Do Pre-1970 Precedents Still Matter? An Empirical Analysis of Legal Submissions and Court Decisions

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ABSTRACT

This paper examines the contemporary relevance of pre-1970 Supreme Court of Canada decisions through quantitative citation analysis, responding to Chief Justice Wagner's 2024 assertion that these historical decisions are of minimal legal interest. The study analyses three datasets: citations in Supreme Court decisions (1985–2024), appeal factums (2009–2024), and decisions from all Canadian courts and tribunals on CanLII. The evidence contradicts the chief justice's assertions. Pre-1970 cases appear in over half of Supreme Court decisions and one-quarter of factums filed between 2015–2024. This engagement spans 2,100 unique pre-1970 decisions. Qualitative analysis reveals that lawyers and judges invoke these precedents primarily as binding legal authority (77.6%) rather than historical background. Contrary to claims that older precedents are irrelevant in commercial matters, this area demonstrates the highest

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rate of pre-1970 citations. Surprisingly, French-language factums cite untranslated pre-1970 decisions more frequently than English ones, and Chief Justice Wagner himself ranks among justices most likely to cite pre-1970 cases. The paper concludes that pre-1970 decisions continue to meaningfully influence Canadian jurisprudence, particularly in certain legal domains, suggesting that official translations would serve a valuable purpose.

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RÉSUMÉ

Cet article examine la pertinence actuelle des décisions rendues par la Cour suprême du Canada avant 1970 au moyen d'une analyse quantitative des citations. Il répond ainsi à l'affirmation du juge en chef Wagner, formulée en 2024, selon laquelle ces décisions historiques ne présenteraient qu'un intérêt juridique minime. L'étude s'appuie sur trois ensembles de données : les citations au sein des décisions de la Cour suprême (1985–2024), les mémoires d'appel (2009–2024) et les décisions de l'ensemble des cours et tribunaux canadiens répertoriés sur CanLII. Les résultats de l'étude infirment les propos du juge en chef. Les arrêts antérieurs à 1970 figurent dans plus de la moitié des décisions de la Cour suprême et dans le quart des mémoires déposés entre 2015 et 2024, ce qui représente 2 100 arrêts distincts. L'analyse qualitative révèle que les avocats et les juges invoquent ces précédents principalement à titre d'autorité juridique contraignante (77,6 %) plutôt que comme simple contexte historique. Contrairement à l'idée reçue voulant que la jurisprudence plus ancienne soit devenue non-pertinente dans les affaires commerciales, ce domaine affiche paradoxalement le taux de citation le plus élevé pour les arrêts pré-1970. Fait étonnant, les mémoires rédigés en français citent plus fréquemment les décisions non traduites antérieures à 1970 que les mémoires en anglais, et le juge en chef Wagner lui-même figure parmi les juges les plus enclins à citer des arrêts historiques. L'article conclut que les décisions antérieures à 1970 continuent d'influencer de manière significative la jurisprudence canadienne, particulièrement dans certains domaines de droit, ce qui souligne l'utilité certaine que revêtirait leur traduction officielle.

INTRODUCTION

IN June 2024, a reporter asked the chief justice of Canada whether the Supreme Court of Canada (SCC) would produce official translations of its judgments prior to 1970.[1] Chief Justice Wagner rebuffed the question:

> Firstly, apart from considering these decisions as part of our legal cultural heritage, no one today references a precedent from 1892 to justify their case. The law evolves so rapidly, especially in Canada with the *Charter of Rights and Freedoms* in 1982, that the legal and judicial landscape has completely changed. A decision that is five years old is often already considered outdated in commercial or civil matters. To make a long story short, I'm simply telling you that the legal interest in these historical decisions is very minimal.[2]

Following the press conference, legal commentators balked at the chief justice's suggestion that pre-1970 decisions from the Supreme Court were of very minimal legal interest today.[3] Commentators argued that, contrary to the chief justice's assertion, "litigants routinely cite and rely upon judgments of the Supreme Court dating back much further than

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1 Presently, reasons for judgment are only available in the language that the judge delivering the reasons chose to use. In 1970, the Supreme Court began to issue official translations of all judgments and reasons for judgment.

2 The chief justice went on to explain that it would also cost between ten and twenty million dollars to translate: "We don't have that money. If someone has it, great—it would please those who are fans of legal cultural heritage, but we don't have it, and it would take something like 10 years to complete" (see "Chief Justice Richard Wagner Provides Update on Work of Supreme Court" (3 June 2024) at 51m:27s, online (video): <cpac.ca> [perma.cc/2D5K-E55R] [translated by author].

3 Patrick Taillon, "Les histoires du juge Wagner", *La Presse* (26 November 2024), online: <lapresse.ca> [perma.cc/UT52-P89X]; Pierre Saint-Arnaud, "La Cour suprême est menacée d'être traînée en Cour", *La Presse* (18 September 2024), online: <lapresse.ca> [perma.cc/62QN-6L4Z]; Dale Smith, "Translation Turmoil at the Supreme Court", *National Magazine* (27 November 2024), online: <nationalmagazine.ca> [perma.cc/NN38-5CQ5]; Sidhartha Banerjee, "Supreme Court Sued over Its Refusal to Translate Decisions Before 1970 Into French", *The Globe and Mail* (1 November 2024), online: <theglobeandmail.com> [perma.cc/BD9A-N4ZX].

the 1970s" and "[t]he Supreme Court itself regularly cites its old decisions."[4]

The disagreement between the chief justice and commentators raises a straightforward empirical question: How often do lawyers and judges actually use decisions from before 1970? The availability of digitized court records allows us to answer this question through quantitative citation analysis, which examines how frequently, and in what contexts, lawyers and judges cite historical precedents in contemporary legal proceedings.

In this paper, I do just that. I analyse citations made in three contexts: decisions of the Supreme Court, appeal factums submitted to the Supreme Court, and decisions of Canadian courts and tribunals posted to CanLII. Each dataset reveals the same pattern: Pre-1970 cases are actively cited across all levels of contemporary Canadian legal practice.

This paper proceeds as follows. Parts I and II situate this research within the broader empirical legal studies literature by reviewing previous judicial citation studies. This review establishes both the methodological foundations for citation analysis and demonstrates how technological advances have enabled increasingly sophisticated examinations of judicial behaviour. In Part II, I outline the construction and analysis of three complementary datasets used in this paper: Supreme Court outbound citations (1985–2024), Supreme Court factum citations (2009–2024), and CanLII inbound citations to Supreme Court decisions (1887–2024).

Part III presents the core empirical findings that directly answer the chief justice's challenge. Through analysis of the three complementary datasets, I demonstrate that pre-1970 cases remain actively cited across all levels of contemporary Canadian legal practice. For instance, pre-1970 precedents appear in over half of Supreme Court decisions and one-quarter of all factums filed between 2015 and 2024. Moreover, this engagement spans over 2,100 distinct pre-1970 decisions rather than being

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4   Stéphane Sérafin & Kerry Sun, "Opinion: Unchecked Judicial Power—That's Chief Justice Wagner's Vision for Canada", *National Post* (9 October 2024), online: <national­post.com> [perma.cc/RGC5-XHUX]; Yan Campagnolo, François Larocque & Lawrence David, "The Supreme Court of Canada Is Wrong to Refuse to Translate Its Pre-1970 Decisions", *The Conversation* (1 October 2024), online: <theconversation.com> [perma.cc/UVQ6-6KLF].

concentrated among a handful of landmark cases. Finally, qualitative analysis confirms that lawyers and judges invoke these precedents primarily as binding legal authority, rather than as historical context.

Part IV investigates factors affecting citation rates to pre-1970 decisions. Contrary to the chief justice's assertion that older precedents are particularly irrelevant in commercial and civil matters, the data shows these areas actually demonstrate the highest rates of historical citation. The analysis also reveals surprising patterns: French-language factums cite untranslated pre-1970 decisions more frequently than English ones, and Chief Justice Wagner himself ranks among the justices most likely to cite pre-1970 cases. A regression analysis confirms that subject matter, individual judges, and the type of court being cited all significantly predict the likelihood of citing historical precedents.

Part V examines trends in the age and lifecycle of judicial precedent. It documents a steady increase in citation ages since the mid-1990s. Decay analysis further reveals that pre-1970 Supreme Court decisions demonstrate remarkable durability. These historical precedents show decay rates of 3.91% annually.

The paper concludes that the empirical evidence overwhelmingly contradicts the chief justice's characterization of pre-1970 decisions as having minimal legal interest. Instead, the data reveals their continued vitality across multiple dimensions of Canadian jurisprudence, supporting the case for comprehensive translation and continued public access to these foundational precedents.

