above, allowed the Union of New Brunswick Indians leave to intervene in a criminal appeal in Simon v. R.[78] No reason for this successful application for leave to intervene was given. Yet the Supreme Court jurists confirmed their position and published in the Supreme Court Bulletin the official revocation of Rule 18(2).[79] Thus, in less than a year, the Supreme Court

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[77] Jillian Welch. 1985. "No Room at the Top." 43:2 *University of Toronto Faculty of Law Review*, 204 at 219.

[78] [1983] S.C.B. 1204.

[79] [1984] S.C.B. 24 (SOR/83 - 930).

has made intervenor status a discretionary matter but then narrowed the range of cases in which intervention by an interest group would be permitted.[80]

5. NO CLEAR POLICY WITH RESPECT TO INTERVENTIONS

The uncertainty with respect to the granting of intervenor status continued through the 1984 court term. No compelling reason for granting intervenor status emerged.[81]

Mr. Justice Sopinka found his fellow Supreme Court jurists unwilling to grant intervenor status in the mid-1980s. In fact, he describes the "cold shoulder from the Court"[82] given to public interest groups attempting to apply for leave to intervene. For example, in 1985, the Supreme Court was presented with only seven applications to intervene, of which only two were successful; in 1986, there was not even one application for leave to intervene, by the Supreme Court

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[80] Jillian Welch. 1985. "No Room at the Top." 43:2 *University of Toronto Faculty of Law Review*, 204 at 220.

[81] Jillian Welch. 1985. "No Room at the Top." 43:2 *University of Toronto Faculty of Law Review*, 204 at 221-222.

Philip Bryden. 1987. "Public Interest Intervention in the Courts." 66 *Canadian Bar Review*, 490 at 504.

Kenneth Swan. 1987. "Interventions and Amicus Curiae Status in Charter Litigation." In Robert J. Sharpe, ed. Charter Litigation. Toronto: Butterworths, 27 at 30.

[82] Mr. Justice John Sopinka. 1987. "Intervention." *The Advocate*, 883 at 884.

summer recess, half-way through the 1986 Court session.[83]

The 1984-1987 period of public interest intervention by the Supreme Court was "in a state of flux."[84] The Supreme Court jurists, apart from Mr. Justice Sopinka, seem to shy away from expressing their reasons for accepting or denying an intervenor's application for leave. The Court's hesitation to accept applications for leave to intervene led to a concerted effort by interest groups such as LEAF and CCLA to campaign publicly for the Court to loosen the rules on intervention.[85] The Court began to relent in 1986 and adopted "an open-door policy on intervenors."[86]

In a series of three cases spanning from 1989 to 1991,[87] Mr. Justice Sopinka indicates a new direction taken by the Court with respect to an increased presence of intervenors. He describes this new direction as more relaxed with respect to the traditional tests of "interest" and "adequate

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[83] Mr. Justice John Sopinka. 1987. "Intervention" *The Advocate*, 883 at 884 and K.P. Swan, "Intervention and Amicus Curiae Status in Charter Litigation" in Charter Cases 95 at 105.

[84] Philip Bryden. 1987. "Public Interest Intervention in the Courts." 66 *Canadian Bar Review*, 490 at 494.

[85] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., at p.55.

[86] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., at p.55.

[87] Reference re Workers' Compensation Act, 1983, [1989] 2 S.C.R. 335; M.(K.) v. M.(H.), [1991] S.C.B. 587; and Norberg v. Wynrib, [1991] S.C.B. 590.

representation."[88] This relaxed attitude permitted the number of interventions to increase.

Sharon Lavine examines the Supreme Court record for the years from 1987 to 1991 and confirms the change in the Court's previous attitude toward intervenors: "...the last 5 years have been marked by an extraordinary receptiveness on the part of the Supreme Court to allowing interest groups both to submit written factums and to present oral arguments..."[89] Lavine lists four criteria which have emerged when granting leave to intervene to public interest groups: "1. "Interest" and "useful and different" submissions; 2. the nature of the proceedings; 3. the character of the applicant; and 4. the consent of the parties."[90] These criteria permit a "seemingly lower threshold"[91] for applications for leave to intervene.

Five interest groups sought leave to intervene before the Supreme Court in the 1992 case R. v. Zundel.[92] These interest groups - the Canadian Civil Liberties Association, the Canadian Jewish Congress, the League for Human

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[88] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 43.

[89] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 43.

[90] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 43-44.

[91] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in Charter Litigation." 2 *National Journal of Constitutional Law*, 27 at 44.

[92] [1992] 2 S.C.R. 731.

Rights of B'Nai Brith, Simon Wiesenthal and the Canadian Holocaust Remembrance Association - applied for leave to intervene and their applications were decided by Madam Justice L'Heureux-Dubé.

Initially disposed to grant all five applications, Madame Justice L'Heureux-Dubé asked Mr. Zundel's counsel if he had objections to the applications for leave to intervene.[93] Counsel for Mr. Zundel objected to the participation of all the potential intervenors and argued strenuously that because four of the five interest groups were opposed to Mr. Zundel's position, Mr. Zundel would suffer from the imbalance of opinion against him.[94] In effect, Mr. Zundel would be forced to defend himself against more than one prosecutor. Counsel for Mr. Zundel also argued that there would be an imbalance created by interest groups who could call on greater financial resources than Mr. Zundel for their fight against him. Further, the scope of the trial would be expanded.

Madame Justice L'Heureux-Dubé accepted the application of three of the interest groups for leave to intervene: the Canadian Civil Liberties Association, the Canadian Jewish Congress and the League for Human Rights of B'Nai Brith.[95] Both Simon Wiesenthal and the Canadian Holocaust Remembrance Association were denied leave to intervene. One of the founders of the

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[93] [1991] S.C.B. 333.

[94] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 44.

[95] [1991] S.C.B. 333.

Canadian Holocaust Remembrance Association was the individual who laid the originating private information against Mr. Zundel. It may be that the position of the Canadian Holocaust Remembrance Association was viewed as a personal attack against Mr. Zundel, rather than a philosophical attack against his beliefs. It may also be that the Supreme Court, not wanting to tip the balance with a series of intervenors all seeking the same outcome, and instead seeking a more balanced representation, chose the two groups with the most credible and established reputations.[96] Typical of the Supreme Court jurists, Madame Justice L'Heureux-Dubé did not supply written reasons for refusing the applications for leave to intervene.

Intervenors might actually assist one of the original parties in the litigation, especially where one party is disadvantaged financially: "...we should not discount the possibility that intervention might tend to redress an existing imbalance between the resources of the parties rather than create problems for an impecunious litigant."[97]

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[96] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 52-53.
Philip Bryden. 1987. "Public Interest Intervention in the Courts." 66 *Canadian Bar Review*, 490 at 520-521.

[97] Philip Bryden. 1987. "Public Interest Intervention in the Courts." 66 *Canadian Bar Review*, 490 at 516.

6. PROPOSALS FOR CHANGE AND THE NEW RULES

The reluctance of the Court to allow interventions in the mid-1980s led to a variety of proposals from those groups who were denied Supreme Court participation. In particular, the Canadian Civil Liberties Association, as early as 1984, recommended that the Supreme Court adopt a more liberal approach with respect to applications for leave to intervene[98]. The CCLA proposed that in exchange for more liberal access with respect to applications for leave to intervene, the intervenors should satisfy themselves with written submissions only; the Supreme Court could open the hearing to oral arguments from the intervenors if it so desired. The CCLA recommended that these restrictions to written arguments also be applied to the Attorneys General. LEAF echoed the recommendations of the CCLA with respect to liberalizing access, while at the same time confining an intervenor to written submissions only.[99] LEAF was concerned that its ability to convey its interests and concerns through interventions would be restricted at the Supreme Court. Further, they wanted to demonstrate their desire to cooperate with the Court's administrative concerns about the length of hearings. The Canadian Bar Association Supreme Court Liaison Committee was requested to advise the Supreme Court on developing a

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[98] John Koch. 1990. "Notes and Comments - Making Room: New Directions in Third Party Intervention." 48 *University of Toronto Faculty of Law Review*, 151 at 160-161.

[99] John Koch. 1990. "Notes and Comments - Making Room: New Directions in Third Party Intervention." 48 *University of Toronto Faculty of Law Review*, 151 at 161.

new policy. On May 22, 1987, the Court adopted new rules (see Appendix 2:3) which, according to a literal reading, appear "even harsher"[100] than the old rules. For example, the new rules state at section 18(3)(b) that the intervenor must identify the position it intends to take in its submissions. The new rules also state at section 18(c) that the intervenor must explain the relevancy of its submissions, as well as why the submissions are useful to the Court and how the submissions are different from the submissions of the parties to the action.

The CCLA understandably condemned these new rules. However, despite the restrictive wording of the new rules, since their adoption, the Supreme Court has been increasingly receptive to applications for leave to intervene. From May 29, 1987 to June 30, 1989, the Court "heard 68 applications for leave to intervene and granted all but ten. These 68 applications represent 87 separate intervenors in 37 different cases."[101]

7. REASONS FOR GRANTING AN APPLICATION

In Reference re Workers' Compensation Act, 1983(Nfld.),[102] for the first time, the Supreme Court published reasons for granting an application for leave

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[100] John Koch. 1990. "Notes and Comments - Making Room: New Directions in Third Party Intervention." 48 *University of Toronto Faculty of Law Review*, 151 at 162.

[101] John Koch. 1990. "Notes and Comments - Making Room: New Direction in Third Party Intervention." 48 *University of Toronto Faculty of Law Review*, 151 at 162.

[102] Reference re Workers' Compensation Act, 1983 (Nfld.) [1989] 2 S.C.R. 335.

to intervene.[103] Mr. Justice Sopinka described, in more detail than previously provided by the Court, the operation of Rule 18 as it pertained to applications for leave to intervene. The applicant was to demonstrate a "sufficient interest" in the matter under appeal, and the applicant was also to demonstrate that its submissions would prove "useful" to the Court and "different" from those of the originating parties.[104] Broadening the traditional criteria, Mr. Justice Sopinka found that a demonstration of any sort of interest was sufficient to grant status, subject only to the Court's discretion. Mr. Justice Sopinka also found that an applicant with a history of involvement in the subject matter at issue, leading to an expertise in that subject matter, satisfied the "useful" and "different" requirements and he noted that where the constitutionality of legislation or the constitutionality of public policy was at issue, the intervention "can add to the effective adjudication of the issue by ensuring that all the issues are presented in a full adversarial context."[105]

Lavine charted the Supreme Court cases from May 26, 1987 to September 26,1989 and found that the Supreme Court dismissed only 2 of at least 21 intervention applications in criminal cases.[106] The Supreme Court no

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[103] Motion by Suzanne Maria Cote for leave to intervene in Reference Re Sections 32 and 34 of the Workers' Compensation Act, [1989] S.C.B. 925.

[104] Reference re Workers' Compensation Act, 1983, (Nfld.) [1989] 2 S.C.R. 335, at 339.

[105] Reference re Workers' Compensation Act, 1983 (Nfld.) [1989] 2 S.C.R. 335 at 341.

[106] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 49.

longer seemed to feel bound by its earlier edict that criminal matters were not the place for interventions. However, despite the increase in accepted applications for leave to intervene, the lack of written reasons by the Supreme Court jurists makes explanation for the turnabout nothing more than speculation: "While the recent trend of the Court clearly speaks for itself, it is unfortunate that the Supreme Court has not seen fit to provide reasons setting forth the rationale for its current expansive approach."[107]

8. INTERVENOR PARTICIPATION IN FAMILY AND TORT LAW CASES

The Supreme Court has historically been hesitant to allow intervenor participation in family law and tort law cases. These types of cases have been considered personal and as such, not necessitating public interest intervention.

The Supreme Court loosened its position on family law interventions in Tremblay c. Daigle ,[108] and allowed applications for leave to intervene from CARAL, Campaign Life Coalition, LEAF, Canadian Physicians for Life, R.E.A.L. Women of Canada and the CCLA.[109] In this case, the natural father of a foetus sought to prevent the abortion of the foetus. The various intervenors presented

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[107] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 50.

[108] Tremblay c. Daigle [1989] 2 S.C.R. 530.

[109] [1989] S.C.B. 1999.

their different views regarding the status of the unborn child, assisting the Court with their expertise and their arguments for and against the right to life.

LEAF was allowed intervenor status by Mr. Justice Sopinka in three unique cases: Moge v. Moge;[110] M. (K). v. M. (H).;[111] and Norberg v. Wynrib.[112] In Moge, a family law case in which there was an application to vary a separation agreement which would have the effect of reducing support payments, LEAF sought intervenor status in order to make submissions regarding the interpretation of section 17(7) of the Divorce Act. The interpretation of section 17(7) of the Divorce Act would affect income security and therefore affect the economic equality of Canadian women: "The granting of leave in a family law case signifies a novel expansion of the role allocated to the public interest intervenor."[113]

Next, Mr. Justice Sopinka granted leave to intervene to LEAF in M. (K.) v. M. (H).[114] This case concerned the tort of incest and the time limitation for this tort. The sexual assault (incest) had occurred when the complainant was a child. It was argued by the respondent (that is, the father) that the complainant

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[110] Moge v. Moge [1992] 3 S.C.R. 813.

[111] M. (K.) v. M. (H.). [1992] 3 S.C.R. 6.

[112] Norberg v. Wynrib [1992] 2 S.C.R. 226.

[113] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 51.

[114] M. (K.). v. M. (H.). [1992] 3 S.C.R. 6..

had missed the time limit for bringing a civil action against him. The Limitations Act does not prescribe the time limit for the commencement of an action under this tort. LEAF supported the claimant and argued that limitation periods should not begin to run until the claimant has substantial awareness of the harm suffered as a result of the sexual abuse.

Lastly, leave to intervene was granted in Norberg v. Wynrib, a case in which a woman sought a remedy against the doctor who exchanged drugs to which the woman was addicted for sexual favours.

In both M. (K.) v. M. (H.) and Norberg v. Wynrib, Mr. Justice Sopinka offered written reasons for accepting the LEAF intervention applications.[115] In both cases, the respondents opposed the LEAF applications on the grounds that they would be disadvantaged by having *Charter* arguments raised for the first time at the Supreme Court. Although Mr. Justice Sopinka acknowledged this concern, he argued that the objection should not affect the intervention applications.

Mr. Justice Sopinka also allowed LEAF to file studies and expert reports[116] in M. (K.) v. M. (H.), despite the objections raised by the respondents. Mr. Justice Sopinka did require LEAF to first submit these materials to the respondent's lawyer, to permit the respondent's lawyer to file motions with the Court regarding the filing of the materials if the respondent felt that the materials

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[115] [1992] 3 S.C.R. 3; [1992] 2 S.C.R. 224.

[116] [1991] S.C.B. 467.

represented new evidence.

These cases indicate a new, more welcoming attitude toward public interest intervenors before the Supreme Court: "The Supreme Court has demonstrated its sensitivity to those constituencies of Canadian society seeking to participate in the process of defining and fleshing out the scope of *Charter* rights."[117]

9. SECTION 15

By the late 1980s applications for leave to intervene were meeting with greater success. Intervenors were warming up to this new means of promoting their interests. Litigation was proving to be a beneficial activity with respect to both the expression of their ideas and the motivation of their members. Interest groups have been attracted to section 15 of the Charter, the equality rights section.

Section 15 has been called " the most important constitutional forum for interest group activity in Canada."[118] Section 15 lists grounds upon which discrimination is expressly prohibited. These enumerated grounds are "race, national or ethnic origin, colour, religion, sex, age or mental or physical

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[117] Sharon Lavine. 1992. "Advocating Values: Public Interest Intervention in *Charter* Litigation." 2 *National Journal of Constitutional Law*, 27 at 53.

[118] Ian Brodie. 1996. "The Market for Political Status." 28 *Comparative Politics*, 253 at 254.

disability."[119] This was not meant to be an exhaustive list. The Supreme Court may determine that other groups deserve section 15 protection.

The Supreme Court has "constricted the entrance into the equality rights section"[120] to those in disadvantaged groups. If the Court had spread section 15 status too widely, the protected status granted the groups listed in section 15 would be effectively diluted.[121] Protected status should be granted selectively. The Supreme Court has extended the grounds for protected status to include citizenship[122] and sexual orientation.[123]

Knopff and Morton also stress the importance of protected status: "Constitutional status gives a group official public status of the highest order, and groups who enjoy it have an advantage in pressing their claims against government over groups who do not."[124] Protected status becomes an entity to be protected by those who claim it: "the Charter gave certain groups

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[119] Constitution Act, 1982, Schedule B to the Canada Act, 1982, section 15(1).

[120] Lynn Smith. 1994. "Have the Equality Rights Made Any Difference?" In Philip Bryden, Steven Davis and John Russell, eds. Protecting Rights and Freedoms. Toronto: University of Toronto Press Incorporated, p.62.

[121] Ian Brodie. 1997. "Interest Groups and Supreme Court of Canada." PhD Dissertation. University of Calgary. p.119.

[122] Andrews v. Law Society of British Columbia [1987] 2 S.C.R. 143.

[123] Haig and Birch v. Canada (1992) 95 D.L.R. (4th) 1; Egan and Nesbitt v. Canada [1985] 2 S.C.R. 513.

[124] Rainer Knopff and F.L. Morton. 1992. Charter Politics. Scarborough: Nelson Canada, p.82.

constitutional niches and an interest in defending them."[125]

Determining who should or should not be granted protected status is an enormous task. The Court may lack familiarity with the social and economic programs likely to face section 15 challenge. Peter Russell warns that: "Leaving these matters to our judges may have the unfortunate consequence of relieving ourselves as citizens from the responsibility of reasoning together about acceptable answers to these questions."[126] The expertise offered by interest groups once again demonstrates the importance of intervenors with respect to *Charter* litigation.

10. THE COURT CHALLENGES PROGRAM

Charter litigation is expensive and the expense may be prohibitive to the very groups who rely on the *Charter* to protect their rights and freedoms: "It is not simply that financial means enable litigation to be conducted in pursuit of specific claims. It is also that financial resources permit litigation and law reform strategies to be formulated and pursued."[127]

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[125] Ian Brodie and Neil Nevitte. 1993. "Clarifying Differences: A Rejoinder to Alan Cairns's Defence of the Citizens' Constitution Theory." XXVI:2 *Canadian Journal of Political Science*, 269 at 272.

[126] Peter H. Russell. 1982. "The Effect of a Charter of Rights on the Policy-making Role of Canadian Courts." 25:1 *Canadian Public Administration*, 1 at 26.

[127] Lynn Smith. 1994. "Have the Equality Rights Made Any Difference?" In Philip Bryden, ed. Protecting Rights and Freedoms. Toronto: University of Toronto Press, 60 at 71.

The federal Court Challenges Program started in 1978, before the enactment of the *Charter*, primarily as a means for the federal government to achieve federal objectives in areas of provincial jurisdiction.[128] The *Charter* expanded the constitution's language rights and accordingly, the Court Challenges Program expanded its areas of concern. The equality rights section of the *Charter* came into force in 1985 which again expanded the scope of the Program.

Although the Program was slated to terminate in March 1990, the Program and its supporters (including LEAF, EGALE, the Canadian Bar Association, the Assembly of First Nations and the Canadian Association for Community Living) successfully campaigned for an extension for the Program. In cases such as R. v. Keegstra,[129] R. v. Butler[130] and R. v. Seaboyer,[131] the Court benefitted from the points of view brought by the intervenors who were funded by the Program. Following the campaign to extend its life, the Program was now set to run until March 1995. However, the Program was unexpectedly cancelled following the 1992 federal budget.

The Program once again garnered support from the groups which had received funding from it. Within weeks, the House of Commons Standing

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[128] www.ccppcj.ca

[129] R. v. Keegstra [1990] 3 S.C.R. 697.

[130] R. v. Butler [1992] 1 S.C.R. 452.

[131] R. v. Seaboyer [1991] 2 S.C.R. 577.

Committee on Human Rights and the Status of Disabled Persons began hearings into the Program's cancellation. The Court Challenges program was reinstated in 1994, following the 1993 federal election. It continues today as an independent, limited corporation.[132] As an independent, limited corporation, it can no longer be cancelled. It continues with an annual federal grant of $2.75 million.[133] Morton and Knopff report that the annual grant to the Program was increased to $4.4 million in the 1999-2000 budget and the annual grant is projected to increase to $5.9 million for 2000-2001 budget.[134]

Morton describes the Program as a "funding bonanza"[135] for LEAF and other groups. The Program has funded language rights cases, equality cases and homosexual rights cases.[136] The Program funds both litigants and intervenors. The credibility offered to recipients of the funding has been argued to be as important as the funding itself.[137] The most frequent recipient of funds

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[132] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., pp.98-99.

[133] www.ccppcj.ca

[134] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., p.99.

[135] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., 97.

[136] Ian Brodie. 1997. "Interest Groups and Supreme Court of Canada." PhD. Dissertation. University of Calgary. pp. 111-113.

[137] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., 98.

is LEAF; LEAF, perhaps correspondingly, has the highest success rate before the Supreme Court.[138]

11. FINAL THOUGHTS

This history of interventions before the Supreme Court sets the stage for this thesis. The uncertain acceptance of interventions initially blocked interest groups who doggedly pursued the Court for the right to participate in the litigation process. The Court is now much more accepting of applications for leave to intervene and the number of intervenors has increased dramatically. The Court has become the forum from which interest groups may present their arguments.

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[138] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution and the Court Party. Peterborough: Broadview Press Ltd., p.98.

APPENDIX 2:1

SUPREME COURT RULES (enacted 1878; revised 1905)
RULE 60

60. (1) Any person interested in an appeal may, by leave of the Court or a Judge, intervene therein upon such terms and conditions and with such rights and privileges as the Court or Judge may determine.

(2) The costs of such intervention shall be paid by such party or parties as the Supreme Court shall order.

APPENDIX 2:2

RULES OF THE SUPREME COURT OF CANADA
RULE 18 (January 26, 1983)

18. (1) Any person interested in an appeal or a reference may, by leave of the Court or a Judge, intervene therein upon such terms and conditions and with such rights and privileges as the Court or Judge may determine.

(2) Any intervenor in the courts below, who is not a party before the Court, shall be considered an intervener in an appeal before the Court unless, within 30 days from the filing of the notice of appeal, he indicates that he does not wish to be considered as such.

APPENDIX 2:3

RULES OF THE SUPREME COURT OF CANADA
RULE 18 (May 22, 1987)

18. (1) Any person interested in an appeal or a reference may, by leave of a Judge, intervene therein upon such terms and conditions and with such rights and privileges as the Judge may determine.

(2) An application for intervention shall be made by filing and serving a notice of motion supported by affidavit within 30 days after the filing of the notice of appeal or reference and shall be heard on a date to be fixed by the Registrar.

(3) An application for intervention shall briefly

(a) describe the intervener and the intervener's interest in the appeal or reference;

(b) identify the position to be taken by the intervener on the appeal or reference;

c) set out the submissions to be advanced by the intervener, their relevancy to the appeal or reference and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

(4) An intervener has the right to file a factum.

(5) Unless otherwise ordered by a Judge, an intervener

(a) shall not file a factum that exceeds 20 pages;

(b) shall be bound by the case on appeal and may not add to it; and

c) shall not present an oral argument.

(6) The order granting leave to intervene shall specify the filing date for the factum of the intervener and shall, unless there are exceptional circumstances, make provisions as to additional disbursements incurred by the appellant or the respondent as a result of the intervention.

(7) Subsections (1) and (3), paragraphs (5) (a) and c) and subsection (6) do not apply to an attorney general who files a notice of intervention referred to in subsection 32(4).

(8) Paragraphs (5)(a) and c) do not apply to an attorney general referred to in subsection 32(7).

CHAPTER THREE

METHODOLOGY

The merits of a quantitative analysis of judicial decision making are discussed by Morton et al in their 1993 analysis of the first decade of Charter decisions.[139] They conclude that such an analysis has its limitations:

> It is not a substitute for jurisprudential analysis. For supreme courts - indeed, for all appellate courts in common law countries - the reasons given to justify a decision are often more important in the long run than a decision's basic outcome or "bottom line." [140]

The authors point out that one case may have far-reaching effects through the precedent it sets. Other Canadians, not just the parties to the action, may be affected by the judicial decision. A statistical analysis will undervalue the importance of such a case if all cases are weighted equally:

> A single decision on a right or freedom - because of the far-reaching implications of its supporting reasons - can outweigh in importance dozens of other decisions on the same right or freedom

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[139] F.L. Morton, Peter H. Russell and Troy Riddell. 1994. "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992." 5 *National Journal of Constitutional Law*, 1 at 2.

[140] F.L. Morton, Peter H. Russell and Troy Riddell. 1994. "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992." 5 *National Journal of Constitutional Law*, 1 at 2.

> which go in the opposite direction. Statistical analysis treats all cases equally, when in fact they are clearly not all of equal significance. Similarly, statistical classifications of cases in terms of their bottom line outcomes - for example "upholding" or "denying" a *Charter* claim - do not capture important jurisprudential subtleties. A decision that upholds a *Charter* claim might do so through opinions that actually narrow the meaning of the *Charter* right involved.[141]

The authors, Morton, Russell and Riddell, explain that the importance of Supreme Court cases may vary. However, I believe they overstate their position when they conclude that a statistical analysis based on descriptive statistics is the only type of analysis that may be performed. As my analysis of the decisions themselves will reveal, there are other methods of analysis which may be employed. The authors conclude, "Descriptive statistics provide a factual foundation on which other studies can build, qualify and elaborate."[142]

1. DOCUMENT ANALYSIS

This thesis concerns the impact of intervenors before the Supreme Court of Canada. The Supreme Court decisions were the primary source of information in this analysis, as opposed to interviews with the Supreme Court

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[141] F.L. Morton, Peter H. Russell and Troy Riddell. 1994. "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992." 5 *National Journal of Constitutional Law*, 1 at 2.

[142] F.L. Morton, Peter H. Russell and Troy Riddell. 1994. "The *Canadian Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992." 5 *National Journal of Constitutional Law*, 1 at 2.

Justices, content analyses of newspaper or journal interpretations of decisions, or interviews with the various intervenors. The Supreme Court decisions were chosen because they represent the written decisions from the highest level of judges in Canada. Further, Supreme Court decisions set precedents for the lower courts to follow.

Content analysis of the Supreme Court decisions provides both a systematic and an objective measure of the impact of the intervenors and their arguments on the decisions rendered by the justices of the Supreme Court. This is an objective measure because other researchers can easily replicate my results by similarly scanning the Supreme Court decisions. The only care to be taken in reading the decisions is to scan for a mention of the "intervenor" or for a mention of the intervenor by its formal name.

Other data regarding the Supreme Court cases from 1997-1999 may be obtained by coding for specific information such as the number of intervenors involved, the name of the judge rendering the decision and whether the written judgment is a judgment for the majority or for the dissent. The code sheet used is attached to this chapter as Appendix 3:1.

Data in this research thesis has been collected from the Supreme Court of Canada decisions for the years 1997, 1998 and 1999. Starting from a reservoir of 253 cases, I first narrowed this reservoir down to 83 cases in which one or more groups or individuals were granted intervenor status. From this bank of 83 cases, I scanned the cases for any and all mentions of the intervenors in the

decisions themselves.

Chapter Four is a more thorough examination of the 37 cases which provided mentions of the intervenors in the judicial decisions.

APPENDIX 3:1

CODESHEET

CASE NAME:

CITE:

DATE OF JUDGEMENT:

NUMBER OF INTERVENORS:

INTERVENORS:

TYPE OF CASE:	PRIMARY	SECONDARY	TERTIARY
ABORIGINAL			
ADMIN. LAW			
CIVIL			
CONSTIT. LAW			
CRIMINAL LAW			
COURT PRACTICE			
FAMILY LAW			
TAXATION			
OTHER			

REPORTING JUSTICE(S): MENTION OF INTERVENOR(S): BY NAME:

1.

2.

3.

4.

REP'NG JUSTICE(S): MENTION OF
- OTHER SOURCES - APPELLANT(S) - RESPONDENT(S)

1.

2.

3.

4.

NOTES:

CHAPTER FOUR

QUANTITATIVE ANALYSIS AND DISCUSSION

1. SETTING THE SCENE

In the years for which the Supreme Court decisions were examined, 1997 through 1999, there were a total of 253 cases heard. Intervenors appeared in a total of 83 cases, which accounts for 33% of the docket. In these 83 cases, a total of 375 intervenors made an appearance (See Appendix 4:1 for a breakdown of these numbers per year). Looking only at cases in which there was at least one intervenor, there was an average of 4.5 intervenors per case.

2. CATEGORY OF INTERVENOR

Intervenors may be categorized into six distinct groups: 1) government intervenors; 2) public interest intervenors; 3) corporate intervenors; 4) trade union intervenors; 5) aboriginal group intervenors; and 6) individual intervenors. Appendix 4:2 classifies the intervenors appearing before the Supreme Court with respect to these six groups and lists the number of appearances made by each intervenor.

The most frequent group to intervene before the Supreme Court is the public interest intervenors. Public interest intervenors include registered

charities (for example, the Easter Seal Society or the Women's Legal Education and Action Fund), non-profit organizations (the League for Human Rights of B'nai Brith Canada), law-related agencies (such as the Canadian Bar Association) and industry groups (such as the Retail Council of Canada or Pollution Probe Inc.). These disparate groups and organizations account for 162, or 43%, of the total number of intervenors appearing before the Supreme Court.

Government intervenors are the second most frequent group, numbering 157, or 42% of the total intervenors. The Attorney General of Canada and the provincial attorneys general may intervene automatically as a matter of right. Intervening as a matter of right means that if a case before the Supreme Court interests these attorneys general, and may have ramifications for a particular province, the Attorney General might decide to intervene. For example, if a statute in Ontario is being questioned for its constitutionality, and a statute in British Columbia is similar, and could be similarly attacked through the courts, the Attorney General of British Columbia might decide to intervene.

Government commissions, tribunals, agencies and public sector organizations may also seek leave to intervene, although the acceptance of their application for leave to intervene would not be granted as a matter of right.

Individual intervenors are persons who have an interest in a case before the Supreme Court and have a stake in the outcome of the Supreme Court

decisions. For example, in Dore v. Verdun (City),[143] a case where a citizen sought a civil remedy for a slip on a municipal sidewalk but the municipality claimed the individual had exceeded the statutory limitation period for notifying the municipality of the claim, several interested individuals were granted leave to intervene. These individuals had no stake in Mr. Dore's injury, but had been similarly denied recourse against the municipality for providing notice after the prescribed notice period.

In another example, Bazley v. Curry[144], the individual intervenors, like the plaintiff Mr. Bazley, had been sexually abused while youths at the same summer camp. The case concerned the issue of vicarious liability of an employer for the tortious action of an employee. It may be the case that the intervenors had brought their own actions against the employer; however, once Mr. Bazley's case was appealed to the Supreme Court, the cases of the other victims would be stayed pending the appeal. However, as the other victims had a stake in the successful outcome of the appeal, they were prime candidates to intervene in Mr. Bazley's case.

Appendix 4:2 categorizes the intervenors and lists the number of appearances before the Supreme Court made by each intervenor. Appendix 4:3 takes the data from Appendix 4:2 and lists the intervenors who appeared most frequently. Not surprisingly, the seven most frequent intervenors were attorneys

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[143] Dore v. Verdun (City) [1997] 2 S.C.R. 862.

[144] Bazley v. Curry [1999] 2 S.C.R. 534.

general, demonstrating that the various attorney general offices take advantage of their "as of right" ability to intervene. Also not surprisingly, the Attorney General of Canada is the most frequent intervenor, with 33 appearances over this study's time frame. The Attorney General of Canada would often be concerned with the interpretation of Charter rights and freedoms and criminal law questions.

Quebec has been described as the most avid protector of provincial rights.[145] Quebec leads the provincial attorneys general with 24 interventions, which confirms this view. The Attorney General of Quebec is closely followed by the Attorneys General of Alberta and Ontario, at 23 and 20 interventions respectively.

The Canadian Civil Liberties Association (CCLA), a public interest intervenor and the first non-government intervenor, is the eighth most frequent party to intervene. The CCLA participated in 6 interventions between 1997 and 1999.

The CCLA had initially been at the forefront of interventions following the advent of the Charter, but had retreated from interventions in the mid to late 1980s, disgusted by the changes in Rule 18 and the Supreme Court jurists' refusal to grant leaves to intervene. Clearly, the CCLA, by the late 1990s, had

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[145] F.L. Morton and Rainer Knopff. 2000. The Charter Revolution & the Court Party. Peterborough, Ontario: Broadview Press Ltd. pp. 160-161.
Peter Hogg and Allison A. Bushell. 1997. "The Charter Dialogue Between Courts and Legislatures." 35:1 *Osgoode Hall Law Journal*, 92-94.

reversed its position and was once again strongly pursuing its agenda before the Supreme Court. There is a dramatic drop in the number of interventions in which the CCLA participated, as compared to the number of interventions in which the government intervenors participated. It is conceivable that a public interest intervenor, without the deep pockets of a government (federal or provincial), must carefully pick its fights.

Appendix 4:3 shows that the Canadian Labour Congress is the only trade union on the most frequent intervenors' list. This is not surprising, because a trade union would tend to have a more restrictive agenda than a government intervenor or a public interest intervenor. Trade unions may find funding litigation prohibitive. Also, no aboriginal groups, corporations or individual intervenors are listed in Appendix 4:3. Unlike the government intervenors and public interest intervenors, who may be interested in protecting a wide variety of rights and freedoms, the aboriginal groups intervene to protect their own rights and freedoms. Corporations and individuals also intervene in order to protect their own rights and interests.

Lastly, of the 18 intervenors listed with 4 or more interventions before the Supreme Court from 1997 to 1999, 8 of the intervenors, or 44%, are government intervenors, while 9 of the intervenors, or 50%, are public interest intervenors.

Appendix 4:4 breaks down the intervenors by category and lists both the number of intervenors and the number of interventions made by each category of intervenor. For example, there were 25 different intervenors categorized as

government intervenors, but these government intervenors intervened a total of 157 times; this averages at 6.28 interventions per government intervenor. However, four intervenors, that is, the Attorney General of Canada, the Attorneys General of Quebec, Alberta and Ontario made 33, 24, 23 and 20 interventions respectively. These four intervenors account for 100 of the 157 government interventions.

While there are many public interest intervenors, they intervene only when their particular interests are under scrutiny. As was previously discussed, the most frequent public interest intervenor, the Canadian Civil Liberties Association, intervened only 6 times in the three years under review. There were 101 public interest intervenors who intervened 162 times, which averages at only 1.6 interventions per public interest intervenor. Appendix 4:2 lists the number of interventions per intervenor, and shows that 71 of the public interest intervenors only intervened once in the three years of this study.

The three trade union intervenors made eight appearances; the 13 aboriginal organizations made only 17 appearances; the nine corporations made 10 appearances; and the 20 individuals who appeared as intervenors made 21 appearances. This confirms the more specific nature of the interests of these categories of intervenors.

3. EXAMINING THE SUPREME COURT DECISIONS 1997-1999

3.1 Hypothesis #1

There is a correlation between the presence of one or more intervenors in a case and the likelihood that an intervenor will be mentioned in the case.

Appendix 4:5 compares the total number of cases in the 1997-1999 period of review, with the total number of cases in which intervenors were present and the number of cases in which an intervenor was mentioned in the Supreme Court decision. Appendix 4:6 augments Appendix 4:5 by adding percentages. Broadly speaking, intervenors appear in about one-third of the cases before the Supreme Court of Canada; and in one-third of those cases, the intervenor is mentioned in the written decisions of the Supreme Court Justices.

Some cases attract an extraordinary number of intervenors; for example, there were 17 intervenors in Vriend v. Alberta[146] and there were 12 intervenors in Eaton v. Brant County Board of Education[147].

Appendix 4:7 begins with a list of the 82 cases in which there were intervenors and notes whether or not the judges mentioned any intervenors.

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[146] Vriend v. Alberta [1998] 1 S.C.R. 493.

[147] Eaton v. Brant County Board of Education [1997] 1 S.C.R. 241.

There were 37 cases with mentions of intervenors. The next logical connection to look for would be a correlation between the number of intervenors and the likelihood that the judges will mention an intervenor in the written decision.

3.2 Hypothesis #2

There is a correlation between the number of intervenors in a case and the likelihood of at least one intervenor being mentioned in a decision.

Appendix 4:7 shows that there is no strong correlation between the likelihood of an intervenor being mentioned and the number of intervenors involved in the case. Of the 82 cases, 10 attracted 10 or more intervenors. These 10 cases were split evenly between the cases in which an intervenor was mentioned and cases in which the intervenor was not mentioned. In contrast, 23 cases had only one intervenor, and the intervenor was mentioned in only 5 of the 23 cases.

There were 22 cases with five to nine intervenors. An intervenor was mentioned in over half these cases, that is, in 13 of the 22 cases. Lastly, there were 27 cases with two to four intervenors associated with the cases. These cases were evenly split, with 13 cases not mentioning any of the intervenors and 14 cases mentioning at least one of the intervenors.

Appendix 4:8 is a summary of the breakdown suggested by Appendix 4:7

and it suggests that there is a balance to be found with respect to intervenor involvement. The presence of too many intervenors, more than 10 per case, begins to make a case unwieldy and the intervenors are less likely to be mentioned in the written decision.