I. PREVIOUS JUDICIAL CITATION STUDIES

Citation analysis is a quantitative method that examines the frequency and patterns with which documents reference other documents. In legal research, it typically involves tracking how often and in what contexts courts cite previous judicial decisions or academic literature.[5] Most

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5   For studies focusing on Canadian judicial citation of academic literature, see Yan Campagnolo & Camille Andrzejewski, "Les articles de revues de droit les plus cités de tous les temps par la Cour suprême du Canada" (2022) 54:1 Ottawa L Rev 1; Yan Campagnolo & Kyle Kirkup, "Étude de l'influence de la *Revue de droit d'Ottawa* auprès de la Cour suprême du Canada (de 1966 à 2017)" (2019) 50 Ottawa L Rev 55 (special edition, January); Peter McCormick, "The Judges and the Journals: Citation of Periodical Literature by the Supreme Court of Canada, 1985-2004" (2004) 83:3 Can Bar Rev

often, scholars use citation analysis to measure the influence and evolution of legal precedents (and their authors) over time.[6]

For example, many early Canadian citation studies focused on the influence of American case law on the Supreme Court of Canada.[7] Authors tracked American citations across several variables like author, province of origin, and subject matter using descriptive statistics. These studies revealed increasing American influence in the early *Canadian Charter of Rights and Freedoms* (*Charter*) era, which eventually declined back down to pre-*Charter* levels.[8] More recently, Mireille Fournier examined cross-citation patterns in provincial courts of appeal.[9] Using a systematic search technique, she captured the number of times the Ontario, British Columbia, Alberta, Quebec, and New Brunswick courts of appeal cited each other between 2018 and 2022. This led her to conclude that, while the Court of Appeal for Ontario influenced other courts, this influence

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633; Vaughan Black & Nicholas Richter, "Did She Mention My Name?: Citation of Academic Authority by the Supreme Court of Canada, 1985-1990" (1993) 16:2 Dal LJ 377.

6　See William M Landes, Lawrence Lessig & Michael E Solimine, "Judicial Influence: A Citation Analysis of Federal Courts of Appeals Judges" (1998) 27:2 J Leg Stud 271 at 271; Frank B Cross et al, "Citations in the U.S. Supreme Court: An Empirical Study of Their Use and Significance" (2010) 2010:2 U Ill L Rev 489 at 490–91.

7　See e.g. SI Bushnell, "The Use of American Cases" (1986) 35 UNBLJ 157; Christopher P Manfredi, "The Use of United States Decisions by the Supreme Court of Canada Under the Charter of Rights and Freedoms" (1990) 23:3 Can J Political Science 499; Peter McCormick, "The Supreme Court of Canada and American Citations 1945-1994: A Statistical Overview" (1997) 8 SCLR (2nd) 527.

8　Peter McCormick, "American Citations and the McLachlin Court: An Empirical Study" (2009) 47:1 Osgoode Hall LJ 83 at 126–27 [McCormick, "American Citations and the McLachlin Court"]. There are also a number of studies examining foreign and international case citation (see Bijon Roy, "An Empirical Survey of Foreign Jurisprudence and International Instruments in *Charter* Litigation" (2004) 62:2 UT Fac L Rev 99; Peter McCormick, "Waiting for Globalization: An Empirical Study of the McLachlin Court's Foreign Judicial Citations" (2009-2010) 41:2 Ottawa L Rev 209; Klodian Rado, "The Use of Non-Domestic Legal Sources in Supreme Court of Canada Judgments: Is This the *Judicial Slowbalization* of the Court?" (2020) 16:1 Utrecht L Rev 57).

9　Mireille Fournier, "Ontario, Listen Up: Citational Practices in the Ontario Court of Appeal" (2023) 101:3 Can Bar Rev 613 [Fournier, "Ontario, Listen Up"]. For her earlier study of the Court of Appeal of Quebec, see Mireille Fournier, "Quebec Talks Back : nouvelles pratiques linguistiques à la Cour d'appel du Québec" (2021) 66:4 McGill LJ 603.

was not reciprocal. The Court of Appeal for Ontario rarely cited sources from outside Ontario.[10]

Critics of citation analysis generally focus on problems that arise from correlating citation with influence. Judges use citations for many different purposes: supporting core legal principles, providing background information, or even critiquing the cited work for flawed reasoning. Even where a judge positively cites a case for a legal proposition, raw citation counts cannot capture the depth or significance of a citation's influence. Thus, critics allege that citations are a poor proxy for influence because of the unclear signal sent by a citation.[11] However, these limitations are less concerning for the present study. Since my research examines whether pre-1970 Supreme Court decisions remain relevant enough to justify translation, the mere fact of citation—regardless of purpose—demonstrates that legal professionals are actively engaging with these historical precedents.

Recent technological advances have dramatically expanded the capabilities of citation analysis.[12] Computer-assisted empirical legal research now allows scholars to compile and analyse vastly larger datasets using sophisticated computational methods, such as natural language processing. For example, Wolfgang Alschner, Carissima Mathen, and Vanessa MacDonnell recently prepared a dataset containing 4,142 Supreme Court of Canada decisions between 1975 and 2021.[13] They extracted

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10   Fournier, "Ontario, Listen Up", *supra* note 9 at 623–24.

11   Richard A Posner, "An Economic Analysis of the Use of Citations in the Law" (2000) 2:2 Am L & Econ Rev 381 at 385–87. See also Yan Campagnolo & Camille Andrzejewski, "The Most-Cited Law Review Articles of All Time by the Supreme Court of Canada" (2022) 60:1 Alta L Rev 129 at 132–36; Peter McCormick, "The Supreme Court Cites the Supreme Court: Follow-Up Citation on the Supreme Court of Canada, 1989-1993" (1995) 33:3 Osgoode Hall LJ 453 at 458–59 [McCormick, "The SCC Cites the SCC"].

12   See generally Wolfgang Alschner, Vanessa MacDonnell & Carissima Mathen, eds, *Decoding the Court: Legal Data Insights from the Supreme Court of Canada* (Abingdon, UK: Routledge, 2024) at 1–4; Wolfgang Alschner & Yazhi Zheng, "Court, Judges and the Pandemic: Computational Legal Insights from the Ontario Court of Appeal Corpus 2008-2021" (2024) 15:2 Western J Legal Studies 1 at 3–5.

13   "Supreme Court of Canada Dataset 1975-2021" (16 January 2024), online: <borealisdata.ca> [perma.cc/RRA6-AWPH].

information from full-length judgments using regular expressions.[14] The dataset was then used by several authors who produced chapters in an edited collection.[15] Additionally, Wolfgang Alschner and Yazhi Zheng prepared a dataset of Court of Appeal for Ontario cases between 2008 and 2021. Using natural language processing, they systematically investigated the use of negatively-connoted language, judges' appeal success rates, and the impacts of the COVID-19 pandemic.[16]

In addition to larger and more varied datasets, empirical legal studies is drawing on increasingly advanced mathematical techniques, such as network analysis, to reveal complex relationships between cases and their influence over time. For example, Thom Neale used several network analysis algorithms, together with regressions and graph theory, to examine the significance of judicial decisions across the CanLII judicial citation network of 1,900,916 citations.[17] His study found that the average Supreme Court of Canada decision continued to exert influence for 49.3 years after it was released.[18] Wolfgang Alschner and Isabelle St-Hilaire also used network analysis to classify Supreme Court decisions in constitutional law into different categories, including cases that are indirectly influential by laying the groundwork for other cases that are frequently cited today.[19]

While network analysis provides excellent insights, it is less suited to my particular research question. I am interested in direct citation alone, as direct citation is the most reliable measure of access and engagement with the original decision. We must recall that, at the heart of the debate about the relevance of pre-1970 SCC decisions, is a debate about whether to translate those decisions. It follows that, when a decision is

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14   Extracted data included decision length, area of law, existence of dissent, case outcomes, judges, and origin of appeal.

15   See generally Alschner, MacDonnell & Mathen, *supra* note 12.

16   See generally Aschner & Zheng, *supra* note 12.

17   Thom Neale, "Citation Analysis of Canadian Case Law" (2013) 1:1 J Open Access to L 1 at 21.

18   *Ibid* at 47.

19   Wolfgang Alschner & Isabelle St-Hilaire, "Using Network Citation Analysis to Reveal Precedential Archetypes at the Supreme Court of Canada" in Wolfgang Alschner, Vanessa MacDonnell & Carissima Mathen, eds, *Decoding the Court: Legal Data Insights from the Supreme Court of Canada* (Abingdon, UK: Routledge, 2024) 60 at 66–73.

cited in current legal reasoning, participants in the legal system should be able to access that decision to fully understand the current legal reasoning. For that reason, this study will focus on citation counts.