4. THE JUSTICES OF THE SUPREME COURT

The following Justices sat on the Supreme Court bench for the entire period under review: Chief Justice Lamer, and Justices McLachlin, L'Heureux-Dubé, Gonthier, Iacobucci and Major. Mr. Justice LaForest, who was appointed in 1985, retired September 30, 1997; Mr. Justice Sopinka, who was appointed in 1988, died November 24, 1997; and Mr. Justice Cory, who was appointed in 1989, retired June 1, 1999. Mr. Justice Bastarache was appointed September 30, 1997; Mr. Justice Binnie was appointed January 8, 1998; and Madame Justice Arbour was appointed June 1999, the appointment becoming effective on September 15, 1999.

Appendix 4:9 lists the 37 cases in which an intervenor is mentioned and also lists the names of the Supreme Court Justices who made the mention. Throughout these 37 cases, the Justices mentioned intervenors in their decisions 45 times[148]. For the purpose of this measure, if a Justice mentioned

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[148] In one case, R. v. Campbell, [1999] 2 S.C.R. 956, which was a Motion brought by an Intervenor, the Attorney General of Alberta, the decision was rendered by "The Court" and was not ascribed to any one particular Justice. Although noted on Appendix 7, this was not counted as

the intervenor more than once within a decision, this was coded as one mention. For example, in R. v. Arp, Mr. Justice Cory, in his written decision, mentioned the intervenor the Attorney General for Ontario on three occasions.

The following list places the Justices in order from most frequent to least frequent mentions of an intervenor within their written decisions:

Mr. Justice Cory	12
Mr. Justice Iacobucci	07
Chief Justice Lamer	05
Madame Justice McLachlin	04
Mr. Justice Bastarache	04
Mr. Justice Major	03
Mr. Justice LaForest	03
Mr. Justice Gonthier	03
Mr. Justice Binnie	02
Madame Justice L'Heureux-Dubé	02

It is clear from this examination of the 1997-1999 decisions that there is a great range amongst the Justices of the Supreme Court with respect to their frequency in mentioning intervenors in their decisions. Mr. Justice Cory, who retired June 1999, did not sit for the entire period under review, yet he mentioned intervenors more often than the other Justices. In contrast, Madame Justice L'Heureux-Dubé sat on the Bench for the entire period under examination, yet she only mentioned an intervenor twice in her written decisions. Two of the three Justices appointed to the Supreme Court during the period under review, that is, Mr. Justice Binnie and Mr. Justice Bastarache, mentioned intervenors at least as many times as in Madame Justice L'Heureux-Dubé's

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one of the 45 mentions of an intervenor by a Justice in their written decision.

decisions.

This examination of the 1997-1999 decisions, together with the changes to the make-up of the Court, implies that intervenors may be facing a less favourable Court. The loss of Mr. Justice Cory removes a Justice inclined to mention intervenors in his written decisions and credit them for their arguments.

5. INTERVENORS SPECIFICALLY MENTIONED BY NAME

5.1 Hypothesis #3

Government agencies and Attorneys General are more likely to be mentioned in a decision than interest group intervenors.

Appendix 4:10 takes a deeper look at the cases where there is a mention of the intervenor in the Supreme Court decision. Intervenors are often referred to generally as "the intervenor" or "an intervenor" or "one of the intervenors." Appendix 4:10 scanned the cases to see if an intervenor was mentioned specifically by name (or by a reasonable facsimile, for example, "the attorney-general" or "Pollution Probe et al"). A total of 198 intervenors appeared in these 37 cases.

It can be seen from Appendix 4:10 that of the 37 cases with mentions of intervenors in the years 1997-1999, there was no specific mention of an

intervenor in 5 of the cases. In many instances, there is more than one intervenor in the case; in 28 of the 37 cases, a whopping 76%, only some of these intervenors were mentioned. For example, in M. v. H., there were ten intervenors, yet only one intervenor was mentioned by name; in Vriend v. Alberta, only one of the seventeen intervenors was mentioned; and in Canada (A.G.) v. Canada (Commission of Inquiry on the Blood System in Canada), only one of the nine intervenors was mentioned. Of the 198 intervenors, only 58 were specifically mentioned.

The results of Appendix 4:10 indicate that a specific mention of an intervenor occurs in approximately 25% of the cases. In cases with more than one intervenor, the full complement of intervenors are mentioned only five times. Further, in two of the instances where all the intervenors are mentioned, the Justice writing the decision referred to the intervenors collectively, that is, as "the intervenors Pollution Probe et al."

Appendix 4:11 lists the intervenors who were mentioned by name. There were 58 individual mentions of intervenors. 38 of these specific mentions were of government intervenors; 18 of the mentions were public interest intervenors; both corporate intervenors and aboriginal intervenors were mentioned three times each; and trade union intervenors were mentioned only once. Thus, hypothesis #3 was proved valid.

6. EXAMINING THE WRITER OF THE DECISION

Appendix 4:10 also scans the 37 cases with mentions of intervenors for the Justice writing the decision in which the intervenors were specifically named. Please note that it is common for more than one Justice to write a decision, either in support of the majority or in dissent. One intervenor could therefore be mentioned by several Justices within one case. This explains why intervenors were mentioned by name 38 times within the 37 cases (despite the fact that in five cases, there was no specific mention of an intervenor by name).

Mr. Justice Cory mentioned intervenors by name on eight occasions, the highest number of specific mentions recorded. Of the six justices who sat on the Supreme Court for the entire period under review, Mr. Justice Iacobucci was not far behind Mr. Justice Cory, with seven specific mentions of intervenors, and the Chief Justice mentioned specific intervenors five times. Madame Justice L'Heureux-Dubé, on the other hand, had only one instance of specifically mentioning an intervenor. Mr. Justice Binnie, only on the Supreme Court for two of the three years under review, mentioned a specific intervenor on two occasions.

This indicates that intervenors may be less likely to be specifically mentioned by name in the future, as the Justice who most favours a mention by name is no longer on the Bench.

6.1 Hypothesis #4

Intervenors who present the same argument as the appellant or the respondent are more likely to be mentioned in a decision.

Appendix 4:12 examines the 1997-1999 cases in which intervenors were mentioned in the judgments for a specific type of mention. Hypothesis #4 proposes that an argument put forth by an intervenor will be more likely to be noted in the written decision if the argument parallels an argument or position put forth by either the appellant or the respondent. It is my contention that the Supreme Court Justices are more inclined to mention an intervenor if the position of the intervenor coincides with the main parties. However, this is in contrast to the Supreme Court Rules which indicate that an intervenor should bring something fresh to the Court for the Court's consideration.

The 1997-1999 cases under review were scanned for phrases such as "the appellant/respondent and the intervenor contend" or "it was submitted by the appellant/respondent and the intervenor." In the 37 cases scanned, this phrasing was found a total of 12 times, or 32.4% of the time. Mr. Justice Cory was, again, the Justice who most frequently linked the intervenor to either the appellant or respondent. The other Justices cited - namely, Justices L'Heureux-Dubé, LaForest, Binnie, Bastarache and Gonthier, as well as Chief Justice Lamer - made this link between the intervenor's argument and the argument of

the appellant or respondent, only one or two times each. It would therefore be expected that this correlation would decrease now that Mr. Justice Cory is no longer on the bench.

7. EXAMINING THE TYPE OF CASE

Appendix 4:13 begins once again with the cases where intervenors were mentioned, 37 in total, and then categorizes these cases by the type of proceeding before the Supreme Court. The categories chosen included the following: constitutional law (which included *Charter* challenges and federalism cases), criminal law, aboriginal law and family law. The last category, "other" is a catch-all for categories that do not fall under the most common headings.

Appendix 4:13 starts with each case's head note but also examines the case itself. It is my belief that the head notes alone inadequately categorize the cases. Cases often can be categorized in more than one way, for example, legislation may come under attack under the *Charter.* In R. v. Williams,[149] the head note to the case categorizes the case as "criminal." The case stems from a charge of robbery against the accused; however, the Supreme Court appeal concerns the procedural question of bias against the accused by the potential jurors. Thus, the case may also be categorized as "court" because it affects court procedure with respect to the selection of a jury. The potential bias against

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[149] R. v. Williams [1998] 1 S.C.R. 1128.

the accused revolves around challenges under sections 7, 11(d) and 15(1) of the *Charter*. The accused in Williams is an aboriginal. Please note that in Appendix 3:13 the case is not categorized as "aboriginal" because the *Charter* (or constitutional) challenge aspects of the case deal with other concerns.

Appendix 4:13 demonstrates that the majority of the cases in which intervenors appeared before the Supreme Court are constitutional. A total of 36 of the 83 cases under review, or 43.4%, were constitutional in nature, and of these 36 cases, 31 of the cases concerned *Charter* issues. Clearly, *Charter* cases dominate the field of cases attracting intervenor involvement.

There is a fairly even distribution across the other categories. A further 17 of the cases under review, or 20.5%, were criminal in nature, while 13 of the cases under review, or 15.7%, concerned the operation of the courts. Only 8 of the cases under review, or 9.6%, concerned aboriginal issues.

A comparison of Appendix 4:13 with the data from Appendix 4:11 shows an obvious correlation. The intervenors defined as aboriginal groups intervened in the cases concerning aboriginal issues. Government intervenors tend to be the parties most interested in administrative issues. Public interest intervenors are concerned with cases revolving around both criminal issues and constitutional issues.

8. THE SUBSTANCE OF THE COURT RULINGS

8.1 Hypothesis #5

The degree of intervenor influence on the substance of Court rulings is minimal.

Hypothesis #5 offers the contention that the degree of intervenor influence on the substance of court rulings is minimal. The data taken as a whole support this contention. The data indicates an ever decreasing spiral of influence. Of the 253 cases decided during the 1997-1999 Supreme Court terms, intervenors participated in 83 cases. Of these 83 cases, intervenors were mentioned in only 37 cases. In the 83 cases with intervenors, a total of 376 intervenors participated. The 37 cases in which intervenors were mentioned involved 198 intervenors. Only 58 intervenors were specifically mentioned by name.

Lastly, it must be remembered that Supreme Court decisions are lengthy documents. A mention by an intervenor, even a specific mention by name, may occur in only one paragraph within the decision. Taken as a whole, this leads to the conclusion that the influence of intervenors is very limited.

Schedule A to this thesis is a compilation of the references extracted from the Supreme Court cases examined. This Schedule demonstrates the brevity of the mentions within the decisions.

9. SUMMARY OF THE RESULTS

The increase in the presence of intervenors, undoubtedly aided by the gradual loosening of both the mechanisms for and the attitude toward Applications to Intervene, has made it easier for intervenors to present their views and concerns to the Supreme Court. These statistics alone, however, do not demonstrate the impact the intervenor may have on the decision. A much better measure is an analysis of the decisions themselves to see exactly how the intervenors are mentioned within the decisions, if they are mentioned at all.

The examination presented in this thesis goes beyond the more superficial examination of the number of intervenors making appearances before the Supreme Court. The examination presented in this thesis goes beyond an examination of the increase in the number of intervenors. This thesis focuses on the heart of a Supreme Court case, the written decision itself, and scans the decision for a mention of an intervenor. The written decision is the precedent setting mechanism by which a case is remembered. It is the contention of this thesis that the mere presence of an intervenor at a hearing before the Supreme Court has no lasting impact unless the arguments of the intervenors are mentioned within the body of the decision itself.

Chapter Five concludes this thesis by summarizing the data results and examining the success of the hypothesis offered in Chapter One.

APPENDIX 4:1

INTERVENOR APPEARANCES, 1997-1999

YEAR	TOTAL NO. OF CASES	TOTAL NO. OF CASES WITH INTERVENORS	TOTAL NO. OF INTERVENORS
1997	111	27	131
1998	90	29	122
1999	52	27	123
1997-99	253	83	376

APPENDIX 4:2

INTERVENORS BY CATEGORY AND NUMBER OF APPEARANCES

INTERVENOR	CATEGORY OF INTERVENOR	NUMBER OF APPEARANCES
*A.G. Canada	Government	33
*A.G. Alta.	Government	23
*A.G. B.C.	Government	14
*A.G. Man.	Government	12
*A.G. N.B.	Government	02
*A.G. N.S.	Government	04
*A.G. Nfld.	Government	01
*A.G. Ont.	Government	20
*A.G. P.E.I.	Government	01
*A.G. Que.	Government	24
*A.G. Sask.	Government	09
*Comm'er of the Northwest Territories as represented by the Attorney General of the Northwest Territories	Government	01
*Gov't of Yukon	Government	01
*Aboriginal Legal Services of Toronto Inc.	Aboriginal Org'zn	03
*African Canadian Legal Clinic	Public Interest Org'zn	02
*Afro-Canadian Caucus of Nova Scotia	Public Interest Org'zn	01
*Alberta and Northwest Conference of the United Church of Canada	Public Interest Org'zn	01

*Alberta Barley Commission	Government	01
*Alberta Civil Liberties Association	Public Interest Org'zn	01
*Alberta Federation of Women United for Families	Public Interest Org'zn	01
*Alberta Provincial Judges' Association	Public Interest Org'zn	03
*Alcan Aluminum Ltd.	Corporation	01
*Alliance for Life	Public Interest Org'zn	01
*Association des Centres jeunesse du Quebec	Public Interest Org'zn	01
*Association des juristes d'expression francaise de l'Ontario	Public Interest Org'zn	01
*Association des juristes d'expression francaise du Manitoba	Public Interest Org'zn	01
*Association quebecoise des avocats et avocats de la defense	Public Interest Org'zn	01
*B.C. Cattlemen's Assoc'n et al	Public Interest Org'zn	01
*B.C. Gas Utility Ltd.	Corporation	01
*B.C. Tel	Corporation	01
*British Columbia Civil Liberties Association	Public Interest Org'zn	01
*British Columbia Human Rights Comm.	Public Interest Org'zn	01
*Canadian Abortion Rights Action League	Public Interest Org'zn	02
*Canadian AIDS [Aids] Society	Public Interest Org'zn	03
*Canadian Association for Community Living	Public Interest Org'zn	01

*Canadian Association of the Deaf	Public Interest Org'zn	01
*Canadian Association of Provincial Court Judges	Public Interest Org'zn	04
*Canadian Association of Statutory Human Rights Agencies (CASHRA)	Public Interest Org'zn	01
*Canadian Bankers' Association	Public Interest Org'zn	01
*Canadian Bar Association	Public Interest Org'zn	05
*Canadian Bar Association - Alberta Branch	Public Interest Org'zn	01
*Canadian Broadcasting Corporation	Government	01
*Canadian Centre for Philanthropy	Public Interest Org'zn	01
*Canadian Civil Liberties Association	Public Interest Org'zn	06
*Canadian Conference of Catholic Bishops	Public Interest Org'zn	02
*Canadian Council of Churches	Public Interest Org'zn	01
*Canadian Council for Refugees	Public Interest Org'zn	03
*Canadian Environmental Law Ass'n	Public Interest Org'zn	01
*Canadian Ethnocultural Council	Public Interest Org'zn	01
*Canadian Foundation for Children, Youth and the Law	Public Interest Org'zn	02

*Canadian Hearing Society	Public Interest Org'zn	01
*Canadian Hemophilia Society	Public Interest Org'zn	01
*Canadian Hemophiliacs Infected with HIV	Public Interest Org'zn	01
*Canadian HIV/AIDS Legal Network	Public Interest Org'zn	01
*Canadian Human Rights Commission	Government	01
*Canadian Institute of Chartered Accountants	Public Interest Org'zn	01
*Canadian Jewish Congress	Public Interest Org'zn	02
*Canadian Labour Congress	Trade Union	05
*Canadian Manufacturers' Ass'n	Public Interest Org'zn	01
*Canadian Mental Health Association	Public Interest Org'zn	04
*Canadian Police Association	Public Interest Org'zn	02
*Catholic Group for Health, Justice and Life	Public Interest Org'zn	02
*Centre for Research Action on Race Relations	Public Interest Org'zn	01
*Charter Committee on Poverty Issues	Public Interest Org'zn	03
*Child Solicitor	Government	01
*Christian Legal Fellowship	Public Interest Org'zn	01
*Christian Medical and Dental Society	Public Interest Org'zn	01
*Coalition of B.C. Businesses	Public Interest Org'zn	01
*Commission de la sante et de la securite du travail	Government	01

*Commission des droits de la personne et des droits de la jeunesse	Government	01
*Commissioner of Official Languages	Government	01
*Confederation des organismes de personnes handicapees du Quebec	Public Interest Org'zn	01
*Conference des juges du Quebec	Public Interest Org'zn	04
*Congress of Aboriginal Peoples	Aboriginal Org'zn	01
*Congress of Black Women of Canada	Public Interest Org'zn	01
*Confederation of National Trade Unions	Public Interest Org'zn	01
*Council of Canadians	Public Interest Org'zn	01
*Council of Canadians with Disabilities	Public Interest Org'zn	02
*Cree Regional Authority	Aboriginal Org'zn	01
*Criminal Lawyers' Association (Ontario)	Public Interest Org'zn	02
*Defence for Children International - Canada	Public Interest Org'zn	01
*Disabled Women's Network Canada (DAWN)	Public Interest Org'zn	04
*Down Syndrome Association of Ontario	Public Interest Org'zn	01
*Easter Seal Society	Public Interest Org'zn	01
*Equality for Gays and Lesbians Everywhere (EGALE)	Public Interest Org'zn	02
*Evangelical Fellowship of Canada	Public Interest Org'zn	04

*Federal Superann's National Association	Public Interest Org'zn	02
*Federation of Law Societies of Canada	Public Interest Org'zn	03
*First Nations Summit	Aboriginal Org'zn	01
*Focus on the Family (Canada) Association	Public Interest Org'zn	02
*Foundation for Equal Families	Public Interest Org'zn	02
*General Synod of the Anglican Church of Canada	Public Interest Org'zn	01
*Grand Council of the Crees (Eeyou Estchee)	Aboriginal Org'zn	01
*Great Lakes United (Canada)	Public Interest Org'zn	01
*Greater Vancouver Crime Stoppers Association	Public Interest Org'zn	01
*Greater Vancouver Sewerage and Drainage District	Public Interest Org'zn	01
*Hepatitis C Group of Transfusion Recipients & Hemophiliacs	Public Interest Org'zn	01
*Hepatitis C Survivors' Society	Public Interest Org'zn	01
*HIV-T Group (Blood Transfused)	Public Interest Org'zn	01
*IPSCO Inc.	Corporation	01
*Islamic Society of North America	Public Interest Org'zn	01
*Janet Conners (Infected Spouses & Children) Association	Public Interest Org'zn	01
*Kenneth Samuel Cromie on behalf of the Queen Street Patients' Council	Public Interest Org'zn	02