Several judicial citation studies are particularly relevant to this paper. Peter McCormick examined the Supreme Court's citations to its own decisions between 1989 and 1993. He found that the average age of Supreme Court decisions cited between 1989 and 1993 was as follows: 6.8 years for *Charter* cases, 12.8 years for public law cases, 10.4 years for criminal law cases, and 15.9 years for private law cases.[20] Additionally, he estimated a rate of decay of 15%—meaning that, with each subsequent year a case grew older, it was 15% less likely to be cited.[21] This rate of decay resulted in a four-year half life; a "drop-off rate" that McCormick described as "surprisingly sharp."[22]

Additionally, Wolfgang Alschner and Keenan MacNeal used a dataset of nearly 40,000 intra-SCC citations between 1879 and 2020 to graph the annual average citations by later SCC rulings.[23] Their analysis revealed three notable peaks in citation frequency: during the mid-1980s following the *Charter's* entrenchment, in 1880 with *Citizens' and The Queen v. Parsons* (*Parsons*),[24] and in the late 1930s when the Court developed common law constitutional rights. The authors noted that even very old precedents like *Parsons*—which addressed federal-provincial division of powers under the *Constitution Act, 1867*—continue to be cited in modern cases, which "speaks to the ongoing relevance of the Court's early case law, particularly as it relates to continuing debates on federalism."[25]

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20 McCormick, "The SCC Cites the SCC", *supra* note 11 at 479.

21 *Ibid* at 469.

22 *Ibid* at 469–70.

23 Wolfgang Alschner & Keenan MacNeal, "A Bird's-Eye View of the Canadian Supreme Court" in Wolfgang Alschner, Vanessa MacDonnell & Carissima Mathen, eds, *Decoding the Court: Legal Data Insights from the Supreme Court of Canada* (Abingdon, UK: Routledge, 2024) 13 at 17–18.

24 1880 CanLII 6 (SCC).

25 Alschner & MacNeal, *supra* note 23 at 17.

II. METHODOLOGY

This study draws upon three complementary datasets, each of which is publicly available on Dataverse.[26] The first dataset contains outbound SCC citations: every case cited by the Supreme Court of Canada in its reasons for judgment between January 1985 and December 2024.[27] I constructed this dataset by extracting citations from English full text reasons for judgment contained in the Supreme Court of Canada Bulk Decisions Dataset.[28] Since 1985, the Reports Branch of the Supreme Court has included a list of all cases cited in the reasons for judgment in a headnote section labelled "cases cited." I used a Python script to identify the "cases cited" section using a regular expression (pattern) and then copied the text within that section into a separate file. This resulted in the extraction of 66,621 outbound citations.

Within the "cases cited" section of the reasons for judgment, the reports branch separates citations by author. The dataset therefore treats each judicial opinion as a distinct unit. In other words, each cited case may be included multiple times within a single judgment, but only once per opinion—regardless of how many times it appears in the text of the opinion.[29]

The dataset also includes the court cited and the year of citation. To identify the court cited and the year, I ran another Python script with regular expressions over the dataset. These regular expressions used the neutral citation, printed reporter—such as the "Supreme Court Reports"

26   See Paul Warchuk, "Judicial Citations" (31 October 2025), online: <dataverse.lib.unb.ca> [perma.cc/B9CT-TSMF], DOI: <10.25545/OTYZPV>. All code used is available upon request.

27   The 1985 start date corresponds with when the Supreme Court began publishing separate citation lists for each opinion. Although this was not done consistently in the first year, manual adjustments were made. Identifying citations within the body of opinions using automated methods presents significant technical challenges (see Neale, *supra* note 17 at 20–21).

28   Sean Rehaag, "Supreme Court of Canada Bulk Decisions Dataset" (last visited 1 June 2025), online: <refugeelab.ca> [perma.cc/N5RW-H7TY]. The Supreme Court of Canada Bulk Decisions Dataset was updated until 31 December 2024 at the time of extraction. In some instances, there are differences in citations between the English and French versions. The differences that I am aware of relate to secondary sources, such as dictionaries, but may also include cases.

29   Citations to the decisions below in the same case are excluded.

(SCR)—and other citation patterns that are identifiable to a specific court and year. However, over 16,000 citations were to case reporters that published cases from one or more than one court. Research assistants manually searched legal databases in order to identify these remaining cases. Finally, I added case topics and subjects from CanLII's metadata, discussed below, by matching citations. This process involved cross-referencing the Supreme Court case citations in the dataset with the corresponding entries in CanLII's CSC-SCC database using neutral citations and SCR citations as matching keys.

The second dataset contains citations to SCC decisions found in factums submitted to the Supreme Court on appeals between April 2009 and December 2024. The dataset was prepared by programmatically searching factums posted on the Supreme Court's website. Unlike the Supreme Court itself, counsel use a wide variety of formats and citation styles. These differences led me to limit extraction to Supreme Court decisions, identified by using regular expressions that searched for the pattern YYYY SCC/CSC NNN or N S.C.R./R.C.S. NNN.[30] The inaccuracies of optical character recognition (OCR) in scanned PDFs complicated the citation extraction process. To capture OCR errors, for example "1" instead of "[", a broader regular expression scraped these instances into a separate file for manual review. After manually cleaning these files, I merged the automated and manually extracted citations, removing duplicates. The resulting matches were verified against a list of known Supreme Court case citations found in the Supreme Court of Canada Bulk Decisions Dataset. Only citations that match an actual case were included. Finally, I added case topics from CanLII's metadata, as discussed below.

Ultimately, of the more than 5,200 publicly available factums, 5,026 contained extractable and verifiable Supreme Court citations. In total, there are 67,368 citations.[31] As with the first dataset, each decision is

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30   The study is therefore restricted to Supreme Court decisions published in the Supreme Court Reports or with a neutral citation. Not all early decisions made it into the Supreme Court Reports. Cameron's Supreme Court Cases (1884–1900) and Coutlee's Supreme Court Cases (1875–1907) are alternative reporters of the early court.

31   A total of 64,805 unique citations were extracted.

counted only once per factum, regardless of the number of times it is cited.[32]

To verify the accuracy of the citation extraction, I conducted a random survey of ninety-five factums.[33] A research assistant read each of the ninety-five factums and compiled a list of citations in those factums. They identified 1,205 citations. The database contained 1,187 (98.51%) of the actual citations. Of the missing eighteen citations, six were improperly cited by counsel and thus eliminated during the validation phase (e.g., "[1979] 2 SCR 790" instead of "[1979] 2 SCR 709"). The dataset also contained six phantom citations that were not found in the factums and thirty-five citations that appeared in appendices, rather than the body of the factum. Therefore, the Type 1 (false positive) error rate was 3.34% and the Type 2 (false negative) error rate was 1.49% (raw) or 1% (counsel typos excluded).

The third dataset captures inbound SCC citations: i.e., all cases on CanLII that cite SCC decisions recorded in the "citingCases" metadata. This data was extracted via CanLII's application programming interface through a series of automated requests. [34] This dataset includes 1,427,465 inbound citations to SCC decisions from 1876–2024.[35] Each citation record includes the Supreme Court case citation, citing court, year, and citing case citation.

Analysis of these three datasets was complemented by the CanLII CSC-SCC database, which contains metadata of Supreme Court cases, such as the title, citations, language, decision date, keywords, and subject matter. The database contains a total of forty-four subjects, with each Supreme Court case labelled with between zero and seven subject matters. [36] In their words: "The subjects are assigned by Lexum's self-

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32 Duplicates and parallel citations were filtered out.

33 Factums were selected using the sample module of Python with a fixed seed. Of the 95 selected factums, 2 were not machine readable and had no citations in the dataset. There were 30 between the two; however, I have excluded these.

34 CanLII provides instructions on how to make automated requests to their API (see Xavier Beauchamp-Tremblay, "CanLII REST API Documentation" (last modified 20 September 2019), online: <github.com> [perma.cc/2LMA-Q63M]).

35 These data were recorded at the end of April 2025.

36 The subject matters found within the SCC-CSC Database are: Access to information and privacy; Administrative remedies; Appeal; Arbitration; Bankruptcy and insolvency;

developed AI program, Lexkey, which is a Longformer model trained for classification tasks."[37] The CanLII database coverage goes back to 1877. However, it is not complete, as some cases have zero topic labels.

Much of the analysis that follows is based on simple descriptive statistics, such as counting citations and computing means or percentages. I performed these calculations either in Excel or via Python (with the NumPy and pandas packages). I also carried out two more advanced analyses: a logistic regression (using the statsmodels package) and a decay model fit (using SciPy). Finally, the charts and graphs were generated with matplotlib.[38]

III. ARE PRE-1970 CASES STILL RELEVANT TODAY?

It may seem intuitive to many lawyers that pre-1970 cases still matter. However, since Chief Justice Wagner's elevation in 2018, the Supreme Court has dramatically transformed its citation practices. Between 2000 and 2017, the court consistently cited around twenty-one cases per year. Beginning in 2018, citations per case began a dramatic upward trend. In 2024, the Court cited an average of sixty-two precedents per case, representing nearly a threefold increase from 2017 levels (Figure 1).[39] This trend cannot be explained by an increased number of

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Business; Child custody and access; Child protection; Citizenship and immigration; Commerce and industry; Constitution; Contracts; Creditors and debtors; Criminal or statutory infractions; Damages; Defences; Environment; Evidence; Family; Guardianship; Health and safety; Indigenous peoples; Insurance; Intellectual property; International; Interpretation; Judicial review; Labour and employment; Motor vehicles; Municipalities; Negligence; Practice and procedure; Professions and occupations; Property and trusts; Public administration; Residential tenancies; Rights and freedoms; Search and seizure; Sentencing; Support and maintenance; Taxation; Torts; Wills and estates; Young offenders.