*Law Union of Ontario	Public Interest Org'zn	01
*League for Human Rights of B'Nai Brith Canada	Public Interest Org'zn	01
*Learning Disabilities Association of Ontario	Public Interest Org'zn	01
*Lesser Slave Lake Indian Regional Council	Aboriginal Org'zn	01
*Manitoba Association of Rights and Liberties Inc.	Public Interest Org'zn	01
*Metis Women of Manitoba Inc.	Aboriginal Org'zn	01
*Minority Advocacy and Rights Council	Public Interest Org'zn	01
*Musqueam Nation et al	Aboriginal Org'zn	01
*National Association of Women and the Law	Public Interest Org'zn	01
*National Organization of Immigrant and Visible Minority Women of Canada	Public Interest Org'zn	01
*Native Women's Association of Canada	Aboriginal Org'zn	01
*Native Women's Transition Centre Inc.	Aboriginal Org'zn	01
*Ontario Council of Sikhs	Public Interest Org'zn	01
*Ontario Human Rights Commission	Public Interest Org'zn	01
*Ontario Public School Boards' Association	Government	01
*Ontario Teachers' Federation	Trade Union	01
*People First of Canada	Public Interest Org'zn	01

*Pepsi-Cola Canada Beverages (West) Ltd.	Corporation	02
*Persons with AIDS Society of British Columbia	Public Interest Org'zn	01
*Pollution Probe	Public Interest Org'zn	01
*Privacy Commissioner of Canada	Government	01
*Pro-Crane Inc.	Corporation	01
*Public Service Alliance of Canada	Trade Union	02
*REAL Women of Canada	Public Interest Org'zn	01
*Retail Council of Canada	Public Interest Org'zn	02
*Sask. Power Corporation	Corporation	01
*Sask. Provincial Court Judges Association	Public Interest Org'zn	04
*Seventh-day Adventist Church in Canada	Public Interest Org'zn	01
*Sexual Assault Crisis Centre of Edmonton	Public Interest Org'zn	01
*Sierra Legal Defence Fund (Society)	Public Interest Org'zn	02
*Skeena Cellulose Inc.	Corporation	01
*Societe des alcools du Quebec	Government	01
*Societe pour vaincre la pollution inc.	Public Interest Org'zn	01
*Southam Inc.	Corporation	01
*Southeast Child and Family Services	Public Interest Org'zn	01
*T-COR	Public Interest Org'zn	01
*Toronto and Central Ontario Regional Hemophilia Society	Public Interest Org'zn	01

*Union of British Columbia Indian Chiefs	Aboriginal Org'zn	01
*United Church of Canada	Public Interest Org'zn	02
*United Native Nations Society of B.C.	Aboriginal Org'zn	01
*Urban Alliance on Race Relations (Justice)	Public Interest Org'zn	01
*Watch Tower Bible and Tract Society of Canada	Public Interest Org'zn	01
*Westbank First Nation	Aboriginal Org'zn	01
*West Region Child and Family Services	Government	01
*Westray Families	Public Interest Org'zn	01
*Women's Legal Education and Action Fund (LEAF)	Public Interest Org'zn	08
*Women's Health Clinic Inc.	Public Interest Org'zn	01
*Workers' Compensation Board of Alberta	Government	01
*Wunnumin Lake First Nation	Aboriginal Org'zn	02

*William Richard Blackwater et al	Individual	01
*Casper Bloom	Individual	01
*Martin Boodman	Individual	01
*John E. C. Brierley	Individual	01
*Barry Caldwell	Individual	01
*Matthew Coon Come	Individual	01
*Sheila Fullowka	Individual	01
*Allan R. Hilton	Individual	01
*Doreen Shauna Hourie	Individual	01
*Nicholas Kasirer	Individual	01
*Samuel McNab	Individual	01
*Bill Namagoose	Individual	01
*Tracey Neill	Individual	01
*Violet Pachanos	Individual	01
*Judit Pandev	Individual	01
*Glen Pelletier	Individual	01
*Ella May Carol Riggs	Individual	01
*Danielle M. St-Aubin	Individual	01
*Doreen Vodnoski	Individual	01
*Kevin George Wainwright	Individual	02

APPENDIX 4:3

MOST FREQUENT INTERVENORS

NAME OF INTERVENOR	CATEGORY OF INTERVENOR	NO. OF APPEARANCES
A.G. of Canada	Government	33
A.G. Quebec	Government	24
A.G. Alberta	Government	23
A.G. Ontario	Government	20
A.G. British Columbia	Government	14
A.G. Manitoba	Government	12
A.G. Saskatchewan	Government	09
Can. Civil Liberties Assoc.	Public Interest	06
Can. Bar Association	Public Interest	05
Can. Labour Congress	Trade Union	05
A.G. Nova Scotia	Government	04
Can. Assoc. of Provincial Court Judges	Public Interest	04
Can. Mental Health Assoc.	Public Interest	04

NAME OF INTERVENOR	CATEGORY OF INTERVENOR	NO. OF APPEARANCES
Conference des juges du Quebec	Public Interest	04
Disabled Women's Network Canada (DAWN)	Public Interest	04
Evangelical Fellowship of Canada	Public Interest	04
Saskatchewan Provincial Judges Association	Public Interest	04
Women's Legal Education and Action Fund (LEAF)	Public Interest	04

APPENDIX 4:4

COMPARISON OF CATEGORY OF INTERVENOR

CATEGORY OF INTERVENOR	NO. OF INTERVENORS	NO. OF INTERVENTIONS	NAME OF INTERVENOR
Government	25	157	*Alberta Barley Commission *A.G. Alberta *A.G. British Columbia *A.G. Canada *A.G. Manitoba *A.G. New Brunswick *A.G. Nova Scotia *A.G. Newfoundland *A.G. Ontario *A.G. Prince Edward Island *A.G. Quebec *A.G. Saskatchewan *Commissioner of the NWT as rep. by the A.G. NWT *Canadian Broadcasting Corporation *Canadian Human Rights Commission *Child Solicitor *Commission de la sante et de la securite du travail *Commission des droits de la personne et des droits de la jeunesse *Commissioner of Official Languages

			*Government of the Yukon *Ontario Public School Boards' Association *Privacy Commissioner of Canada *Societe des alcools du Quebec *West Region Child and Family Services *Workers' Compensation Board of Alberta
Trade Union	03	08	*Can. Labour Congress *Ont. Teachers' Federation *Public Service Alliance of Canada
Aboriginal Organization	13	17	*Aboriginal Legal Services of Toronto Inc. *Congress of Aboriginal Peoples *Cree Regional Authority *Grand Council of the Crees (Eeyou Estchee) *Lesser Slave Lake Indian Regional Council *Metis Women of Manitoba Inc. *Musqueam Nation et al *Native Women's Association of Canada *Native Women's Transition Centre Inc. *Union of British Columbia Indian Chiefs *United Native Nations Society of B.C. *Westbank First Nation *Wunnumin Lake First Nation

Corporation	09	10	*Alcan Aluminium Ltd. *B.C. Gas Utility Ltd. *B.C. Tel *IPSCO Inc. *Pepsi-Cola Canada Beverages (West) Ltd. *Pro-Crane Inc. *Sask. Power Corporation *Skeena Cellulose Inc. *Southam Inc.
Public Interest Organization	101	162	*African-Canadian Legal Clinic *Afro-Canadian Caucus of Nova Scotia *Alberta and Northwest Conference of the United Church of Canada *Alberta Civil Liberties Association *Alberta Federation of Women United for Families *Alberta Provincial Judges' Association *Alliance for Life *Association des Centres jeunesse du Quebec *Association des juristes d'expression francaise de l'Ontario *Association des juristes d'expression francaise du Manitoba *Association quebecoise des avocats et avocats de la defense *B.C. Cattlemen's Association et al

			*British Columbia Civil Liberties Association *British Columbia Human Rights Commission *Canadian Abortion Rights Action League *Canadian AIDS Society *Canadian Association for Community Living *Canadian Association of the Deaf *Canadian Association of Provincial Court Judges *Canadian Association of Statutory Human Rights Agencies (CASHRA) *Canadian Bankers' Association *Canadian Bar Association *Canadian Bar Association - Alberta Branch *Canadian Centre for Philanthropy *Canadian Civil Liberties Association *Canadian Conference of Catholic Bishops *Canadian Council of Churches *Canadian Council for Refugees *Canadian Environmental Law Association *Canadian Ethnocultural Council *Canadian Foundation for Children, Youth and the Law *Canadian Hearing Society

			*Canadian Hemophilia Society *Canadian Hemophiliacs Infected with HIV *Canadian HIV/AIDS Legal Network *Canadian Institute of Chartered Accountants *Canadian Jewish Congress *Canadian Manufacturers' Association *Canadian Mental health Association *Canadian Police Association *Catholic Group for Health, Justice and Life *Centre for Research Action on Race Relations *Charter Committee on Poverty Issues *Christian Legal Fellowship *Christian Medical and Dental Society *Coalition of B.C. Businesses *Confederation des organismes de personnes *Conference des juges du Quebec *Congress of Black Women of Canada *Confederation of National Trade Unions *Council of Canadians *Council of Canadians with Disabilities *Criminal Lawyers' Association (Ontario)

			*Defence for Children International - Canada *Disabled Women's Network Canada (DAWN) *Down Syndrome Association of Ontario *Easter Seal Society *Equality for Gays and Lesbians Everywhere (EGALE) *Evangelical Fellowship of Canada *Federal Superannuates National Association *Federation of Law Societies of Canada *Focus on the Family (Canada) Association *Foundation for Equal Families *General Synod of the Anglican Church of Canada *Great Lakes United (Canada) *Greater Vancouver Crime Stoppers Association *Greater Vancouver Sewerage and Drainage District *Hepatitis C Group of Transfusion Recipients & Hemophiliacs *Hepatitis C Survivors' Society *HIV-T Group (Blood (Transfused) *Islamic Society of North America

			*Janet Conners (Infected Spouses & Children) Association *Kenneth Samuel Cromie on behalf of the Queen Street Patients' Council *Law Union of Ontario *League for Human Rights of B'Nai Brith Canada *Learning Disabilities Association of Ontario *Manitoba Association of Rights and Liberties Inc. *Minority Advocacy and Rights Council *National Association of Women and the Law *National Organization of Immigrant and Visible Minority Women of Canada *Ontario Council of Sikhs *Ontario Human Rights Commission *People First of Canada *Persons with AIDS Society of British Columbia *Pollution Probe *REAL Women of Canada *Retail Council of Canada *Sask. Provincial Court Judges Association *Seventh-day Adventist Church in Canada *Sexual Assault Crisis Centre of Edmonton *Sierra Legal Defence Fund (Society)

			*Societe pour vaincre la pollution inc. *Southeast Child and Family Services *T-COR *Toronto and Central Ontario Regional Hemophilia Society *United Church of Canada *Urban Alliance on Race Relations (Justice) *Watch Tower Bible and Tract Society of Canada *Westray Families *Women's Legal Education and Action Fund (LEAF) *Women's Health Clinic Inc.

APPENDIX 4:5

INTERVENOR APPEARANCES INCLUDING MENTIONS OF INTERVENORS

YEAR	TOTAL NO. OF CASES	TOTAL NO. OF CASES WITH INTERVENORS	TOTAL CASES W/ MENTIONS OF INTERVENORS
1997	111	27	9
1998	90	29	16
1999	52	27	12
1997-99	253	83	37

APPENDIX 4:6

PERCENTAGE EXAMINATION OF INTERVENOR APPEARANCES

YEAR	TOTAL NO. OF CASES	TOTAL NO. OF CASES WITH INTERVENORS (and showing the percentage with respect to the total no. of cases)	TOTAL NO. OF MENTIONS OF INTERVENORS (and showing the percentage with respect to the total no. of cases with intervenors)
1997	111	27 (24.3%)	9(33.3%)
1998	90	29 (32.2%)	16(55.2%)
1999	52	27 (51.9%)	12(44.4%)
1997-99	253	83 (32.8%)	37(44.6%)

APPENDIX 4:7

EXAMINATION OF THE 1997-1999 CASES WITH INTERVENORS FOR A MENTION OF AN INTERVENOR

NAME OF CASE	NO. OF INTERVENORS	MENTION OF INTERVENOR
1997, VOLUME 1		
Eaton v. Brant County Board of Education	12	-
R. v. Leipert	01	-
Benner v. Canada (Secretary of State)	01	X
R. v. Stillman	11	-
Germain v. Montreal (City)	01	-
1997, VOLUME 2		
Opetchesaht Indian Band v. Canada	04	X
Hercules Management Ltd. v. Ernst & Young	01	X
Dagg v. Canada (Minister of Finance)	02	X
Air Canada v. Ontario (Liquor Control Board)	05	-
St. Mary's Indian Band v. Cranbrook (City)	01	-
St. Mary's Indian Band v. Cranbrook (City)	01	-

R. v. Cogger	01	-
Dore v. Verdun (City)	06	-
Pasiechnyk v. Saskatchewan (Workers' Compensation Board)	11	-
1997, VOLUME 3		
Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)	16	X
R. v. Skalbania	04	-
S. (L.) v. S. (C.)	01	-
R. v. Feeney	01	-
Delgamuukw v. British Columbia	06	-
Ref. Re Remuneration of Judges of the Prov. Court of P.E.I.; etc.	11	X
R. v. Hydro-Quebec	07	X
Eldridge v. British Columbia (Attorney General)	10	-
Benner v. Canada (Secretary of State)	01	-
Canada (Minister of Citizenship and Immigration) v. Tobiass	01	-
R. v. S. (R.D.)	05	X
Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)	09	X

1998, VOLUME 1		
R. v. Williams	06	X
Pushpanathan v. Canada (Minister of Citizenship and Immigration)	01	-
Union of New Brunswick Indians v. New Brunswick (Minister of Finance)	09	X
Vriend v. Alberta	17	X
Thomson Newspapers Co. v. Canada (Attorney General)	02	X
Schreiber v. Canada (Attorney General)	01	-
Pushpanathan v. Canada (Minister of Citizenship and Immigration)	01	-
Canada (Human Rights Commission) v. Canadian Liberty Net	02	X
Aubry v. Editions Vice-Versa inc.	01	X
R. v. Lucas	04	X
J.M. Asbestos Inc. v. Commission d'appel en matiere de lesions professionnelles	02	-
Westcoast Energy Inc. v. Canada (National Energy Board)	03	X
Giffen (Re)	03	X
Ref. Re Remuneration of Judges of Prov. Court of PEI; etc.	11	X
R. v. Caslake	06	X

1998, VOLUME 2		
R. v. Wells	04	-
Ref. Re Remuneration of Judges of Prov. Court of PEI; etc.	11	-
New Brunswick (Minister of Health and Community Services) v. L. (M.)	01	-
R. v. Hodgson	04	X
Eurig Estate (RE)	03	-
R. v. W. (D.D.)	05	-
R. v. Cook	01	X
Continental Bank Leasing Corp. v. Canada	01	-
R. v. Cuerrier	05	X
1998, VOLUME 3		
Ordon Estate v. Grail	01	-
R. v. Arp	03	X
R. v. Rose	04	X
Consortium Developments (Clearwater) Ltd. v. Sarnia (City)	01	-
Canadian Egg Marketing Agency v. Richardson	09	-
1999, VOLUME 1		
CanadianOxy Chemicals Ltd. v. Canada (Attorney General)	01	X
R. v. Beaulac	05	X

R. v. Gladue	03	-
R. v. Sundown	03	-
Smith v. Jones	01	-
R. v. Godoy	01	-
R. v. Ewanchuk	04	-
Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.	04	X
Del Zotto v. Canada	03	-
1999, VOLUME 2		
R. v. Stone	03	X
U.F.C.W., Local 1518 v. KMart Canada Ltd.	06	X
Delisle v. Canada (Deputy Attorney General)	04	-
Bese v. British Columbia (Forensic Psychiatric Institute)	05	-
Allsco Building Products Ltd. v. U.F.C.W., Local 1288P	07	X
Orlowski v. British Columbia (Forensic Psychiatric Institute)	04	-
R. v. Campbell	09	X
Baker v. Canada (Minister of Citizenship and Immigration)	05	X
Corbiere v. Canada (Minister of Indian and Northern Affairs)	05	X

Jacobi v. Griffiths	02	-
Bazley v. Curry	09	-
Winko v. British Columbia (Forensic Psychiatric Institute)	06	-
R. v. LePage	04	-
Dobson (Litigation Guardian of) v. Dobson	03	X
M. v. H.	10	X
1999, VOLUME 3		
Westbank First Nation v. British Columbia Hydro and Power Authority	03	X
New Brunswick (Minister of Health and Community Services) v. G.(J.)	04	-
British Columbia (Public Service Employee Relations Commission) v. BCGSEU	09	-

APPENDIX 4:8

COMPARISON OF CASES CATEGORIZED BY NUMBER OF INTERVENORS FOR MENTION OF AN INTERVENOR

NUMBER OF INTERVENORS	FREQUENCY	INTERVENOR(S) MENTIONED	
		YES	NO
1 intervenor	23	05	18
2-4 intervenors	27	14	13
5-9 intervenors	22	13	09
10+ intervenors	10	05	05

APPENDIX 4:9

EXAMINATION OF INTERVENOR CASES FOR JUSTICES WRITING DECISION

CASE NAME (listed by year and volume)	NUMBER OF INTERVENORS	JUDGE WRITING DECISION
1997, VOLUME 1		
Benner v. Canada	1	Iacobucci
1997, VOLUME 2		
Opetchesaht Indian Band v. Canada	4	Major McLachlin
Hercules Management Ltd. v. Ernst & Young	1	LaForest
Dagg v. Canada	2	LaForest
1997, VOLUME 3		
Winnipeg Child and Family Services v. D.F.G.	16	Major
Ref. re Remuneration of Judges of the Prov. Crt. of P.E.I; etc.	11	Lamer
R. v. Hydro-Quebec	7	Lamer LaForest
R. v. R.D.S.	5	Cory

Canada (A.G.) v. Canada (Commission of Inquiry on the Blood System in Canada	9	Cory
1998, VOLUME 1		
R. v. Williams	6	McLachlin
Union of New Brunswick Indians v. New Brunswick	9	McLachlin
Vriend v. Alberta	17	Cory Iacobucci
Thomson Newspapers Company Limited v. A.G. Canada	2	Gonthier
Canada (Human Rights Commission) v. Canadian Liberty Net	2	Bastarache
Aubry v. Editions Vice-Versa	1	Lamer
R. v. Lucas	4	Cory
Westcoast Energy Inc. v. Canada	3	Iacobucci
Giffen (Re)	3	Iacobucci
Ref. re Remuneration of Judges of the Prov. Crt. Of P.E.I.	11	Lamer
R. v. Caslake	6	Lamer
1998, VOLUME 2		
R. v. Hodgson	4	Cory
R. v. Cook	1	Cory Bastarache