37   See Canadian Legal Information Institute, "What's New on CanLII: Summer 2023" (11 September 2023), online (blog): <blog.canlii.org> [perma.cc/C2C3-YAX9]. See also Canadian Legal Information Institute, "New AI Generated Subject Classification for Saskatchewan Case Law Is Live!" (14 June 2021), online (blog): <blog.canlii.org> [perma.cc/8YHG-99FK]; Canadian Legal Information Institute, "New AI Generated Subject Classification for Ontario Case Law is Live!" (25 January 2022), online (blog): <blog.canlii.org> [perma.cc/YJU5-7GQS].

38   The code used to generate these is available upon request.

39   The mean annual citation rates depicted in Figure 1 include only opinions that cite at least one case.

dissenting or concurring opinions alone, as the average number of citations per opinion has also more than doubled over this same timeframe.

Figure 1. Average Citations Made by the Supreme Court of Canada
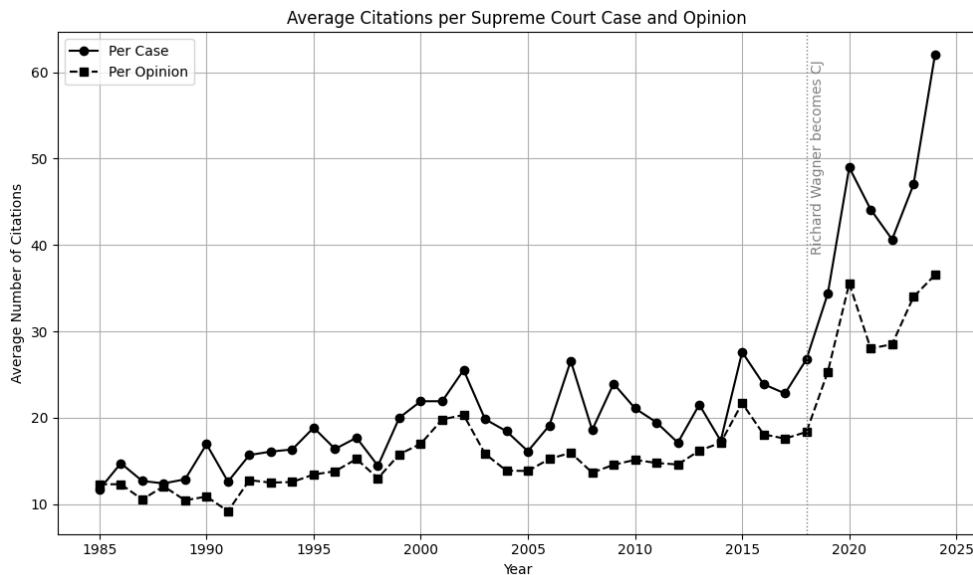
The court's transformation in citation practices raises questions about what is driving the massive increase in citations and whether other aspects of citation practices—like the use of historical precedents—have also changed. The most direct way to assess whether pre-1970 decisions retain contemporary legal significance beyond their historical value is by looking at whether lawyers and judges are actively using them in their work. In this section, I will examine citation patterns across the three datasets: Supreme Court decisions, factums submitted to the court, and the broader Canadian judicial landscape captured by CanLII. The evidence from all three sources tells a consistent story: pre-1970 cases actively remain part of contemporary legal practice.

Between 2015 and 2024, Supreme Court judges included 19,548 citations in their opinions. Of those, 950 citations (4.86%) were to pre-1970 decisions, including 331 (1.69%) pre-1970 Supreme Court decisions. Table 1 breaks this down on an annual basis. The annual figures show consistent citation, including moderate fluctuations, but with no evidence of decline under Chief Justice Wagner.

Table 1. Annual Number of Citations to Pre-1970 Cases
in Supreme Court Reasons (2015–2024)

Year	Citations in Supreme Court reasons			
	Citations to pre-1970 cases	Percentage of total citations	Citations to pre-1970 SCC cases	Percentage of total citations to SCC cases
2015	78	4.3%	32	2.8%
2016	76	5.7%	25	3.3%
2017	89	6.1%	22	2.8%
2018	58	3.7%	19	1.8%
2019	121	5.3%	48	3.8%
2020	157	7.1%	35	2.9%
2021	157	6.6%	59	4.0%
2022	58	2.6%	26	1.9%
2023	51	3.2%	23	2.5%
2024	105	3.9%	42	2.4%

Although consistent, the number of pre-1970 citations are modest. To contextualize these citation rates, it is instructive to compare pre-1970 citations with citations to other courts. Table 2 presents this comparison, including the average annual citations made by the Supreme Court to Canadian courts of appeal, the Supreme Court of the United Kingdom, and the Supreme Court of the United States. With an average of just over thirty-three citations per year, the Supreme Court cited the pre-1970 Supreme Court cases more often than it cited the Supreme Court of the United Kingdom, the Supreme Court of the United States, and all but five Canadian courts of appeal.[40]

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40   The pre-1970 SCC citation number also surpassed all but two trial courts: the Ontario Superior Court of Justice with 561 citations and the Superior Court of Québec with 371.

Table 2. Comparative Citation Rates by the SCC—Pre-1970
SCC vs. Other Courts (2015–2024)

Court	Average Annual Citations
Court of Appeal for Ontario	146.8
Court of Appeal of Quebec	87.5
British Columbia Court of Appeal	53.5
Court of Appeal of Alberta	41.4
Federal Court of Appeal	36
Pre-1970 Supreme Court of Canada	**33.1**
Supreme Court of the United Kingdom	27.8
Court of Appeal for Saskatchewan	14.1
Manitoba Court of Appeal	13.7
Judicial Committee of the Privy Council	13.2
Court of Appeal for Nova Scotia	12.8
Supreme Court of the United States	12.5
Court of Appeal of Newfoundland and Labrador	8.5
Court of Appeal of New Brunswick	5
Court Martial Appeal Court of Canada	2.6
Court of Appeal of Prince Edward Island	1.5
Court of Appeal of Yukon	1.4
Nunavut Court of Appeal	0.9
Court of Appeal for the Northwest Territories	0.6

More revealing than raw citation counts is the proportion of judicial decisions that engage with pre-1970 precedents. Between 2015 and 2024, there were 442 Supreme Court decisions and 762 opinions that cited at least one judicial decision. Of these, 221 decisions and 312 opinions included at least one citation to a pre-1970 decision. That means the majority of Supreme Court decisions (50%) and 40.94% of opinions include at least one citation to a pre-1970 case.[41]

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41   There were also 135 decisions and 177 opinions citing pre-1970 SCC decisions: 30.54% and 23.23% respectively.

Turning to the use of pre-1970 cases by counsel before the Supreme Court, roughly a quarter of all factums submitted between 2015 and 2024 (22.05%) cited pre-1970 Supreme Court decisions. During that period, lawyers collectively referenced 523 unique pre-1970 Supreme Court decisions. These citations were fairly evenly distributed. Most factums (483) contained a single reference, 155 had two citations, 107 had three to five citations, and 15 had more than five pre-1970 SCC citations.

The number of citations per factum was also comparable to the number of citations per judicial opinion. Between 2015 and 2024, lawyers referenced on average 13.44 Supreme Court decisions per factum. The court averaged 15.50 Supreme Court citations per opinion. Isolating citations to pre-1970 SCC decisions, lawyers averaged 0.37 pre-1970 SCC citations per factum and the Supreme Court averaged 0.44 pre-1970 SCC citations per opinion.[42] These parallels are unsurprising. They suggest that counsel and the court are using judicial citations, including historical precedents with similar frequency.[43]

As with the Supreme Court, annual citation rates by counsel and lower courts to pre-1970 cases have remained relatively stable. Table 3 includes the number of annual citations to pre-1970 SCC decisions in both factums submitted to the Supreme Court and the decisions of courts and tribunals in CanLII. Unsurprisingly, the CanLII database of court and tribunal decisions contains several thousand citations to pre-1970 SCC decisions between 2015 and 2024.