R. v. Cuerrier	5	McLachlin Cory
1998, VOLUME 3		
R. v. Arp	3	Cory
R. v. Rose	4	Binnie Cory
1999, VOLUME 1		
CanadianOxy Chemicals Ltd. v. Canada	1	Major
R. v. Beaulac	5	Bastarache
Vancouver Society of Immigrant and Visible Minority Women v. Canada	4	Gonthier Iacobucci
1999, VOLUME 2		
R. v. Stone	3	Binnie Bastarache
U.F.C.W. Local 1518 v. KMart Canada Ltd.	6	Cory
Allsco Building Products Ltd. v. U.F.C.W. 1288P	7	Iacobucci
R. v. Campbell	9	The Court
Baker v. Canada	5	L'Heureux-Dubé
Corbiere v. Canada	5	L'Heureux-Dubé
Dobson v. Dobson	3	Cory
M. v. H.	10	Cory Iacobucci

1999, VOLUME 3 Westbank First Nation v. B.C. Hydro and Power Authority	3	Gonthier

APPENDIX 4:10

COMPARISON OF INTERVENOR CASES FOR INTERVENOR MENTIONED BY NAME AND THE JUSTICE WRITING THE DECISION

CASE NAME (listed by year and volume)	NUMBER OF INTERVENORS	NUMBER OF INTERVENORS MENTIONED BY NAME	JUDGE WRITING DECISION
1997, VOLUME 1			
Benner v. Canada	1	1	Iacobucci
1997, VOLUME 2			
Opetchesaht Indian Band v. Canada	4	4*	Major*(3) McLachlin(4)
Hercules Management Ltd. v. Ernst & Young	1	0	
Dagg v. Canada	2	1	LaForest(1)
1997, VOLUME 3			
Winnipeg Child and Family Services v. D.F.G.	16	2	Major
Ref. re Remuneration of Judges of the Prov. Crt. of P.E.I; etc.	11	1	Lamer
R. v. Hydro-Quebec	7	5**	Lamer(4)** LaForest(5)**
R. v. R.D.S.	5	3***	Cory***

Canada (A.G.) v. Canada (Commission of Inquiry on the Blood System in Canada	9	1	Cory
1998, VOLUME 1			
R. v. Williams	6	1	McLachlin
Union of New Brunswick Indians v. New Brunswick	9	1	McLachlin
Vriend v. Alberta	17	1	Iacobucci
Thomson Newspapers Company Limited v. A.G. Canada	2	1	Gonthier
Canada (Human Rights Commission) v. Canadian Liberty Net	2	1	Bastarache
Aubry v. Editions Vice-Versa	1	1	Lamer
R. v. Lucas	4	1	Cory
Westcoast Energy Inc. v. Canada	3	3	Iacobucci
Giffen (Re)	3	1	Iacobucci
Ref. re Remuneration of Judges of the Prov. Crt. Of P.E.I.	11	3	Lamer
R. v. Caslake	6	6****	Lamer****
1998, VOLUME 2			
R. v. Hodgson	4	1	Cory

R. v. Cook	1	1~	Cory~ Bastarache~
R. v. Cuerrier	5	0	
1998, VOLUME 3			
R. v. Arp	3	1	Cory
R. v. Rose	4	2	Binnie
1999, VOLUME 1			
CanadianOxy Chemicals Ltd. v. Canada	1	1	Major
R. v. Beaulac	5	1	Bastarache
Vancouver Society of Immigrant and Visible Minority Women v. Canada	4	4	Gonthier (1) Iacobucci (3)
1999, VOLUME 2			
R. v. Stone	3	3~~	Binnie~~ Bastarache~~
U.F.C.W. Local 1518 v. KMart Canada Ltd.	6	1	Cory
Allsco Building Products Ltd. v. U.F.C.W. 1288P	7	1	Iacobucci
R. v. Campbell	9	0	
Baker v. Canada	5	0	
Corbiere v. Canada	5	2	L'Heureux-Dubé(2)
Dobson v. Dobson	3	0	
M. v. H.	10	1	Cory~~~ Iacobucci~~~

1999, VOLUME 3 Westbank First Nation v. B.C. Hydro and Power Authority	3	1	Gonthier

KEY:

* the reporting Justices mentioned "B.C. Tel et al" which encompassed three intervenors

** each Justice mentioned the intervenors "Pollution Probe et al" which encompassed four intervenors

*** the Justice mentioned "the intervener African Canadian Legal Clinic et al" which encompassed three intervenors

**** the Justice refers to the intervenors as "the interveners (all provincial attorneys general)"

~ the Justices each mentioned the same intervenor

~~ each Justice mentioned "the Attorneys General" who intervened

~~~ the Justices each mentioned the same intervenor
~~~

APPENDIX 4:11

COMPARISON OF INTERVENOR CASES FOR INTERVENOR MENTIONED BY NAME LISTING THE INTERVENOR AND THE CATEGORY OF THE INTERVENOR

CASE NAME (listed by year and volume)	NUMBER OF INTERVENORS	NUMBER OF INTERVENORS MENTIONED BY NAME	NAME OF INTERVENOR (Category of the Intervenor)
1997, VOLUME 1			
Benner v. Canada	1	1	Fed. Superann. (Public Interest)
1997, VOLUME 2			
Opetchesaht Indian Band v. Canada	4	4*	B.C. Tel (Corp.) B.C. Gas (Corp.) Greater Vancouv. Sewerage (Corp.) Union of B.C. Indian Chiefs (Aboriginal)
Hercules Management Ltd. v. Ernst & Young	1	0	
Dagg v. Canada	2	1	PSAC (Union)
1997, VOLUME 3			
Winnipeg Child and Family Services v. D.F.G.	16	2	Southeast Child (Government) W. Region Child (Government)

Ref. re Remuneration of Judges of the Prov. Crt. of P.E.I; etc.	11	1	Alta. Prov. Judges Assoc. (Public Interest)
R. v. Hydro-Quebec	7	5**	Pollution Probe (Public Interest) Great Lakes United (Public Interest) Can. Envir. Law (Public Interest) Sierra Legal Defence (Public Interest) A.G. Sask. (Gov.)
R. v. R.D.S.	5	3***	African-Can. Legal Clinic (Public Interest) Afro-Can. Caucus (Public Interest) Congress of Black Women (Public Interest)
Canada (A.G.) v. Canada (Commission of Inquiry on the Blood System in Canada	9	1	Can. Hemophil. Society (Public Interest)
1998, VOLUME 1			
R. v. Williams	6	1	Crim. Lawyers (Ont.) (Public Interest)

Union of New Brunswick Indians v. New Brunswick	9	1	A.G. Man. (Gov.)
Vriend v. Alberta	17	1	Can. Jewish Congress (Public Interest)
Thomson Newspapers Company Limited v. A.G. Canada	2	1	CCLA (Public Interest)
Canada (Human Rights Commission) v. Canadian Liberty Net	2	1	A.G. Can. (Gov.)
Aubry v. Editions Vice-Versa	1	1	CBC (Gov.)
R. v. Lucas	4	1	A.G. Ont. (Gov.)
Westcoast Energy Inc. v. Canada	3	3	A.G.Alta. (Gov.) A.G.N.S. (Gov.) A.G.Sask. (Gov.)
Giffen (Re)	3	1	A.G.B.C. (Gov.)
Ref. re Remuneration of Judges of the Prov. Crt. Of P.E.I.	11	3	A.G.Alta. (Gov.) A.G.Man. (Gov.) A.G.P.E.I. (Gov.)
R. v. Caslake	6	6****	A.G.Ont. (Gov.) A.G.Que. (Gov.) A.G.N.S. (Gov.) A.G.N.B. (Gov.) A.G.B.C. (Gov.) A.G.B.C. (Gov.)

1998, VOLUME 2			
R. v. Hodgson	4	1	A.G.Can. (Gov.)
R. v. Cook	1	1~	A.G.Can. (Gov.)
R. v. Cuerrier	5	0	
1998, VOLUME 3			
R. v. Arp	3	1	A.G.Ont. (Gov.)
R. v. Rose	4	2	A.G.B.C. (Gov.) A.G.Can. (Gov.)
1999, VOLUME 1			
CanadianOxy Chemicals Ltd. v. Canada	1	1	A.G.Ont. (Gov.)
R. v. Beaulac	5	1	A.G.Can. (Gov.)
Vancouver Society of Immigrant and Visible Minority Women v. Canada	4	4	Can. Centre for Philanthropy (Public Interest) Min. Advocacy & Rights Council (Public Interest) Can. Ethno. Council (Public Interest) Centre for Research Action on Race (Public Interest)
1999, VOLUME 2			
R. v. Stone	3	3~~	A.G.Can. (Gov.) A.G.Ont. (Gov.) A.G.Alta. (Gov.)

U.F.C.W. Local 1518 v. KMart Canada Ltd.	6	1	A.G.B.C. (Gov.)
Allsco Building Products Ltd. v. U.F.C.W. 1288P	7	1	A.G.N.B. (Gov.)
R. v. Campbell	9	0	
Baker v. Canada	5	0	
Corbiere v. Canada	5	2	Lesser Slave Lake (Aboriginal) Native Women's Ass. (Aboriginal)
Dobson v. Dobson	3	0	
M. v. H.	10	1	EGALE (Public Interest)
1999, VOLUME 3			
Westbank First Nation v. B.C. Hydro and Power Authority	3	1	A.G.B.C. (Gov.)

KEY:

* the reporting Justices mentioned "B.C. Tel et al" which encompassed three intervenors

** each Justice mentioned the intervenors "Pollution Probe et al" which encompassed four intervenors

*** the Justice mentioned "the intervener African Canadian Legal Clinic et al" which encompassed three intervenors

**** the Justice refers to the intervenors as "the interveners (all provincial attorneys general)"

~ the Justices each mentioned the same intervenor

~~ each Justice mentioned "the Attorneys General" who intervened

~~~ the Justices each mentioned the same intervenor
~~~

APPENDIX 4:12

EXAMINATION OF THE 1997-1999 INTERVENOR CASES FOR A LINK BETWEEN AN INTERVENOR AND THE APPELLANT OR RESPONDENT

CASE NAME (listed by year and volume)	NUMBER OF INTERVENORS	INTERVENORS LINKED TO APPELLANT OR RESPONDENT	JUDGE WRITING DECISION
1997, VOLUME 1			
Benner v. Canada	1	-	
1997, VOLUME 2			
Opetchesaht Indian Band v. Canada	4	-	
Hercules Management Ltd. v. Ernst & Young	1	x	LaForest
Dagg v. Canada	2	x	LaForest
1997, VOLUME 3			
Winnipeg Child and Family Services v. D.F.G.	16	-	
Ref. re Remuneration of Judges of the Prov. Crt. of P.E.I; etc.	11	-	
R. v. Hydro-Quebec	7	-	

R. v. R.D.S.	5	x	Cory
Canada (A.G.) v. Canada (Commission of Inquiry on the Blood System in Canada	9	-	
1998, VOLUME 1			
R. v. Williams	6	-	
Union of New Brunswick Indians v. New Brunswick	9	-	
Vriend v. Alberta	17	x	Cory
Thomson Newspapers Company Limited v. A.G. Canada	2	x	Gonthier
Canada (Human Rights Commission) v. Canadian Liberty Net	2	-	
Aubry v. Editions Vice-Versa	1	-	
R. v. Lucas	4	-	
Westcoast Energy Inc. v. Canada	3	-	
Giffen (Re)	3	-	
Ref. re Remuneration of Judges of the Prov. Crt. Of P.E.I.	11	-	
R. v. Caslake	6	x	Lamer

1998, VOLUME 2			
R. v. Hodgson	4	-	
R. v. Cook	1	-	
R. v. Cuerrier	5	-	
1998, VOLUME 3			
R. v. Arp	3	-	
R. v. Rose	4	-	
1999, VOLUME 1			
CanadianOxy Chemicals Ltd. v. Canada	1	-	
R. v. Beaulac	5	-	
Vancouver Society of Immigrant and Visible Minority Women v. Canada	4	x	Gonthier
1999, VOLUME 2			
R. v. Stone	3	x	Binnie Bastarache
U.F.C.W. Local 1518 v. KMart Canada Ltd.	6	x	Cory
Allsco Building Products Ltd. v. U.F.C.W. 1288P	7	-	
R. v. Campbell	9	-	
Baker v. Canada	5	x	L'Heureux-Dubé
Corbiere v. Canada	5	x	L'Heureux-Dubé

Dobson v. Dobson	3	x	Cory
M. v. H.	10	-	
1999, VOLUME 3			
Westbank First Nation v. B.C. Hydro and Power Authority	3	-	

APPENDIX 4:13

COMPARISON OF 1997-1999 INTERVENOR CASES BY CATEGORY OF CASE TYPE

NAME OF CASE	CATEGORY OF CASE TYPE								
	CN[1]	CR	AD	CT	AB	CV	FM	TX	OTHER
1997, VOLUME 1									
Eaton v. Brant County Board of Education	X								
R. v. Leipert		X							
Benner v. Canada (Secretary of State)	X								
R. v. Stillman	X	X							
Germain v. Montreal (City)	X								municipal
1997, VOLUME 2									
Opetchesaht Indian Band v. Canada					X				
Hercules Management Ltd. v. Ernst & Young									negligence
Dagg v. Canada (Minister of Finance)									access to info.
Air Canada v. Ontario (Liquor Control Board)									air law
St. Mary's Indian Band v. Cranbrook (City)					X				
St. Mary's Indian Band v. Cranbrook (City)					X				costs

R. v. Cogger		X							
Dore v. Verdun (City)									municipal interpretation Quebec Civil Code
Pasiechnyk v. Saskatchewan (Workers' Compensation Board)			X						
1997, VOLUME 3									
Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)				X					
R. v. Skalbania	X	X							
S. (L.) v. S. (C.)							X		
R. v. Feeney									Judgments and Orders
Delgamuukw v. British Columbia	X			X	X				
Ref. Re Remuneration of Judges of the Prov. Court of P.E.I.; etc.	X			X					
R. v. Hydro-Quebec	X								
Eldridge v. British Columbia (Attorney General)	X								
Benner v. Canada (Secretary of State)									Judgments and Orders

Canada (Minister of Citizenship and Immigration) v. Tobiass				X						
R. v. S. (R.D.)				X						
Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)			X							Public Inquiry
1998, VOLUME 1										
R. v. Williams		X								
Pushpanathan v. Canada (Minister of Citizenship and Immigration)			X							Immigration
Union of New Brunswick Indians v. New Brunswick (Minister of Finance)					X					
Vriend v. Alberta	X									
Thomson Newspapers Co. v. Canada (Attorney General)	X									
Schreiber v. Canada (Attorney General)	X									
Pushpanathan v. Canada (Minister of Citizenship and Immigration)										Judgments and Orders
Canada (Human Rights Commission) v. Canadian Liberty Net				X						

Aubry v. Editions Vice-Versa inc.	X							Civil Liberty
R. v. Lucas	X	X						
J.M. Asbestos Inc. v. Commission d'appel en matiere de lesions professionnelles			X					
Westcoast Energy Inc. v. Canada (National Energy Board)	X							
Giffen (Re)								Bankruptcy & Insolvency
Ref. Re Remuneration of Judges of Prov. Court of PEI; etc.				X				
R. v. Caslake	X							
1998, VOLUME 2								
R. v. Wells	X							
Ref. Re Remuneration of Judges of Prov. Court of PEI; etc.								Judgments and Orders
New Brunswick (Minister of Health and Community Services) v. L. (M.)							X	
R. v. Hodgson		X						Evidence
Eurig Estate (RE)	X							Estates
R. v. W. (D.D.)		X						
R. v. Cook	X							Evidence

Continental Bank Leasing Corp. v. Canada								X	
R. v. Cuerrier		X							
1998, VOLUME 3									
Ordon Estate v. Grail									Municipal
R. v. Arp	X	X							Evidence
R. v. Rose	X			X					
Consortium Developments (Clearwater) Ltd. v. Sarnia (City)	X								
Canadian Egg Marketing Agency v. Richardson	X								Practice
1999, VOLUME 1									
CanadianOxy Chemicals Ltd. v. Canada (Attorney General)		X							
R. v. Beaulac		X							
R. v. Gladue		X							
R. v. Sundown					X				
Smith v. Jones				X					Privilege
R. v. Godoy		X							
R. v. Ewanchuk		X							
Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.	X							X	
Del Zotto v. Canada	X							X	

1999, VOLUME 2										
R. v. Stone		X		X						Sentencing
U.F.C.W., Local 1518 v. KMart Canada Ltd.	X									Labour
Delisle v. Canada (Deputy Attorney General)	X									
Bese v. British Columbia Forensic Psychiatric Institute)	X									
Allsco Building Products Ltd. v. U.F.C.W., Local 1288P										Labour
Orlowski v. British Columbia (Forensic Psychiatric Institute)	X									
R. v. Campbell	X			X						
Baker v. Canada (Minister of Citizenship and Immigration)			X	X						Immigration
Corbiere v. Canada (Minister of Indian and Northern Affairs)	X				X					
Jacobi v. Griffiths										Torts Employment
Bazley v. Curry										Torts Employment
Winko v. British Columbia (Forensic Psychiatric Institute)	X									
R. v. LePage	X									
Dobson (Litigation Guardian of) v. Dobson										Torts
M. v. H.	X						X			

1999, VOLUME 3 Westbank First Nation v. British Columbia Hydro and Power Authority	X				X				
New Brunswick (Minister of Health and Community Services) v. G.(J.)	X						X		
British Columbia (Public Service Employee Relations Commission) v. BCGSEU									Human Rights Code

KEY:

CN: constitutional law
CR: criminal law
AD: administrative law
CT: court practice
AB: aboriginal/indian law
CV: civil law
FM: family law
TX: taxation law
OTHER: other areas of law

CHAPTER FIVE

CONCLUSIONS

1. OVERVIEW

This thesis begins with the contention that the previous examinations of the presence of intervenors before the Supreme Court of Canada are superficial and do not really capture whether an intervenor's argument, or even presence, has an influence on the top Court. It is contended that a more accurate measure of the influence of an intervenor's appearance before the Supreme Court is a mention of that intervenor in the written decisions of the jurists.

The thesis first looked at the 253 decisions written by members of the Supreme Court from 1997 through 1999. These cases were examined for the presence of one or more intervenors, this information being readily available in the heading of each case. 83 cases involved one or more intervenors during this period. These 83 decisions were the basis of this study and from this bank of decisions, such things as the number of intervenors, the category of intervenor, the category of case type and the number of appearances by each intervenor could be gleaned. Lastly, the cases were scanned for mentions of the intervenors in the written decisions. The cases were scanned for any mention of an intervenor, whether the intervenor was mentioned by its specific name or just referred to as "an intervenor", whether the intervenor's argument was linked to

an argument put forth by the appellant or respondent, and which Justice of the Supreme Court was the writer of the decision.

2. THE PURPOSE OF THIS THESIS

The political science research to date acknowledges the presence of intervenors in Supreme Court cases. For example, Lavine charted the success of applications for leave to intervene from 1987-1991; Brodie examined interventions from 1984-1993; and Monahan charted the 1999 constitutional cases before the Supreme Court. Morton and Knopff demonstrate a great belief in the value of the presence of intervenors. It is my contention, however, that the literature fails to demonstrate that the value of the input of intervenors has been fully appreciated by the Court.

The most telling gap in the political science literature lay not in a question unanswered but in a method not yet applied to the bank of Supreme Court cases in existence. This thesis attempts to fill this gap by looking at Supreme Court cases in a new way.

Scanning the cases provided more than superficial information for analysis. The cases were scanned for the manner in which intervenors were mentioned within the decisions, if an intervenor was mentioned at all. The written decisions represent the precedents that will affect the legal system in the future.

The existing political science research fails to do more than record the increase of intervenors before the Supreme Court, and in my opinion, overstates the influence of intervenors due to their increased presence. This research does more than merely count the number of intervenors to intervene in a case. This research more closely examines the decisions for themselves to see whether intervenors are mentioned in the decisions, and if so, how the intervenors are mentioned. It is a basic contention of this thesis that the mention of an intervenor within a decision is an indicator of the influence of the intervenor on the decision rendered.

This is not to say that an intervenor appearing before the Supreme Court who is not mentioned within the decision had no influence over the Justice writing the decision. It may very well be that the Justice was influenced by either the factum of the intervenor or by the intervenor's oral argument. However, the influence of the intervenor may not have warranted a mention within the written decision of the Supreme Court jurists. Scanning for a mention of an intervenor is a direct way to measure the influence of the intervenor. Therefore, it is reasonable to treat the mention of an intervenor in a written decision as a proxy for the influence of the intervenor.

Scanning for a mention of an intervenor is a limited method. It does not capture influence that is not recognized by a Justice within his or her written decision and thus it would tend to understate the influence of intervenors. There might also be reasons why a Justice does not want to mention an intervenor

specifically. Interviewing the members of the Supreme Court certainly might uncover the various factors which influence their decisions, including the arguments of intervenors, but garnering the consent of the Justices' for interviews might be impossible.

On a case by case basis, the facta of the parties appearing before the Court, including the facta of the intervenors, might be analysed. The decisions of the Court could then be carefully reviewed in order to correlate the source of the information or arguments accepted. A small number of important cases could be chosen for this comparison. This method would uncover influence not captured by the scanning method I utilized.

3. OBSERVATIONS EXTRAPOLATED FROM THE CASES SCANNED

Chapter Four presented an analysis of the Supreme Court decisions from 1997-1999 and presented the following observations:

1. An intervenor is present in approximately one-third of the cases.
2. There are on average four to five intervenors per cases in which there is an intervention.
3. There is a forty-three percent chance that the intervenor will be a public interest advocate.
4. There is a forty-two percent chance that the intervenor will be a

government intervenor.

5. There is a sixty percent chance that the government intervenor will be either the Attorney General of Canada, the Attorney General of Quebec, the Attorney General for Alberta or the Attorney General for Ontario.

6. There is a fifteen percent chance that the intervenor will represent a trade union, a corporation, an aboriginal group or be an individual.

7. There is only a two percent chance that the intervenor would be the Canadian Civil Liberties Association, the most frequent public interest intervenor.

8. 18 intervenors account for 35% of the total interventions (see Appendix 4:1 and Appendix 4:3 - 183 of the 375 total appearances).

9. Intervenors are mentioned in over forty percent of the cases in which intervenors are present (see Appendix 4:6).

10. There is a greater than fifty percent chance that at least one of the intervenors will be mentioned in a decision if that intervenor is one of 2 to 9 intervenors appearing before the Supreme Court on the matter at hand. If there are 10 or more intervenors present, there is a fifty percent chance that at least one intervenor will be mentioned. If there is only one intervenor, there is only a 20 percent chance the intervenor will be mentioned (see Appendix 4:7).

11. Mr. Justice Cory was the Justice most likely to mention an intervenor.

12. Mr. Justice Cory was also most likely to mention an intervenor by name.

13. Madame Justice L'Heureux-Dubé was least likely to mention an

intervenor in her written decision.

14. When an intervenor is mentioned in the decision, the intervenor's argument is linked to an argument put forth by the appellant or the respondent approximately one-third of the time.

15. Cases which contain a constitutional argument comprise over forty percent of the cases involving intervenors. Of these cases, eighty-six percent are likely to involve a *Charter* argument.

These observations serve a two-fold purpose: one, the observations set the stage for the scanning method undertaken in this research (for example, observations #1 through #9); and two, the observations present information from which some general conclusions can be drawn (for example, observations #10 through #14). It must be remembered, however, that these observations concern cases scanned over a three year period, namely 1997-1999, and thus are only indicative of what may continue to be observed.

4. REVISITING THE HYPOTHESES

In Chapter One the following hypotheses were offered:

1. There is a correlation between the presence of one or more intervenors in a case and the likelihood that an intervenor will be mentioned in the case.

2. There is a correlation between the number of intervenors in a case and

the likelihood of at least one intervenor being mentioned in a decision.

3. Government agencies and Attorneys General are more likely to be mentioned in a decision than interest group intervenors.

4. Intervenors who present the same argument as the appellant or the respondent are more likely to be mentioned in a decision.

5. The degree of intervenor influence on the substance of court rulings is minimal.

The various examinations of the data from 1997-1999 show that intervenors only appear in about one-third of the cases before the Supreme Court (that is, 83 of the 253 cases); if there is one or more intervenor present, there is a 44% chance that at least one intervenor will be mentioned somewhere in the decision. In the 37 cases from the 253 cases examined, in which a total of 198 intervenors appeared before the Supreme Court, only 58 intervenors were mentioned specifically by name.

4.1 Hypothesis #1

Hypothesis #1, which states that there is a correlation between the presence of one or more intervenors in a case and the likelihood that an intervenor will be mentioned, has not been conclusively proved. Rather, the data from Appendix 4:5 and Appendix 4:6 show there is a moderate correlation between the presence of an intervenor and the mention of an intervenor in a

decision. Hypothesis #1 has been proved to show a moderate correlation.

4.2 Hypothesis #2

Hypothesis #2 proposes that there is a correlation between the number of intervenors in a case and the likelihood of at least one intervenor being mentioned in a decision. In Appendix 4:8, the cases are broken into four categories: one, cases with one intervenor present; two, cases with 2 to 4 intervenors present; three, cases with 5 to 9 intervenors present; and four, cases with 10 or more intervenors present. The data revealed an unexpected result: both a low number of intervenors present (one intervenor) and a multitude of intervenors present (ten or more) result in a low likelihood of an intervenor being mentioned in a decision.

Intervenors are less likely to mentioned when they are the only intervenor in a case (approximately a 20% chance). When there are more than 10 intervenors, there is a fifty-fifty chance that at least one intervenor will be mentioned. However, when there are between 2 and 9 intervenors, there is a better than fifty percent chance that at least one intervenor will be mentioned in the decision.

Hypothesis #2 has proved an asymmetric correlation between the number of intervenors in a case and the likelihood of at least one intervenor being mentioned in a decision. The correlation is asymmetric in that the correlation

occurs in the middle of the data stream but the correlation does not occur at the two extremes (that is, when there is one intervenor present and when there are ten or more intervenors present).

4.3 Hypothesis #3

Appendix 4:11 lists each of the 37 cases in which an intervenor is mentioned and compares the number of intervenors per case, the number of intervenors mentioned by name in the case and both the name of the intervenor and the category of intervenor.

Appendix 4:11 shows that in the 37 cases with mentions of intervenors, 58 intervenors were mentioned by name. This is despite the fact that in 5 of the 37 cases, there was no mention of an intervenor by name. There were a total of 199 intervenors appearing in these 37 cases. In 28 of the 37 cases, not all of the intervenors were mentioned where there were multiple intervenors.

Government intervenors were mentioned by name 33 times, which is fifty-six percent of the time. Public Interest intervenors are mentioned by name 18 times, which is thirty-one percent of the time. Thus, Hypothesis #3 is proved valid.

4.4 Hypothesis #4

Hypothesis #4 states that intervenors who present the same argument as the appellant or the respondent are more likely to be mentioned in a decision. The data from Appendix 4:12 shows that in nearly one-third of the 37 cases with a mention of an intervenor, there is a link to either the argument put forth by the appellant or respondent made by the Justice writing the decision. Once again, Mr. Justice Cory, who mentioned intervenors in his decisions more frequently than any other Justice, linked the intervenor to the appellant or respondent.

There is a moderate correlation with respect to hypothesis #4.

4.5 Hypothesis #5

Hypothesis #5 contends that the degree of intervenor influence on the substance of court rulings is minimal. The data supports this contention. There is an ever decreasing spiral of influence. 253 cases were decided during the 1997-1999 Supreme Court terms and intervenors participated in 83 of these cases. Intervenors were mentioned in only 37 cases. A total of 376 intervenors participated in these cases. There were 198 intervenors involved in the 37 cases in which intervenors were mentioned. However, only 58 intervenors were specifically mentioned by name. Taken step by step, it can be seen that the field of intervenors in a position of influence is steadily narrowed.

The transformation of the function of the Court from an adjudicative nature to a more oracular nature demands that the Court canvass many sources for their opinions and observations. This provides a new opportunity for intervenors to influence the Court. As the various studies by Welch, Lavine, Bryden, Brodie and Monahan indicate, intervenors have anticipated this new opportunity. The increased presence of intervenors at the top court shows their desire to participate in this new process. The interpretation of the *Charter,* especially section 1 arguments, may have lasting implications for Canadians which go beyond the concerns of the originating parties in an action. Through the interpretation of the *Charter*, the Court has assumed a *de facto* policy-making power.

It is my belief that the influence of intervenors can only increase. The influence of intervenors, although a difficult concept to assess, is a continuing concern for political science research. Legislators have seen an erosion of their policy-making power as a result of the implications of the *Charter*'s interpretation. Not only has policy-making power fallen to non-elected judges, but the non-elected judges are influenced by public interest groups pursuing their own agendas. It is important to observe the influence of intervenors on the Court because the Court has assumed this policy-making role.

Hypothesis #5 has important implications for intervenors. As has been previously stated, the scanning method I utilized will understate the influence of intervenors because aspects of the influence of intervenors may not be captured

within the written decisions of the Court. Regardless, hypothesis #5 shows a step by step decrease in the mention of intervenors, and this is a noteworthy part of the story of the influence of intervenors.

5. FINAL THOUGHTS

Scanning of Supreme Court decisions for more accurate information concerning the influence of intervenors on decisions has yielded interesting results. This method provides more than superficial numbers. However, this method will tend to understate the influence of intervenors because it fails to capture influence not specifically referred to by the Court. Scanning the decisions themselves for mentions of intervenors is only a new piece of the puzzle with respect to the influence of intervenors on the Supreme Court.

The hypotheses offered at the beginning of this thesis anticipated correlation between the increased presence of intervenors and an increase in intervenor impact on the decisions. The data showed a moderate correlation for each hypothesis.

Scanning Supreme Court decisions is a reproducible method for political science research. It is a method that can continue to be utilized with future Supreme Court decisions, which will add to the field of data from which conclusions can be drawn. However, it is a method that might best be utilized along with a case by case analysis of facta and decisions which would pick up

on influence not captured by scanning.

SCHEDULE A

CASES SCANNED FOR MENTIONS OF INTERVENORS

1997, VOLUME 1

43 cases
5 cases with intervenors
I mention of intervenors

Benner v. Canada (Secretary of State)

107 paragraphs

"As **the intervener, Federal Superannuates National Association, pointed out**..."
par.75 (Iacobucci J. for the Court)

1997, VOLUME 2

35 cases
9 cases with intervenors
3 mentions of intervenors

Opetchesaht Indian Band v. Canada

100 paragraphs

"In addition to the issues of the validity of the permit, the appellants at the hearing brought a motion to strike certain portions of the **factum of the interveners B.C. Tel et al**. I would allow the motion in part, striking out the last sentence of paragraph 24 of the factum only. The balance of the unproven factual assertions made by **these interveners** in their factum are issues better left to the trial judge is the matter goes to trial."
par. 58 (Major J. writing for the majority)

"I note finally that the construction of s. 28(2) which I suggest flows from a contextual reading of the Act is supported by **the intervener, The Union of British Columbia Indian Chiefs**. Despite the fact that this construction limits the power of the Chiefs and councils, **the Union argues** that s. 28(2) should be construed to allow only short-term, temporary and non-permanent use of reserve

land which is consented to by a band council, and can be reviewed by a subsequent band council at the conclusion of the permitted duration. Section 28(2) should not, **it argues**, allow long-term use of reserve lands without the consent of band members. **The Union advocates** an interpretation which confirms the authority of band members to collectively decide the long-term use of reserve lands, rather than one that grants to band councils the ability to enlarge or reduce the collective interest."

par. 96 (McLachlin J. writing in dissent)

"I agree with Major J. that the final sentence of paragraph 24 of **the factum of the interveners B.C. Tel et al**. should be struck."

par. 100 (McLachlin J. writing in dissent)

Hercules Management Ltd. v. Ernst & Young

65 paragraphs

"All the participants in this appeal -- **the appellants, the respondents, and the intervener** -- raised the issue of whether the appellants' claim in respect of the losses they suffered in their existing shareholdings...ought to have been brought as a derivative action..."

par. 58 (La Forest J. for the Court)

Dagg v. Canada (Minister of Finance)

117 paragraphs

"**The appellant and his supporting intervener** contend that the information about hours of work relates to employees' position or function. Such information, **they assert**, reveals that it is a requirement of their positions that they work overtime or on weekends."

par. 91 (La Forest J. in dissent)

"**The intervener PSAC argues**, however, that there are compelling policy reasons for disclosure in this case. **In its view**, the disclosure of employment-related information is designed, in part, to ensure that the operation of the Access to Information Act and Privacy Act is consistent with the collective bargaining regime. The disclosure of the information requested by the appellant, **it submits**, would facilitate bargaining agents in exercising their rights and ensure that the public is able to determine whether public servants are appropriately compensated for their work."

par. 98 (La Forest J. in dissent)

1997, VOLUME 3

33 cases
13 cases with intervenors
5 mentions of intervenors

Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)

142 paragraphs

"**Several of the interveners submitted material** on the prevalence of mental and physical disabilities in children as a result of substance abuse by their mothers while pregnant. Some of this evidence focused on the "crisis situation" in many aboriginal communities."

par. 88 (Major J. in dissent)

"**The interveners Southeast Child and Family Services and West Region Child and Family Services** are aboriginal child and family service agencies responsible for delivering services to 18 First nation communities in Manitoba. **These parties intervened, in part, to urge** upon this Court the creation of a legal remedy to use in their fight against FAS/FAE. **These interveners submitted** that such a remedy would be consistent with the aboriginal world view, and that the common law should be expanded to help alleviate what is particularly an aboriginal problem."

par. 88 (Major J. in dissent)

NOTE: FAS/FAE fetal alcohol syndrome/ fetal alcohol effects

" Opposition to this intervention [the remedy of confinement] has been strenuously argued by the respondent **and her supporting interveners**."

par. 124 (Major J. in dissent)

Ref. Re Remuneration of Judges of the Prov. Court of P.E.I.; Ref. Re Independence and Impartiality of Judges of the Prov. Court of P.E.I.

375 paragraphs

"**The intervener Alberta Provincial Judges' Association** raises a different issue -- the pension scheme for Alberta Provincial Court judges. **Its submissions** are somewhat unclear, but in the end, appear to assert that numerous changes to the operation of the pension plan demonstrate the "financial vulnerability of the judiciary". However, this analysis relies entirely on extrinsic evidence which was not accepted by this Court. "

par. 223 (Lamer C.J. for the majority)

R. v. Hydro-Quebec

161 paragraphs

"**The interveners Pollution Probe et al. submit**, in the alternative, that ss. 34 and 35 of the Act as well as the Interim order can be sustained as an exercise of the federal trade and commerce power under s.91(2) of the Constitution Act, 1867. More specifically, **they argue** that the "general trade and commerce power" recognized in General Motors of Canada Ltd. v. City National Leasing, [1989] 1 S.C.R. 641, can justify the federal regulations, which are aimed at controlling the use and release of toxic substances in the course of commercial activities."

par. 80 (Lamer C.J. and Iacobucci J., dissenting)

"**Pollution Probe et al refer** to Laskin C.J.'s comments in Wetmore....These comments, **they argue**, should similarly apply to those parts of the Interim order..."

par. 81 (Lamer C.J. and Iacobucci J., dissenting)

"We reject these submissions for two main reasons...**The interveners Pollution Probe et al.** seem to recognize this insofar as **they submit** that the trade and commerce power merely provides "supplemental authority" for upholding the Interim Order and the enabling provisions."

par. 82 (Lamer C.J. and Iacobucci J., dissenting)

"For these reasons, we cannot agree with **the interveners' submission** that the impugned legislation can be justified as an exercise of the federal trade and commerce power."

par. 83 (Lamer C.J. and Iacobucci J., dissenting)

"The attack on the validity of the provisions under the latter power is also supported, most explicitly by **the intervener the Attorney General for Saskatchewan**, on the ground that they are, in essence, of a regulatory and not of a prohibitory character. Finally, I repeat that while the Interim Order precipitated the litigation, there is no doubt that the respondent and mis en cause **as well as their supporting interveners** are after bigger game -- the enabling provisions."

par. 108 (La Forest J. for the majority)

"**Counsel for the interveners, Pollution Probe et al.**, **informed** us that of the over 21,000 registered substances in commercial use in Canada...only 44 have been placed on the Priority Substances List and scientifically assessed under the Act...Of these, only 25 were found to be toxic within the meaning of s.11...and of these only a few have been the subject of a regulation under s.34..."

par. 147 (La Forest J. for the majority)

"I should perhaps note here that it is wholly appropriate to have recourse to extrinsic material of the kind just referred to as well as of the type already referred to in considering the constitutional validity of legislation, especially when one is dealing with colourability, as is the case here."

par. 148 (La Forest J. for the majority)

R. v. S. (R.D.)

60 paragraphs

"Before dealing with the issue of apprehended bias, it is necessary to address an **argument raised by the appellant and the interveners African-Canadian Legal Clinic et al.** They stressed that this appeal turns entirely on findings of credibility...it is a well-established principle of law that appellate courts should defer to **appellant and the interveners argued** such findings, and that Glube C.J.S.C. improperly reviewed Judge Sparks' findings of credibility. In my view, these submissions are not entirely correct."