Table 3 also reveals a strong correlation between factum and Supreme Court citation patterns. The court's three highest years for citing pre-1970 cases were 2021, 2019, and 2016, while factums peaked in

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42   Both figures relate to the period of 2009–2024

43   Rational choice theory suggests that lawyers and lower court judges (at least those who regularly engage with the Supreme Court) will mirror its citation practices to increase their chances of success. However, I am also reminded of the historical debate over whether legal change in 18th-century England was driven "from above" by centralized judges or "from below" by local courts and practitioners (see generally Peter King, *Crime, Justice, and Discretion in England 1740–1820* (Oxford, UK: Oxford University Press, 2000); Douglas Hay et al, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975)). Just as Peter King and Douglas Hay highlight the tension between judicial authority and local agency in shaping the law, modern citation practices may reflect a similar dynamic, with lawyers introducing innovations, rather than merely following judicial norms.

2020, 2019, and 2015. This temporal offset is expected given the court's decision-making timeline.

Table 3. Annual Number of Citations to Pre-1970 Cases in Supreme Court Factums and CanLII Cases (2015–2024)

Year	Citations in Factums		Citations in CanLII Database	
	Citations to Pre-1970 SCC Cases	Percentage of Total Citations to SCC Cases	Citations to Pre-1970 SCC Cases	Percentage of Total Citations to SCC Cases
2015	142	3.50%	1822	3.30%
2016	124	3.20%	1942	3.38%
2017	136	2.80%	1877	3.12%
2018	160	2.70%	1784	2.82%
2019	160	3.60%	1757	2.62%
2020	176	4.00%	1763	2.87%
2021	115	2.50%	1911	2.54%
2022	95	1.80%	1729	2.41%
2023	113	1.90%	1560	2.13%
2024	70	2.20%	1753	2.66%

The CanLII database also provides a comprehensive view of how courts of appeal use pre-1970 Supreme Court decisions. Table 4 displays the pre-1970 citation rates across Canada's main courts of appeal, showing the percentage of total citations to Supreme Court judgments from 2015 to 2024 that were made to pre-1970 cases. This data reveals meaningful regional variation, with some courts citing pre-1970 decisions at twice the rate of others. Notably, the two largest appeal courts—Quebec and Ontario—demonstrate relatively low citation rates.

Table 4. Percentage of SCC Citations That Are to Pre-1970 Cases in Various Courts of Appeal (Average of 2015–2024)

Court	Portion of SCC Citations to Pre-1970 Cases
PECA	4.68%
NBCA	3.80%
SKCA	3.42%
BCCA	3.27%
NSCA	3.13%
ABCA	2.76%
NLCA	2.71%
YKCA	2.65%
FCA	2.44%
MBCA	2.19%
ONCA	2.04%
QCCA	1.90%
NUCA	1.58%
NTCA	0.6%

Taken together, the evidence in all three datasets paints a picture of continued engagement with pre-1970 jurisprudence. The fact that these precedents appear in roughly half of all Supreme Court decisions, one-quarter of all factums, and thousands of lower court decisions annually suggests they remain sources of binding legal authority rather than historical curiosities.

However, objectors may point out that these figures alone do not definitively establish ongoing relevance. Citations may be concentrated among a handful of landmark decisions, rather than spread across pre-1970 decisions more broadly. Moreover, these citations may be used as background or historical narrative, rather than as binding authority. The following sections examine these questions to provide a more nuanced understanding of how historical Supreme Court decisions function in contemporary legal practice.

A. *Diversity in Pre-1970 Citations*

Does the engagement seen above reflect broad reliance on historical jurisprudence, or is it concentrated among a handful of landmark decisions? If only a few "eternal stars"—to use Alschner and St-Hilaire's terminology for cases with enduring influence—dominate contemporary citations,[44] then the argument for comprehensive translation would be significantly weakened. The empirical evidence strongly supports the former interpretation. Far from being concentrated among a few celebrated cases, contemporary legal citations show great breadth in coverage of the historical Supreme Court Reports.

Between 2015 and 2024, the Supreme Court cited 734 different pre-1970 decisions, including 231 unique pre-1970 SCC decisions. Lawyers cited 523 unique pre-1970 SCC decisions in the same period. The annual data in Table 5 shows consistent diversity year over year, with courts citing between seventeen and forty-one unique pre-1970 Supreme Court decisions annually. When extended beyond Supreme Court proceedings, we see the diversity of pre-1970 cases more clearly: 2,152 unique cases cited, with annual rates of 599–761. However, it is notable that this annual figure has consistently declined over the ten years studied.

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44   Alschner & St-Hilaire, *supra* note 19 at 68–70.

Table 5. Unique Pre-1970 SCC Cases Cited per Year by Various Sources (2015–2024)

Year	Unique Pre-1970 SCC Cases Cited per Year		
	SCC Reasons	SCC Factums	CanLII Reasons
2015	27	80	761
2016	24	85	775
2017	21	66	716
2018	17	70	723
2019	40	111	718
2020	29	83	679
2021	41	80	692
2022	21	58	636
2023	19	71	597
2024	31	44	599

While some pre-1970 decisions are cited more frequently than others, the distribution is notably flat rather than concentrated. Table 6 shows the most frequently cited pre-1970 decisions between 2015 and 2024. As the tenth rank was a tie between nine cases, the table includes eighteen cases: eleven Supreme Court of Canada cases and seven cases decided by British courts. While many of the top ten cases are widely known, their total citations do not demonstrate concentrated citation.[45] With the exception of *Roncarelli v. Duplessis*, no case averaged more than one citation per year.

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45   For comparison, the overall top ten decisions cited over the same period were all from the Supreme Court of Canada and had between 39 and 79 citations. 79—*Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC); 77—*Housen v Nikolaisen*, 2002 SCC 33; 68—*Dunsmuir v New Brunswick*, 2008 SCC 9; 58—*R v Oakes*, 1986 CanLII 46 (SCC); 55—*Hunter et al v Southam Inc*, 1984 CanLII 33 (SCC); 54—*R v Big M Drug Mart Ltd*, 1985 CanLII 69 (SCC); 46—*Reference Re Secession of Quebec*, 1998 CanLII 793 (SCC); 39—*Canada (Attorney General) v Bedford*, 2013 SCC 72; 39—*R v Grant*, 2009 SCC 32; 37—*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

Table 6. **Most Cited Pre-1970 Decisions (as Cited by the Supreme Court)**

Case	Year	Court	Citations (2015–2024)
Roncarelli v. Duplessis, [1959] S.C.R. 121	1959	SCC	12
Citizens Insurance Co. of Canada v. Parsons (1881), 7 App. Cas. 96	1881	UKPC	8
Hodge v. The Queen (1883), 9 App. Cas. 117	1883	UKPC	8
Donoghue v. Stevenson, [1932] A.C. 562	1932	UKHL	7
Commissioners of Inland Revenue v. Duke of Westminster, [1936] A.C. 1	1936	UKHL	7
Frey v. Fedoruk, [1950] S.C.R. 517	1950	SCC	7
Boucher v. The Queen, [1955] S.C.R. 16	1955	SCC	6
Attorney General of Nova Scotia v. Attorney General of Canada, [1951] S.C.R. 31	1951	SCC	6
Reference re Farm Products Marketing Act, [1957] S.C.R. 198	1957	SCC	5
Edwards v. Attorney-General for Canada, [1930] A.C. 124	1930	UKPC	4
O'Grady v. Sparling, [1960] S.C.R. 804	1960	SCC	4
McLean v. The King, [1933] S.C.R. 688	1933	SCC	4
Stockdale v. Hansard (1839), 9 Ad. & E. 1, 112 E.R. 1112	1839	EWQB	4
Okalta Oils Ltd. v. Minister of National Revenue, [1955] S.C.R. 824	1955	SCC	4
Wexler v. The King, [1939] S.C.R. 350	1939	SCC	4
Boudreau v. The King, [1949] S.C.R. 262	1949	SCC	4
Scott v. Scott, [1913] A.C. 417	1913	UKHL	4
Reference as to the Validity of the Regulations in Relation to Chemicals Enacted by Order in Council and of an Order of the Controller of Chemicals Made Pursuant Thereto, [1943] S.C.R. 1	1943	SCC	4

The Appendix contains tables with the top twenty-five most-cited cases in factums and CanLII cases. These tables reveal that pre-1970 case citation patterns vary across different legal contexts. While *Roncarelli v. Duplessis* tops both the Supreme Court and factum rankings, the CanLII

database shows a markedly different pattern. Within the CanLII top twenty-five, private law cases like *Raymond v. Township of Bosanquet* (883 citations), *Wood v. Grand Valley R. Co.* (781 citations), and *Parent v. Lapointe* (664 citations) dominate. Only five of the top twenty-five cases in the CanLII database appear on either the Supreme Court or factum top twenty-five lists: *Roncarelli v. Duplessis*, *Boucher v. The Queen*, *Boudreau v. The King*, *Poje v. Attorney General for British Columbia*, and *The Queen v. George*. This limited overlap could reflect the different types of cases the Supreme Court hears or the specialized functions that pre-1970 precedents serve in various judicial contexts. The latter attribute can be seen in the geographic concentration of CanLII citations: Over 90% of citations to *Raymond v. Township of Bosanquet* come from British Columbia, over 90% of *Wood v. Grand Valley R. Co.* citations originate from the Saskatchewan Office of Residential Tenancies, and 99% of *Parent v. Lapointe* citations are from Quebec. This pattern suggests that certain historical precedents have become foundational authorities in particular jurisdictions only.