par. 98 (Cory J., majority decision but his reasons with Iacobucci J. only)

"**One of the interveners did argue** that the principles of judicial notice apply in this case. However, *since the appellant did not put forward this position*, it would be inappropriate to consider the question as to whether the existence of anti-black racism in society is a proper subject for judicial notice."

par. 122 (Cory J., majority decision but his reasons with Iacobucci J. only)

Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)

76 paragraphs

"The **position of the intervener the Canadian Hemophilia Society** is both illuminating and helpful on this point. Like the appellants, **the Society** received a notice of a potential finding of misconduct. **The Society** was a party to the Inquiry, and accepted and adapted to the same procedures as the appellants. However, unlike the appellants, **it** continues to support the Commissioner's right to make findings of misconduct. **The Society** submitted and confirmed that the practices and procedures adopted at the Inquiry were, in light of its mandate, fair and appropriate. As well, **it emphasized that it knew** from the outset of the Inquiry that there was a risk that the Commissioner would make findings of misconduct against the group **as a result of its involvement** in the Canadian blood system."

par. 66 (Cory J. for the Court)

1998, VOLUME 1

57 cases
15 cases with intervenors
11 mentions of intervenors

R. v. Williams

60 paragraphs

"The appellant appears to accept the standard of widespread racial prejudice in the community. **Interveners, however, urge** a lower standard. **One suggestion** is that all aboriginal accused should have the right to challenge for cause. **Another** is that any accused who is a member of a disadvantaged group under s.15 of the Charter should have the right to challenge for cause. **Also possible** is a rule which permits challenge for cause whenever there is bias against the accused's race in the community, even if that bias is not general or widespread."

par. 40 (McLachlin J. for the Court)

"**The Criminal Lawyers' Association (Ontario), an intervener, advised** that in those cases where the matter arises, an average of 35-45 minutes is consumed. The **Attorney General for Ontario** did not contradict this statement and supports the appellant's position."

par. 55 (McLachlin J. for the Court)

Union of New Brunswick Indians v. New Brunswick (Minister of Finance)

80 paragraphs

"For example, **the intervener, the Attorney General of Manitoba, asserted** that almost all Manitoba reserves contain some retail business."

par. 44 (McLachlin J. for the majority)

Vriend v. Alberta

202 paragraphs

"It was **submitted by the appellants and several of the interveners** that the purpose of the Alberta Government in excluding sexual orientation was itself discriminatory."

par. 92 (Cory J. writing on behalf of himself and Iacobucci J., for the majority)

"Indeed, as **noted by the intervener Canadian Jewish Congress**, if reading in is always deemed an inappropriate remedy where a government has expressly chosen a course of action, this amounts to the suggestion that whenever a government violates a Charter right, it ought to do so in a deliberate manner so as to avoid the remedy of reading in."

par. 168 (Iacobucci J. writing on behalf of himself and Cory J., for the majority)

Thomson Newspapers Co. v. Canada (Attorney General)

131 paragraphs

"The **position of the appellants and the intervener Canadian Civil Liberties Association** regarding free expression in democracy is couched on the rationale that truth emerges through vigorous debate and more publication of polls. My colleague [Bastarache J., who writes for the majority] adopts this view,

at para. 108..."
par. 28 (Gonthier J., on behalf of Lamer C.J. and L'Heureux-Dubé, dissenting)

Canada (Human Rights Commission) v. Canadian Liberty Net

74 paragraphs

"The **intervener Attorney General of Canada advocated** a relatively flexible and fluid approach to determining whether jurisdiction should be implied from the provisions of federal legislation, **and suggested** that the Human Rights Act contained such an implied jurisdiction."
par. 15 (Bastarache J., on behalf of L'Heureux-Dubé and Gonthier, for the majority)

"...The **Attorney General cited** two cases..."
par. 16 (Bastarache J., on behalf of L'Heureux-Dubé and Gonthier, for the majority)

Aubry v. Editions Vice-Versa inc.

82 paragraphs

"To a great extent, the oral arguments of the parties in this Court concerned the scope of the right to one's image and the limits imposed on it by the freedom of expression of a photographer and that of a publishing company. To this effect, the **intervener Canadian Broadcasting Corporation relied** on this Court's freedom of expression jurisprudence to challenge the scope of a person's right to his or her image. The important role played by freedom of expression in our society was **raised**."
par. 2 (Lamer, C.J., dissenting)

R. v. Lucas

131 paragraphs

"**Counsel for the Attorney General of Ontario argued forcefully** that defamatory libel is not worthy of constitutional protection. This submission cannot be accepted. It runs contrary to the long line of decisions, beginning with Irwin Toy, supra, which have held that freedom of expression should be given a

broad and purposive interpretation."
par. 25 (Cory J., writing for the majority)

Westcoast Energy Inc. v. Canada (National Energy Board)

170 paragraphs

"BC Gas appealed and was supported by the respondent, the Attorney General of British Columbia. **The interveners, the Attorneys General of Alberta, Nova Scotia and Saskatchewan**, also appeared in its support."
Headnote

"The appellant, BC Gas, appealed from the decision of the Federal Court of Appeal to this Court. The respondent, the Attorney General of British Columbia, and **the interveners, the Attorneys General of Alberta, Nova Scotia and Saskatchewan**, **appeared in support** of the appellant."
par. 6 (Iacobucci and Major JJ. for the majority)

"The intervener, the Attorney General of Nova Scotia, puts forth the argument that in reaching its decision, the Federal Court of Appeal failed to accord due deference to the findings of fact made by the majority of the Board on the Fort St. John application."
Par. 36 (Iacobucci and Major JJ. for the majority)

"**The thrust of the argument** is that by criticizing the way in which the Board reached its conclusion as to the character of the activities in question, the court improperly rejected this "finding of fact". As the Board is an expert tribunal, **the argument goes**, the standard of review applied to findings within its expertise ought to be patent unreasonableness, or at least reasonableness *simpliciter*...For several reasons, we are unable to agree,"
par. 37 (Iacobucci and Major JJ. for the majority)

"BC Gas and the Attorneys General of British Columbia **and for Alberta relied** on comments by La Forest J., writing for himself, L'Heureux-Dube and Gonthier JJ., in Ontario Hydro, supra...."
par. 83 (Iacobucci and Major JJ. for the majority)

Giffen (Re)

74 paragraphs

"...The lessor appealed to the Court of Appeal for British Columbia; **the Attorney General of British Columbia was granted leave to intervene** as party respondent in the appeal."
par. 7 (Iacobucci J. for the Court)

"Finding it unnecessary to address the other issues raised by the lessor or deal with the constitutional questions raised by **the Attorney General**, Finch J.A. allowed the appeal and directed that the proceeds be paid to the lessor."
par. 22 (Iacobucci J. for the Court)

** *these references are with respect to the court chronology of the case*

Ref. Re Remuneration of Judges of Prov. Court of PEI; Ref. Re Independence & Impartiality of Judges of Prov. Court of PEI; R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Prov. Judges Assn. v. Manitoba (Min. of Justice)

21 paragraphs (REHEARING)

"**The Attorneys General of Alberta, Manitoba and Prince Edward Island** have returned to this Court primarily **to request declarations** deeming past decisions of provincial court judges in those provinces to be valid."
par. 3 (Lamer C.J. for the Court)

"**The Attorneys General of all three provinces** have returned to this Court primarily **to seek additional remedies** to ensure that the Provincial Court Judges Case does not have the effect of opening every decision made by their provincial courts to a s. 11(d) challenge. **All three provinces** have requested declarations deeming past acts and decisions of the members of their provincial courts to be valid, despite the courts' lack of independence."
par. 4 (Lamer C.J. for the Court)

"Therefore, the doctrine of necessity applies, rendering these decisions valid, and there is no need to grant the declaratory relief sought by **the Attorneys General of Alberta, Manitoba and Prince Edward island**."
par. 8 (Lamer C.J. for the Court)

"In addition to requesting a declaration validating past Provincial Court decisions, **the Attorney General for Alberta sought** two additional orders on

this hearing...[neither of which was granted]"
par. 13 (Lamer C.J. for the Court)

"**The Attorneys General of Alberta and Prince Edward Island, as well as several of the interveners, have asked for a further remedy** to ensure that courts that are not currently independent can continue to function while governments are going through the judicial remuneration review process required by this Court's September 18, 1997 judgement."
par. 17 (Lamer C.J. for the Court)

"The Court will remain seized of this matter until the end of the suspension period, and the parties or **any intervener may apply** to the Court for further directions as needed during the suspension."
par.21 (Lamer C.J. for the Court)

R. v. Caslake

50 paragraphs

"The respondent and **the interveners (all provincial attorneys general) have argued** that even if the search was not properly authorized by search incident to arrest, there ought to be an "inventory search exception" to s. 8, for the protection of the accused's belongings...In my view, this is not an appropriate case to decide this question.."
par. 30 (Lamer C.J. for the majority)

1998, VOLUME 2

17 cases
9 cases with intervenors
3 mentions of intervenors

R. v. Hodgson

115 paragraphs

"As **the intervener the Attorney General of Canada observed**, the person in authority requirement has evolved in a manner that avoids a formalistic or legalistic approach to the interactions between ordinary citizens."
par. 36 (Cory J. writing for himself, Lamer C.J., Gonthier, McLachlin,

Iacobucci, Major and Binnie JJ.)

R. v. Cook

153 paragraphs

"**The Attorney General of Canada intervened** in these proceedings, in part, **to warn the Court** about the possible consequences of applying the Charter to the actions of Canadian authorities on foreign territory. **The intervener first submits** that the application of the Charter in this case will ultimately confer on every person in the world, who is in some respect implicated in the exercise of Canadian governmental authority abroad, those Canadian Charter rights which are attributed to "everyone" (ss. 2 (fundamental freedoms); 7 (life, liberty and security of the person); 8 (search or seizure); 9 (detention or imprisonment); 10 (rights upon arrest or detention); and 12 (treatment or punishment). **The intervener further submits** that extending the Charter to the actions of Canadian police officers when they travel abroad on a criminal investigation will seriously impair Canada's ability to conduct or participate in international criminal investigations."

par. 52 (Cory and Iacobucci JJ. for themselves, Major and Binnie, in the majority)

"We are not persuaded by **the intervener's submissions**."

par. 53 (Cory and Iacobucci JJ. for themselves, Major and Binnie, in the majority)

"**Several policy arguments** were presented to the Court by **the intervener Attorney General of Canada** which merit attention."

par. 149 (Bastarache J., for himself and Gonthier, in the majority)

"Second, **it was argued** [by the intervener the Attorney General of Canada] that the application of the Charter to Canadian officials abroad would lead to an unmanageable complexity in knowing the rules by which they are bound. This argument is unconvincing."

par. 150 (Bastarache J., for himself and Gonthier, in the majority)

R. v. Cuerrier

148 paragraphs

"**Public health workers [interveners?] argue** that encouraging people to come forward for testing and treatment is the key to preventing the spread of HIV and similar diseases, and that broad criminal sanctions are unlikely to be effective...**The material before the Court suggests** that a blanket duty to disclose may drive those with the disease underground."

par. 55 (McLachlin J. for herself and Gonthier, in the majority)

"**These considerations suggest** that the broad changes to the criminal law proposed by L'Heureux-Dube J. and Cory J. will have complex ramifications. Parliament is better equipped than the courts to foresee the ramifications of such sweeping changes and make the necessary value choices."

par. 56 (McLachlin J. for herself and Gonthier, in the majority)

"**Interveners submitted** that the criminal law is not the most effective tool for dealing with HIV transmission. **They argued** that public health initiatives are more appropriately employed to control the spread of HIV and AIDS. **They submitted** that provinces have established a wide network of testing, education, counselling and support services for people infected by HIV/AIDS. Additionally, **it was argued** that all Canadian provinces have in place comprehensive public health legislation which gives public health authorities broad powers which can be exercised for the protection of public health."

par. 140 (Cory J., for himself, Major, Bastarache and Binnie, in the majority)

"**It was forcefully contended [by the interveners?]** that these endeavours may well prove more effective in controlling the disease than any criminal sanctions which can be devised."

par. 141 (Cory J., for himself, Major, Bastarache and Binnie, in the majority)

"**One of the arguments put forward [by an intervener?]** against criminalization was that it will deter those in high-risk groups or marginalized communities from seeking testing. I cannot accept this argument."

par. 143 (Cory J., for himself, Major, Bastarache and Binnie, in the majority)

"**It was also argued [by an intervener?]** that criminalizing non-disclosure of HIV status will undermine the educational message that all are responsible for protecting themselves against HIV infection. Yet this argument can have little

weight."
par. 144 (Cory J., for himself, Major, Bastarache and Binnie, in the majority)

"**It was also contended [by an intervener?]** that criminalization would further stigmatize all persons with HIV/AIDS."
par. 145 (Cory J., for himself, Major, Bastarache and Binnie, in the majority)

1998, VOLUME 3

16 cases
5 cases with intervenors
2 mentions of intervenors

R. v. Arp

92 paragraphs

"**As the intervener the Attorney General for Ontario points out**, the probative value of the evidence does not depend on a finding that both offences were necessarily committed by the same person."
par. 67 (Cory J. for the Court)

"**As the Attorney General for Ontario stated**, it cannot be presumed that because a preliminary determination of fact is not proven to the criminal standard, that the trier of fact is thereby invited to make use of evidence which lacks its purported probative value."
par. 68 (Cory J. for the Court)

"As the intervener the Attorney General for Ontario concedes, it is, of course, conceivable for a single item of circumstantial evidence to be the only evidence of an essential element of the offence in a given case."
par. 73 (Cory J. for the Court)

R. v. Rose

139 paragraphs

"**Two of the interveners, the Attorney General of British Columbia and the Attorney General of Canada**, for example, **suggested** that allowing

the prosecution to address the jury last is important because it is frequently only at the stage of argument that the Crown learns what affirmative defences the accused is relying on. It is in the interests of justice, **they say**, that jurors understand the theories of the parties."

par. 55 (Binnie J. on behalf of himself, Lamer C.J., McLachlin and Major, in dissent)

"There is also **a body of opinion** that counsel who first addresses the jury has the advantage...On the other hand there are **those who consider** the right to speak to the jury last is of great value."

par. 110 (Cory, Iacobucci and Bastarache JJ. for themselves and Gonthier, for the majority)

****other sources (journal articles) immediately follow this passage.*

1999, VOLUME 1

27 cases
9 cases with intervenors
3 mentions of intervenors

CanadianOxy Chemicals Ltd. v. Canada (Attorney General)

31 paragraphs

"In addition, **as pointed out by the intervener Attorney General for Ontario**, denying the Crown the ability to gather evidence in anticipation of a defence would have serious consequences on the functioning of our justice system."

par. 27 (Major J. for the Court)

R. v. Beaulac

57 paragraphs

"**The Attorney General of Canada explained** that the definition of the language of the accused has been a contentious issue for many years."

par. 32 (Bastarache J. on behalf of himself and L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci and Major, in the majority)

Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.

210 paragraphs

"The intervener Canadian Centre for Philanthropy showed the way forward by bringing to our attention that assisting the settlement of migrants, immigrants and refugees, and their integration into national life, is a charitable purpose already recognized under the fourth head of the Pemsel classification."
par. 82 (Gonthier J. for himself, L'Heureux-Dubé and McLachlin, in dissent)

"The Society and **the interveners** invited this Court to **modify** the existing categorization of charitable purposes set out in Pemsel in favour of a broader test...we need not engage in such an exercise on the facts of this appeal."
par. 122 (Gonthier J. for himself, L'Heureux-Dubé and McLachlin, in dissent)

"For similar reasons, we need not take a position on the argument advanced by the Society in the Federal Court of Appeal, **and by one of the interveners** before this Court, that on the facts of this appeal, s. 15 of the Charter has been infringed, or that the ITA and the common law should be interpreted in accordance with the Charter."
par. 123 (Gonthier J. for himself, L'Heureux-Dubé and McLachlin, in dissent)

"In the **submissions of the intervener, the Canadian Centre for Philanthropy** (the "Centre"), "without having available a method which allows for consideration of the underlying elements of charitable purpose, any movement forward may be frustrated"."
par. 201 (Iacobucci J. for himself, Cory, Major and Bastarache, in the majority)

"Although it is not necessary for me to comment on proposals for change, particularly since aspects of **the Centre's** proposals may themselves need further clarifications and refinements, I would commend for serious consideration the general framework suggested by **the Centre** as potentially a useful guide for the legislator."
par. 202 (Iacobucci J. for himself, Cory, Major and Bastarache, in the majority)

"One final **submission merits some consideration**. It was **argued by the interveners, the Minority Advocacy and Rights Council, the Canadian Ethnocultural Council, and the Centre for Research Action on Race**

Relations that the rule in Pemsel, as incorporated in ss. 248(1) and 149.1(1) of the ITA, violated s. 15 of the Canadian Charter of Rights and Freedoms by discriminating against immigrant and visible minority women on the basis of the analogous ground of immigrant status as well as the enumerated grounds of race, gender, and national or ethnic origin. Very briefly, the argument runs as follows..."

par. 207 (iacobucci J. for himself, Cory, Major and Bastarache, in the majority)

"..I see no merit to **this argument**."

par. 208 (Iacobucci J. for himself, Cory, Major and Bastarache, in the majority)

1999, VOLUME 2

20 cases
15 cases with intervenors
8 mentions of intervenors

R. v. Stone

251 paragraphs

"On this appeal, however, **neither the respondent nor any of the Attorneys General who intervened in the appeal (Canada, Ontario and Alberta) suggested** that such a change was either desirable or necessary."

par. 48 (Binnie J. for himself, Lamer C.J., Iacobucci and Major, in dissent)

"...I do not believe the Court ought to embark on organizing its own s. 1 justification **where none of the Attorneys General saw fit even to propose** the shift of the persuasive onus much less to try to justify it."

par. 50 (Binnie J. for himself, Lamer C.J., Iacobucci and Major, in dissent)

"The view of the **Canadian Psychiatric Association** that all causes of automatism are mental disorders was not accompanied by any ringing endorsement that in all such cases s. 16 of the Code provides an appropriate analytical framework."

par. 78 (Binnie J., for himself, Lamer C.J., Iacobucci and Major, in dissent)

*** *The Canadian Psychiatric Association is NOT an intervenor or a party of any sort.*

"...In support of this position, Binnie J. argues that **neither the respondent nor any of the intervening Attorneys General requested** such a review..."

par. 173 (Bastarache J. for himself, L'Heureux-Dubé, Gonthier, Cory and McLachlin, in the majority)

"**The Crown and intervening Attorney General for Ontario argue** that the sentencing judge erred in principle when he considered provocation as a mitigating factor after s. 232 of the Code had reduced a verdict of murder to one of manslaughter."

par. 232 (Bastarache J. for himself, L'Heureux-Dubé, Gonthier, Cory and McLachlin, in the majority)

"In a case involving manslaughter pursuant to s. 232 of the Code, however, **the Crown and Attorney General for Ontario argue** that provocation should not be considered in sentencing because it has already reduced the legal character of the crime from murder to manslaughter."

par. 235 (Bastarache J. for himself, L'Heureux-Dubé, Gonthier, Cory and McLachlin, in the majority)

"**The Crown and Attorneys General of Canada and for Ontario argue** that the seven-year sentence imposed by the trial judge in the present case fails to reflect society's current understanding and awareness of the problem of violence against women in general, and, in particular, domestic violence. More specifically, **they argue** that the sentencing judge erred in failing to recognize that killing a spouse is considered an aggravating factor in sentencing in accordance with s. 718.2(a)(ii) of the Code...**The Attorneys General of Canada and for Ontario request** that this Court specifically recognize spousal killings as an aggravating factor in sentencing under s. 718.2(a)(ii)."

par. 238 (Bastarache J. for himself, L'Heureux-Dubé, Gonthier, Cory and McLachlin, in the majority)

"In this case, I must however first consider **the argument of the Crown and the Attorney General for Ontario** that "double counting" of provocation is responsible for driving sentencing ranges for cases involving provoked, spousal manslaughter into the lower end of the spectrum available for manslaughter, and that this resulted in an inadequate sentence."

par. 246 (Bastarache J. for himself, L'Heureux-Dubé, Gonthier, Cory and McLachlin, in the majority)

"**The argument** that "double counting" of provocation is responsible for the sentencing range in cases involving provoked, spousal manslaughter fails to recognize that provocation is just one factor to be considered..."

par. 247 (Bastarache J. for himself, L'Heureux-Dubé, Gonthier, Cory and

McLachlin, in the majority)

U.F.C.W., Local 1518 v. KMart Canada Ltd.

81 paragraphs

"Before this Court, **the respondent and the Attorney General of British Columbia,** who intervened to defend the constitutionality of the impugned provisions, **conceded** that ss. 1, 65 and 67 of the Code infringe s. 2(b) of the Charter but **argued** that those infringements could be justified under s. 1 of the Charter."

par. 11 (Cory J. for the Court)

"In the case at bar, **the respondent and the Attorney General** very properly **conceded** that the restriction on consumer leafleting activity was *prima facie* an infringement of freedom of expression."

par. 31 (Cory J. for the Court)

"The aim of the analysis under s.1 of the Charter is to determine whether the infringement of a Charter right or freedom can be justified in a free and democratic society. Following the test elaborated initially in R. v. Oakes...**it is incumbent on the respondent and the Attorney General as the parties seeking to uphold the restriction on a Charter freedom to show on a balance of probabilities that such an infringement can be justified.** To satisfy this burden, **they must demonstrate** that the objective sought to be served by the legislative restriction is of sufficient importance to warrant overriding a constitutionally protected right or freedom. Only a significantly pressing and substantial objective can meet this requirement. **They must also demonstrate** that the legislative restriction is proportional to the objective sought by the legislature."

par. 34 (Cory J. for the Court)

"**The Attorney General of British Columbia intervened to defend** the legislative restriction on secondary picketing. However **this intervener did not consider** the very real distinction which exists between picketing and consumer leafleting. **The Attorney General noted** that both activities share similar attributes, including the presence of persons, and then **relied upon** the following passage from A.W.R. Carrothers, E.E. Palmer and W.B. Rayner, *Collective Bargaining Law in Canada*..."

par. 48 (Cory J. for the Court)

"I agree with this position [an article by J.A. Manwaring]. It follows that I cannot accept **the position of the Attorney General** that constitutional

picketing and leafleting are indistinguishable. They are distinct and different activities."

par. 50 (Cory J. for the Court)

"**The respondent and the Attorney General have therefore argued** that degree of deference should be shown to the legislature in finding the proper balance between the interests of labour and management. **This argument** underlies the judgements of the lower courts..."

par. 62 (Cory J. for the Court)

"Similarly, in the present appeal, it is important to note that **the respondent and the Attorney General have not demonstrated** that a partial ban, such as a restriction on conventional picketing activity alone, would be less effective in achieving the government objective."

par. 77 (Cory J. for the Court)

Allsco Building Products Ltd. v. U.F.C.W., Local 1288P

29 paragraphs

"However, as was brought to this Court's attention by **the intervener, the Attorney General for New Brunswick**, there is another provision of the *Industrial Relations Act,* in light of whose interpretive guidance s. 104(2) must be construed."

par. 22 (Iacobucci J. for the Court)

R. v. Campbell
MOTION FOR DIRECTIONS brought by the INTERVENOR

5 paragraphs

"The **Alberta Provincial Judges' Association ("Association")** has submitted a motion for directions relating to our decision in *Provincial Court Judges (No. 1)*, [1997] 3 S.C.R. 3."

par. 1 (The Court)

"**Upon reading the submissions and supporting material of the parties and interveners**, the Court is of the opinion that the motion for directions should be dismissed without costs..."

par. 2 (The Court)

Baker v. Canada (Minister of Citizenship and Immigration)

77 paragraphs

"Because, in my view, the issues raised can be resolved under the principles of administrative law and statutory interpretation, I find it unnecessary to consider the various Charter issues raised by **the appellant and the interveners who supported her position.**"

par. 11 (L'Heureux-Dubé J. for herself, Gonthier, McLachlin, Bastarache and Binnie, for the majority)

Corbiere v. Canada (Minister of Indian and Northern Affairs)

126 paragraphs

"...the authors note that the purpose of stating constitutional questions is to ensure that the Attorney General of Canada, the attorneys general of the provinces, and the ministers of justice of the territories are made aware of constitutional challenges as required by Rule 32(4), so that they may decide whether or not to **exercise their right to intervene**. I agree with this characterization of the purpose of the provision..."

par. 49 (L'Heureux-Dubé J. for herself, Gonthier, Iacobucci and Binnie, in dissent)

"The effects of s. 25 of the Charter and s. 35 of the Constitution Act. 1982, are raised by **the intervener the Lesser Slave Lake Indian Regional Council (the "Council")**, but this issue was not addressed by either of the appellants or by the respondents. **The Council argues** that the restriction of voting rights to those who are ordinary resident on the reserve constitutes a codification of Aboriginal or treaty rights under s. 35, or falls under the "other rights or freedoms" protected under s. 25, and that , therefore, s. 25 requires that s. 15 be interpreted so as not to abrogate or derogate from those rights in any way. **It suggests** that for this reason the impugned provisions are shielded from review. **In contrast, the intervener the Native Women's Association of Canada argues** that s. 25 guides the interpretation of other Charter rights so that the rights of Aboriginal peoples cannot be challenged by non-Aboriginal people, but it does not shield Aboriginal rights from challenge by members of the Aboriginal community."

par. 51 (L'Heureux-Dubé J. for herself, Gonthier, Iacobucci and Binnie, in dissent)

"**The arguments of the Council** do not, in my opinion, indicate that the relief requested by the respondents could "abrogate or derogate" from the rights included in s. 25...**The Council argues** that s. 77(1) protects or recognizes rights guaranteed by s. 35 including Aboriginal title, treaty rights, and Aboriginal rights of self-government. It also alleges that s. 77(1) is a statutory right that protects bands' self-determination and self-government. **The Council's arguments** relating to s. 25 rest, in large part, on the assertion that Bill C-31 violates Aboriginal and treaty rights, a matter which is not before this Court and in relation to which no evidence has been presented. In my opinion, therefore, **the submissions of the Council** do not show that s. 25 is triggered in this case."

par. 52 (L'Heureux-Dubé J.for herself, Gonthier, Iacobucci and Binnie, in dissent)

"**Most interveners who support the position of the respondents argue** that the appropriate remedy is a general declaration of invalidity, suspended for a period of time, and an exemption from the suspension for the Batchewana Band."

par. 108 (L'Heureux-Dubé J. for herself, Gonthier, Iacobucci and Binnie, in dissent)

Dobson (Litigation Guardian of) v. Dobson

134 paragraphs

"In addition, **an intervener submitted** that to impose a legal duty of care upon a pregnant woman towards her foetus or subsequently born child would give rise to a gender-based tort, in contravention of s. 15(1) of the Canadian Charter of Rights and Freedoms. **That contention** may be correct. However, in light of the conclusion reached with respect to the second branch of the Kamloops test, this case need not, and should not, be decided on Charter grounds. It cannot be forgotten that the parties did not address the Charter. Indeed, **apart from the submissions of one intervener**, no argument was put forward on the Charter. In those circumstances, it is inappropriate to resolve that issue in these reasons."

par. 22 (Cory J. for himself, Lamer C.J., L'Heureux-Dubé, Gonthier, Iacobucci and Binnie, in the majority)

"With respect, I believe that the **public policy considerations** are paramount in this appeal."

par. 39 (Cory J. for himself, Lamer C.J., L'Heureux-Dubé, Gonthier, Iacobucci and Binnie, in the majority)

"**The infant respondent and certain interveners argued** that a legal duty of care should be imposed upon a pregnant woman towards her foetus or born alive child. If such a duty of care is imposed upon a pregnant woman, then a judicially defined standard of conduct would have to be met. **One intervener argued** that tort liability should be imposed where a woman's conduct fails to conform to a "reasonable pregnant woman" standard, which would apply to all aspects of her behaviour while pregnant."

par. 49 (Cory J. for himself, Lamer C.J., L'Heureux-Dubé, Gonthier, Iacobucci and Binnie, in the majority)

"For the reasons set out later, I am of the view that the various approaches advocated by **the infant respondent and the interveners** fail to avoid the pitfalls of a judicially defined standard of care for pregnant women."

par. 51 (Cory J. for himself, Lamer C.J., L'Heureux-Dubé, Gonthier, Iacobucci and Binnie, in the majority)

"**An intervener argued** that a mother-to-be should be held liable for all negligent behaviour causing damages to her foetus, which would be determined in accordance with a "reasonable pregnant woman" standard. **An intervener submitted** that, once aware of the pregnancy, a woman should be required to conform to the standard of behaviour of a "reasonably prudent expectant mother conducting herself under similar circumstances"..."

par. 52 (Cory J. for himself, Lamer C.J., L'Heureux-Dubé, Gonthier, Iacobucci and Binnie, in the majority)

M. v. H.

357 paragraphs

"H. appealed the judgment and was **joined in the appeal by the intervener, the Attorney General for Ontario**."

par. 16 (Cory and Iacobucci JJ., for themselves, Lamer C.J., L'Heureux-Dube, McLachlin and Binnie, in the majority)

"**As the intervener EGALE submitted**, such exclusion perpetuates the disadvantages suffered by individuals in same-sex relationships and contributes to the erasure of their existence."

par. 73 (Cory and Iacobucci JJ., for themselves, Lamer C.J., L'Heureux-Dubé, McLachlin and Binnie, in the majority)

"Secondly, **as noted by EGALE**, the protection that a domestic contract provides to economically vulnerable individuals is markedly inferior to that

offered by the FLA."

par. 123 (Iacobucci J. continues the reasons for himself, Cory, Lamer C.J., L'Heureux-Dubé, McLachlin and Binnie, in the majority)

"Indeed, **as noted by EGALE**, given that the members of equality-seeking groups are bound to differ to some extent in their politics, beliefs and opinions, it is unlikely that any s. 15 claims would survive s. 1 scrutiny if unanimity with respect to the desired remedy were required before discrimination could be redressed."

par. 127 (Iacobucci J. continues the reasons for himself, Cory, Lamer C.J., L'Heureux-Dubé, McLachlin and Binnie, in the majority)

1999, VOLUME 3

5 cases
3 cases with intervenors
1 mention of intervenors

Westbank First Nation v. British Columbia Hydro and Power Authority

46 paragraphs

"I agree with **the Attorney General of British Columbia's submission** that the Constitution demands more precision in order to oust the operation of s. 125."

par. 39 (Gonthier J. for the Court)

SCHEDULE B

ALPHABETICAL LIST OF SUPREME COURT CASES WITH INTERVENORS

Air Canada v. Ontario (Liquor Control Board), [1997] 2 S.C.R. 581.

Allsco Building Products Ltd. v. U.F.C.W., Local 1288P, [1999] 2 S.C.R. 1136.

Aubry v. Editions Vice-Versa inc., [1998] 1 S.C.R. 591.

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817.

Bazley v. Curry, [1999] 2 S.C.R. 534.

Benner v. Canada (Secretary of State), [1997] 1 S.C.R. 358.

Benner v. Canada (Secretary of State), [1997] 3 S.C.R. 389.

Bese v. British Columbia (Forensic Psychiatric Institute), [1999] 2 S.C.R. 722.

British Columbia (Public Service Employee Relations Commission) v. BCGSEU, [1999] 3 S.C.R. 3.

Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System), [1997] 3 S.C.R. 440.

Canada (Human Rights Commission) v. Canadian Liberty Net, [1998] 1 S.C.R. 626.

Canada (Minister of Citizenship and Immigration) v. Tobiass, [1997] 3 S.C.R. 391.

Canadian Egg Marketing Agency v. Richardson, [1998] 3 S.C.R. 157.

CanadianOxy Chemicals Ltd. v. Canada (Attorney General), [1999] 1 S.C.R. 743.

Consortium Developments (Clearwater) Ltd. v. Sarnia (City), [1998] 3 S.C.R. 3.

Continental Bank Leasing Corp. v. Canada, [1998] 2 S.C.R. 298.

Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999] 2 S.C.R.

203.

Dagg v. Canada (Minister of Finance), [1997] 2 S.C.R. 403.

Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010.

Delisle v. Canada (Deputy Attorney General), [1999] 2 S.C.R. 989.

Del Zotto v. Canada, [1999] 1 S.C.R. 3.

Dobson (Litigation Guardian of) v. Dobson, [1999] 2 S.C.R. 753.

Dore v. Verdun (City), [1997] 2 S.C.R. 862.

Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241.

Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624.

Eurig Estate (RE), [1998] 2 S.C.R. 565.

Germain v. Montreal (City), [1997] 1 S.C.R. 1144.

Giffen (Re), [1998] 1 S.C.R. 91.

Hercules Management Ltd. v. Ernst & Young, [1997] 2 S.C.R. 165.

J.M. Asbestos Inc. v. Commission d'appel en matiere de lesions professionnelles, [1998] 1 S.C.R. 315.

Jacobi v. Griffiths, [1999] 2 S.C.R. 570.

M. v. H., [1999] 2 S.C.R. 3.

New Brunswick (Minister of Health and Community Services) v. G.(J.), [1999] 3 S.C.R. 46.

New Brunswick (Minister of Health and Community Services) v. L. (M.), [1998] 2 S.C.R. 534.

Opetchesaht Indian Band v. Canada, [1997] 2 S.C.R. 119.

Ordon Estate v. Grail, [1998] 3 S.C.R. 437.

Orlowski v. British Columbia (Forensic Psychiatric Institute), [1999] 2 S.C.R. 733.

Pasiechnyk v. Saskatchewan (Workers' Compensation Board), [1997] 2 S.C.R. 890.

Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 982.

Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 1222.

R. v. Arp, [1998] 3 S.C.R. 339.

R. v. Beaulac, [1999] 1 S.C.R. 768.

R. v. Campbell, [1999] 2 S.C.R. 956.

R. v. Caslake, [1998] 1 S.C.R. 51.

R. v. Cogger, [1997] 2 S.C.R. 845.

R. v. Cook, [1998] 2 S.C.R. 597.

R. v. Cuerrier, [1998] 2 S.C.R. 371.

R. v. Ewanchuk, [1999] 1 S.C.R. 330.

R. v. Feeney, [1997] 3 S.C.R. 1008.

R. v. Gladue, [1999] 1 S.C.R. 688.

R. v. Godoy, [1999] 1 S.C.R. 311.

R. v. Hodgson, [1998] 2 S.C.R. 449.

R. v. Hydro-Quebec, [1997] 3 S.C.R. 213.

R. v. Leipert, [1997] 1 S.C.R. 281.

R. v. LePage, [1999] 2 S.C.R. 744.

R. v. Lucas, [1998] 1 S.C.R. 439.

R. v. Rose, [1998] 3 S.C.R. 262.

R. v. S. (R.D.), [1997] 3 S.C.R. 484.

R. v. Skalbania, [1997] 3 S.C.R. 995.

R. v. Stillman, [1997] 1 S.C.R. 607.

R. v. Stone, [1999] 2 S.C.R. 290.

R. v. Sundown, [1999] 1 S.C.R. 393.

R. v. W. (D.D.), [1998] 2 S.C.R. 681.

R. v. Wells, [1998] 2 S.C.R. 517.

R. v. Williams, [1998] 1 S.C.R. 1128.

Ref. Re Remuneration of Judges of the Prov. Court of P.E.I.; Ref. Re Independence and Impartiality of Judges of the Prov. Court of P.E.I.; R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Prov. Judges Assn. v. Manitoba (Minister of Justice), [1997] 3 S.C.R. 3.

Ref. Re Remuneration of Judges of Prov. Court of PEI; Ref. Re Independence & Impartiality of Judges of Prov. Court of PEI; R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Prov. Judges Assn. v. Manitoba (Min. of Justice), [1998] 1 S.C.R. 3.

Ref. Re Remuneration of Judges of Prov. Court of PEI; Ref. Re Independence & Impartiality of Judges of Prov. Court of PEI; R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Prov. Judges Assn. v. Manitoba (Min. of Justice), [1998] 2 S.C.R. 443.

S. (L.) v. S. (C.), [1997] 3 S.C.R. 1003.

Schreiber v. Canada (Attorney General), [1998] 1 S.C.R. 841.

Smith v. Jones, [1999] 1 S.C.R. 455.

St. Mary's Indian Band v. Cranbrook (City), [1997] 2 S.C.R. 657.

St. Mary's Indian Band v. Cranbrook (City), [1997] 2 S.C.R.678.

Thomson Newspapers Co. v. Canada (Attorney General), [1998] 1 S.C.R. 877.

U.F.C.W., Local 1518 v. KMart Canada Ltd., [1999] 2 S.C.R. 1083.

Union of New Brunswick Indians v. New Brunswick (Minister of Finance), [1998] 1 S.C.R. 1161.

Vancouver Society of Immigrant and Visible Minority Women v. M.N.R., [1999] 1 S.C.R. 10.

Vriend v. Alberta, [1998] 1 S.C.R. 493.

Westbank First Nation v. British Columbia Hydro and Power Authority, [1999] 3 S.C.R. 134.

Westcoast Energy Inc. v. Canada (National Energy Board), [1998] 1 S.C.R. 322.

Winko v. British Columbia (Forensic Psychiatric Institute), [1999] 2 S.C.R. 625.

Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.), [1997] 2 S.C.R. 925.

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