As with the Supreme Court citations, citation counts remain relatively flat—even the most-cited case in the CanLII database represents less than 1% of all pre-1970 citations—confirming that engagement with historical precedents is distributed across hundreds of decisions rather than concentrated among a dominant few.

The evidence thus rejects the hypothesis that contemporary relevance is limited to a handful of landmark cases. Instead, it reveals sustained engagement with a broad spectrum of pre-1970 decisions, suggesting that these precedents continue to provide foundational principles and authoritative guidance across diverse areas of Canadian law.

This broad distribution has important implications for translation policy. The diversity of pre-1970 citations means that translating only the most frequently cited historical decisions would capture a small fraction of contemporary usage. Based on the citation patterns observed, a comprehensive approach to translation would be necessary to serve the demonstrated needs of legal practitioners who regularly engage with this diverse body of historical jurisprudence.

B. *How Lawyers and Judges Use Pre-1970 SCC Decisions*

The citation patterns documented above demonstrate that pre-1970 decisions appear regularly in contemporary legal practice. Citation counts, while informative of general patterns, admittedly only tell part of the story. They do not tell us whether these citations represent meaningful engagements with legal authority or perfunctory references to historical background. To examine this question empirically, I conducted a detailed qualitative analysis of how counsel and judges actually deploy pre-1970 Supreme Court decisions in their legal arguments.

I established a two-part coding scheme to record the purpose of the citation and the depth of engagement with each cited case.[46] The coding scheme included three categories of purpose: authority for a legal proposition, to analogize or distinguish, and historical context. I classified citations as "direct authority" when counsel or the court cited the case to support a specific legal proposition or rule. The category "analogize/distinguish" was used when counsel used the case for comparative legal reasoning. "Historical context" was used when counsel or the court used the case to provide background information, such as how the law developed or used to be. Similarly, I used three levels of engagement: high, medium, and low. High level engagement included extended discussion, several references, or lengthy block quotes. Medium engagement represented a typical case citation, such as a short quote or specific reference to the court's reasoning. Low engagement represented incidental or string citations, such as cases cited as part of a long list or as "see also" cases.

I used a randomizer to select one hundred factums containing pre-1970 citations from the dataset.[47] These factums contained 165 pre-1970 citations. Similarly, the randomizer selected fifty SCC cases from the SCC dataset. These cases contained 140 pre-1970 citations.

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46   This qualitative analysis was conducted by a single coder, which introduces potential subjectivity in borderline categorization decisions. Future research could enhance reliability through independent double-coding or machine-learning validation. However, the core distinction between authoritative citations and background references was generally clear-cut. The dataset is available for scrutiny on Dataverse (see Warchuk, *supra* note 26).

47   Factums were selected using the "random" module of python. Eligible factums were any factum that contained a pre-1970 citation.

Table 7 displays my findings from the factum analysis. The results demonstrate that counsel use pre-1970 Supreme Court decisions primarily as sources of legal authority, rather than historical artifacts. The majority of citations (128 of 165, or 77.6%) served as direct authority for legal propositions, with eighty-three of these showing high or medium-level engagement. Only twenty-three citations (14%) were used purely for historical context or background.

Table 7. **A Sample of the Way Counsel Used Pre-1970 Decisions**

	High	Medium	Low
Direct authority	6.7%	43.6%	27.3%
Analogize/distinguish	0.0%	7.9%	0.6%
Historical context	0.0%	8.5%	5.5%

The results of the SCC study were broadly similar to the factum analysis; however, Supreme Court judges demonstrated a greater propensity to use pre-1970 cases for historical context (22.1% versus 14% in factums). A notable pattern in the Supreme Court cases was judges referencing pre-1970 cases through more recent intermediary decisions.[48] Eleven of the forty-one direct authority/low citations (7.9% of all citations) fall into that category.[49]

Table 8. **The Way the SCC Uses Pre-1970 Decisions**

	High	Medium	Low
Direct authority	3.6%	39.3%	29.3%
Analogize/distinguish	0.0%	5.7%	0.0%
Historical context	1.4%	15.7%	5.0%

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48   See e.g. *Lalonde v Sunlife Assurance Co of Canada*, [1992] 3 SCR 261 at 278–79, 1992 CanLII 39 (SCC), citing *City of Ottawa v Town of Eastview et al*, 1941 CanLII 9 at 462 (SCC).

49   Because judges chose to continue referencing the pre-1970 case rather than the more recent case alone, I coded these as authority. However, there is an argument that the earlier case functions more as background in these instances. Were those cases to be labelled as historical context, then nearly one-third of SCC citations to pre-1970 SCC cases would be considered historical context.

The pattern of active engagement with pre-1970 jurisprudence rein-forces the quantitative findings about pre-1970 cases' enduring influence on Canadian law. Rather than being relegated to historical footnotes, these precedents appear to remain sources of legal authority, with roughly three-quarters of citations invoking pre-1970 decisions for their substantive legal content.

Taken together, the evidence presented across Part III provides a comprehensive empirical response to Chief Justice Wagner's assertion that pre-1970 decisions have minimal legal relevance. The citation data reveals consistent contemporary usage, with pre-1970 cases appearing in roughly half of all Supreme Court decisions and one-quarter of factums. The diversity analysis demonstrates that this usage spans over 2,100 distinct pre-1970 decisions rather than being concentrated among a handful of landmark cases. Finally, the qualitative analysis shows that when lawyers and judges cite these precedents, they overwhelmingly do so as binding legal authority rather than historical background. In my view, this evidence can lead to only one conclusion: Pre-1970 cases are still relevant today.

IV. FACTORS AFFECTING PRE-1970 CASE CITATION RATES

While Part III demonstrates the continued relevance of pre-1970 decisions across Canadian legal practice, this general finding raises more specific questions about the patterns and drivers of historical citation practices. There are many factors that could affect why courts and lawyers cite precedents of various ages. In his comments, the chief justice specifically identified one potential factor: subject matter. For the chief justice, "[a] decision that is five years old is often already considered outdated in commercial or civil matters." In this part, I will consider the effects of subject matter, citing author, court cited, and factum language on citation pre-1970 citation rates.

To empirically assess the chief justice's claim, I classified SCC cases into groups based on their subject matter. As mentioned in the methodology section, CanLII has classified almost all Supreme Court decisions into one or more of forty-four subject matters using an artificial intelligence-based system.[50] To improve readability and simplify analysis, I

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50   See *supra* note 36.

condensed CanLII's forty-four topics into seven broader categories or clusters: administrative and regulatory, civil law, constitutional, corporate commercial, criminal, family law, and legal processes.[51]

As the CanLII subject matter database is nearly comprehensive, it can be applied either to the citing SCC case or a cited SCC case. In other words, we can look both at the share of all citations made by criminal cases that were to pre-1970 SCC decisions (citing view) or the share of all citations received by pre-1970 criminal law decisions (cited view).

Table 9 displays the results for citations in SCC decisions, factums submitted to the SCC and the CanLII database. In each instance, the highest proportion of pre-1970 SCC citations comes from or goes to corporate commercial cases. Similarly, in each instance the second highest values are for civil law cases. Thus, in all instances it appears that the chief justice's observation does not hold.

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51   The groupings are as follows: Administrative and Regulatory (Judicial review; Public administration; Municipalities; Citizenship and immigration; Administrative remedies; Professions and occupations; Health and safety; Environment; Motor vehicles; Residential tenancies; Labour and employment; Taxation); Civil law (Contracts; Damages; Torts; Property and trusts; Negligence; Wills and estates); Constitutional (Constitution; Rights and freedoms; Indigenous peoples; Access to information and privacy; International); Corporate commercial (Bankruptcy and insolvency; Business; Commerce and industry; Creditors and debtors; Intellectual property; Insurance); Criminal (Criminal or statutory infractions; Defences; Search and seizure; Sentencing; Young offenders); Family Law (Family; Child protection; Support and maintenance; Child custody and access; Guardianship); and Legal Processes (Practice and procedure; Appeal; Evidence; Arbitration; Interpretation). This consolidation both reflects established doctrinal divisions in Canadian law and ensures adequate case counts within each group for robust analysis.

Table 9. Pre-1970 SCC Citation Rates Separated by Subject Matter, Across Three Datasets (2015–2024)

Case Topic	Percentage of Citations to Pre-1970 SCC Cases (2015–2024)				
	SCC Case		Factums		CanLII
	Citing	Cited	Citing	Cited	Cited
Administrative and Regulatory	3.13%	3.15%	2.62%	2.10%	2.82%
Civil Law	4.27%	5.46%	5.26%	6.46%	6.21%
Constitutional	2.29%	1.53%	2.21%	1.84%	0.62%
Corporate Commercial	5.85%	5.33%	8.15%	6.84%	11.51%
Criminal	3.05%	3.78%	2.50%	2.99%	2.02%
Family Law	2.70%	3.65%	5.06%	2.99%	0.67%
Legal Processes	2.92%	2.58%	2.56%	2.46%	2.49%

It is also possible that citation rates to pre-1970 cases vary based on judge—perhaps the chief justice is uniquely opposed to citing pre-1970 cases, for instance. An earlier study by Peter McCormick revealed significant differences between judges in the number of citations to American authorities, so the same may be true with respect to age.[52]

To assess citations at the judge level, I divided the SCC dataset of citations by author. I performed the count twice; once considering only solo authored opinions, and again, counting citations made by co-authored reasons equally for each author.

Table 10 displays the percentage of pre-1970 citations that each judge who has served between 2015 and present has made. It is listed from highest to lowest, with current members of the Court in bold. Two trends stand out. First, most of the current court is near the bottom of the list, with Justice Moreau—the newest Justice—citing no pre-1970 decisions in her first year on the Court. Second, the current judge with the highest proportion of pre-1970 citations is, surprisingly, Chief Justice Wagner.

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52   McCormick, "American Citations and the McLachlin Court", *supra* note 8 at 97.

Table 10: Pre-1970 Citation Rates Broken Down by Judge

Judge	Percentage of SCC Citations to Pre-1970 Decisions	
	Solo Opinions	**All Opinions**
McLachlin	14.52%	12.76%
Rothstein	10.53%	9.79%
Cromwell	8.56%	7.59%
Wagner	7.49%	5.06%
Brown	6.90%	6.43%
Côté	6.56%	6.78%
Abella	6.13%	5.66%
Rowe	5.42%	5.94%
Gascon	4.49%	5.22%
Karakatsanis	3.90%	3.88%
Kasirer	3.74%	3.49%
Moldaver	2.82%	3.18%
Jamal	2.60%	2.78%
Martin	1.74%	2.79%
O'Bonsawin	1.25%	0.89%
Moreau	0	4.23%

A third factor that may affect citation rates is language. The majority of the pre-1970 SCC decisions are in English. This language barrier clearly inhibits use by non-English speakers. As the Supreme Court is a bilingual institution, and there have been no unilingual Francophone judges within the period under review, I turn instead to factums.

Due to the large number of factums included in this study, I used citation style as a proxy for factum language. Where 80% or more of the citations were in the SCC/SCR format, the factum was labelled as English. Where 80% or more of the citations were in the CSC/RCS format, the factum was labelled as French. Remaining factums were manually labelled. The result was 4,239 English factums and 801 French factums. To validate the 80% threshold, I randomly sampled fifty English and fifty

French factums that were automatically labelled.[53] One factum labelled as French was written in English, but the other ninety-nine matched the language.

The average number of pre-1970 SCC citations was calculated for each language category. English factums averaged 0.39 citations, whereas French ones averaged 0.48, with 22.36% of English factums and 26.84% of French factums including at least one pre-1970 SCC citation. Statistical testing confirmed that the difference between the means of French and English factums, although small, is statistically significant.[54] This distinction defies expectations. Given that most pre-1970 SCC decisions are in English, one would expect that English language factums would be more likely to cite these decisions. However, the greater rate of citation by French language factums may indicate a cultural difference between the research and citation practices of French-language practitioners and English-language practitioners.

While this finding might initially appear to undermine the case for translation, that conclusion does not necessarily follow. The fact that French-writing practitioners are managing to work around language barriers demonstrates their professionalism and dedication, not the adequacy of the current system. Litigants and practitioners who are less comfortable in English must invest additional time and resources to understand untranslated precedents or risk missing nuances that could be crucial to their arguments. That they do so does not mean that those barriers do not exist. Finally, I suspect that counsel who appear at the Supreme Court are more likely to be bilingual or have access to translation resources than litigants appearing in lower courts, meaning the language barriers are even more significant in other judicial contexts.

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53   Random sampling was conducted within each language group using the sample method of the pandas package in Python, with a fixed random seed to ensure reproducibility of results.

54   The data is heavily zero-inflated (as most factums don't include pre-1970 citations) and shows unequal variance between English and French factums. I therefore used a Mann-Whitney U test because it does not require a normal distribution and assesses whether one group's values tend to be larger than the other's by ranking all observations and evaluating the sum of ranks in each group. This yielded a test statistic of U = 1,616,506, with a p-value of 0.0035, thus indicating statistical significance.

A. Regression Analysis

To examine whether pre-1970 citation patterns at the Supreme Court are driven by particular judges or subject matters, I conducted a logistic regression to predict the likelihood that a citation is from before 1970. I also included court type in the model as I observed that the Supreme Court tends to cite older English cases. A logistic regression is the appropriate form of regression analysis when predicting a binary outcome—such as whether a citation is from before 1970 or not.[55]

The regression equation is:

$$\log\left(\frac{p}{1-p}\right) = \beta_0 + \beta_1(\text{Judge}) + \beta_2(\text{Subject Matter}) + \beta_3(\text{Court Type})$$

where p represents the probability of citing a pre-1970 case, and the β coefficients measure how each factor affects this probability. In simpler terms, this statistical model allows us to isolate the effect of each variable, such as which judge is writing or the subject matter of the case.

The full results are included in the Appendix. The regression demonstrates good predictive power (Pseudo R^2 = 0.226, meaning it explains approximately 23% of the variation in pre-1970 citations) and strong ability to distinguish between cases that will and will not cite pre-1970 decisions (ROC-AUC = 0.821, where 1.0 would be perfect prediction and 0.5 would be no better than random chance).

The regression uses Chief Justice Wagner writing in a corporate commercial case and citing a Supreme Court of Canada decision as the baseline or reference category. To calculate the probability that this combination of factors will result in a citation being to a pre-1970 case, we can take the odds ratio for the intercept and convert it to a probability using the formula $OR = \frac{p}{1-p}$.[56] As the odds ratio for the intercept is 0.077, there is a 7.15% chance that a citation would be to a pre-1970 case.

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55   David Rindskopf, "Trends in Categorical Data Analysis: New, Semi-New, and Recycled Ideas" in David Kaplan, ed, *The SAGE Handbook of Quantitative Methodology for the Social Sciences* (Thousand Oaks, Cal: Sage Publications, 2004) 137 at 144.

56   An odds ratio (OR) is calculated by raising the base of the natural logarithm (≈2.71828) to the power of the coefficient of the predictor. Where two predictors are changed from the reference, the $OR = e^{\beta 1} \times e^{\beta 2}$. An OR greater than 1 indicates an increased likelihood of citing pre-1970 cases, while an OR less than 1 indicates decreased likelihood. For example, an OR of 2.0 means the odds are doubled. The p-value indicates statistical

To find the probability for other combinations of factors, we multiply the relevant odds ratios together, then convert to probability using the same formula. For example, if Justice Wilson (OR = 4.76) writes a corporate commercial case citing a Supreme Court decision, we multiply $0.077 \times 4.76 = 0.367$, which converts to a 27% probability of citing a pre-1970 case. If she were citing a foreign court instead (OR = 12.01), we would multiply $0.077 \times 4.76 \times 12.01 = 4.40$, which converts to an 81% probability.

Unsurprisingly, historical judges show dramatically higher rates of citing pre-1970 cases compared to Chief Justice Wagner, such as Justice Beetz (OR = 6.74) and Justice Estey (OR = 8.23). This translates to probabilities of them citing a pre-1970 SCC decision in a corporate commercial case to be 34.2% and 38.8% respectively.

Turning to subject matter, all of the odds ratios are less than one, meaning that judges are less likely to cite pre-1970 cases outside of corporate commercial cases. Perhaps most striking is the finding regarding foreign court citations. When a citation in an SCC judgment is to a foreign court, that foreign citation itself is nearly twelve times more likely to be from before 1970—compared to when the citation is to another SCC case. For example, were Chief Justice Wagner to cite a foreign case in a corporate commercial appeal, the probability of it being from before 1970 would be 47.7%.

These regression results, which control for multiple factors simultaneously, demonstrate that the judge, subject matter, and the court being cited are useful predictors of whether a citation will be to a pre-1970 case. Of course, there are many additional contributing factors. Undoubtedly, there is a relationship between judge and citation age, in part because judges have served during different eras, some much closer to 1970 than others. To better understand the natural lifecycle of legal authority we must turn to an analysis of how citation patterns evolve as cases age.

V.   THE LIFECYCLE OF PRECEDENT

The two preceding parts have shown the continued contemporary significance of pre-1970 case law, particularly SCC case law. But each

significance—values below 0.05 suggest the relationship is unlikely due to chance. Full regression results are provided in the Appendix.

year, the legal landscape evolves and pre-1970 SCC decisions remain unchanged. As Richard Posner wrote, "[T]he stock of knowledge capital created by scholarly or judicial activity, just like a stock of physical capital, both is durable and depreciates."[57] This natural obsolescence may have been what the chief justice was alluding to in his remarks. To explore the process of obsolescence more generally, this final part looks at trends in citation age and the decay of cases.

A. Trends in Citation Age

Figure 2 plots both the mean age and 75th percentile age of citations to Supreme Court of Canada cases over time across all three datasets. The data reveals a consistent pattern: Citation ages fell sharply in the late 1980s before stabilizing and then rising steadily since the mid-1990s.

In 1995, the mean age of SCC citations was 13.16 years in the CanLII database and 8.85 in the SCC dataset. By 2024, those ages had increased to 20.11 years (CanLII), 20.44 years (SCC), and 18.29 years (factums). Notably, while the factum and CanLII citation ages track closely over time, Supreme Court citation ages diverge somewhat.

The decline in citation ages during the 1980s likely reflects the impact of *Charter* litigation.[58] As Peter McCormick previously observed, average citation age in *Charter* cases was significantly lower than other areas in the late 1980s and early 1990s.[59] The subsequent rise in citation ages since the mid-1990s likely reflects the continued citation of these now-aging early *Charter* precedents, consistent with Alschner and MacNeal's findings regarding the enduring prominence of foundational *Charter* cases.[60]

Figure 2 also plots the 75th percentile citation ages over time. As mean age can be skewed by a few citations to very old cases, the percentile ages help assess whether mean age is representative of an average case being cited (or whether it is skewed by very old and young cases).[61]

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57 Posner, *supra* note 11 at 388.

58 Thanks to Peter Wills for pointing this out.

59 McCormick, "The SCC Cites the SCC", *supra* note 11 at 479.

60 Alschner & MacNeal, *supra* note 23 at 17–18.

61 Although limited to SCC citations, the distribution of citation ages spans an extremely wide range, from newly decided cases (age zero) to centuries-old precedents, with the

Between the late 1980s and mid-2000s, the mean age and 75th percentile age were nearly identical. However, over the past ten years, the 75th percentile has grown to be approximately eight years older. This divergence indicates that while most citations continue to reference cases of moderate age, there is an increasing tendency to cite older precedents, creating a right-skewed distribution with a longer tail of historical citations.

Figure 2. **Mean and 75 Percentage Age of Citations over Time**

Mean and 75th Percentile Age of Citations by Year
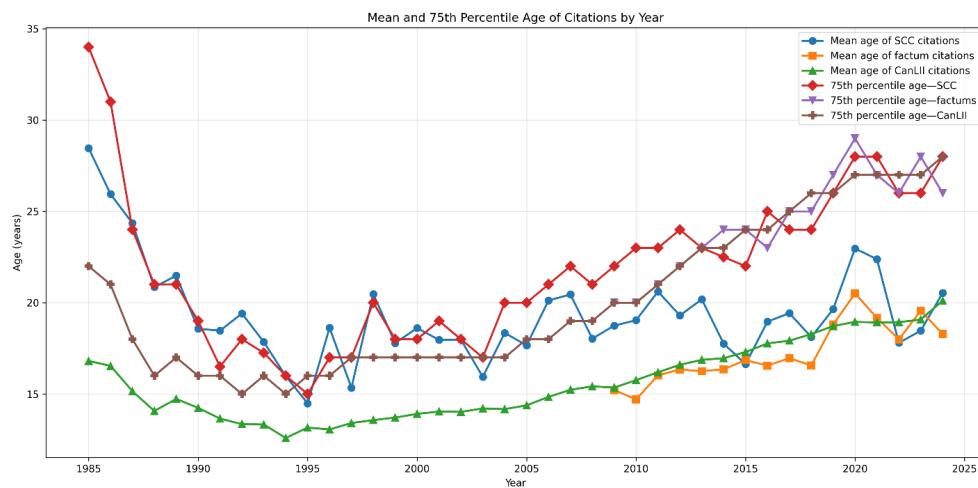
oldest cited case dating back 634 years. Within the SCC dataset, there were also two cases over 500 years old and another 20 cases over 400 years old at the time of citation.

B.   Decay Analysis

The rising citation ages documented above suggest that older precedents retain relevance longer than might be expected. To understand this phenomenon more precisely, we can examine how citation rates decline using decay analysis.

To establish baseline decay patterns and enable comparison with previous research, I first examined how the Supreme Court cites its own previous decisions. As discussed above, Peter McCormick previously performed that calculation and determined the decay rate for SCC cases to be 15%.

Figure 3 shows citation frequency as a function of case age at the time of citation. It indicates a clear general trend for cases to decay over time. However, this decay does not occur in a linear manner. In an attempt to find the rate of decay, I thus plotted two non-linear curves: an exponential decay curve and a log-linear decay curve. The exponential decay curve assumes that citation rates decline by a constant percentage each year. The log-linear model assumes there is a linear relationship between the natural logarithm of number of citations and time.

While both models fit relatively well, the exponential decay model fits remarkably well with an R^2 of 0.982, indicating it explains 98.2% of the variation in Supreme Court self-citation patterns over time. This model estimates an annual decay rate of 6.11%, yielding a half-life (the time required for citation rates to fall to 50% of their peak) of 11.3 years.[62] This 6.11% rate is substantially lower than McCormick's 15% estimate, which suggests that either Supreme Court citation practices have evolved toward greater reliance on older precedents since the 1990s, or that the expanded temporal scope captures different dynamics than McCormick's narrow five-year window.

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62   These numbers are comparable to the rate of decay of SCC cases across the entire CanLII database. There, the exponential decay model achieved an R-squared value of 0.932, an estimated annual decay rate of 4.45%, and a half life of 15.75 years—or 68.08 years until citations fall to 5% of their peak.

Figure 3. Decay of Supreme Court Decisions as Cited by the
Supreme Court of Canada
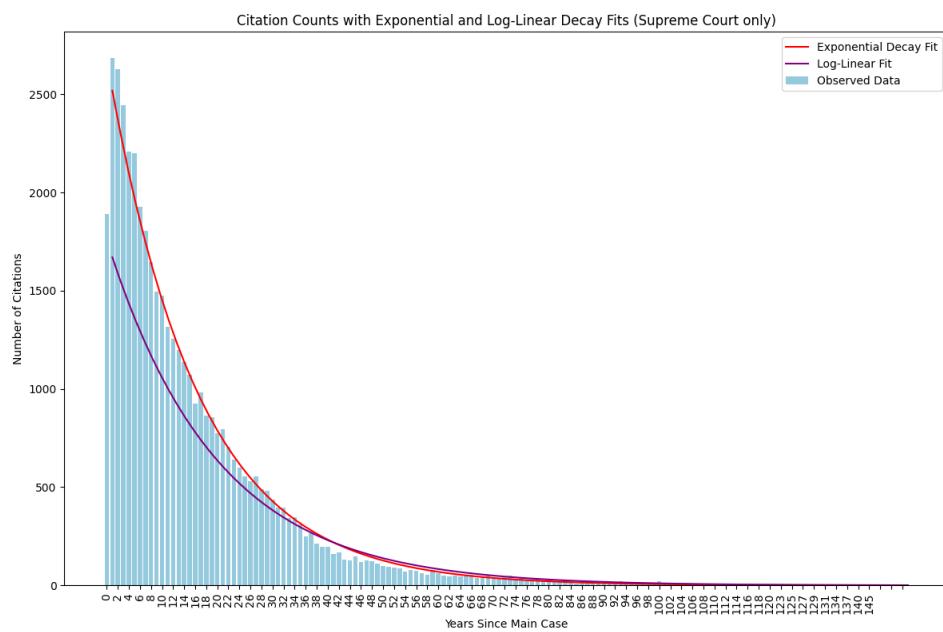
More directly relevant to this paper's central question is whether pre-1970 Supreme Court decisions follow different decay patterns than the general population of precedents. Given their survival through major legal transformations—including the *Charter's* adoption—we might expect these cases to show accelerated obsolescence.

Figure 4 presents the decay analysis for pre-1970 Supreme Court decisions as cited across all Canadian courts and tribunals in the CanLII database. The results reveal a striking and counter-intuitive finding: Pre-1970 decisions actually demonstrate lower decay rates than both the Supreme Court average and the broader judicial system.

Both the exponential ($R^2 = 0.975$) and log-linear ($R^2 = 0.972$) models fit the pre-1970 data extremely well, with the exponential model yielding a decay rate of just 3.91% annually. This translates to a half-life of 17.7 years and suggests that it would take approximately 76.6 years for cases to reach practical irrelevance (5% of peak citation levels).

Figure 4. Decay of Pre-1970 Supreme Court Decisions Across All Canadian Courts
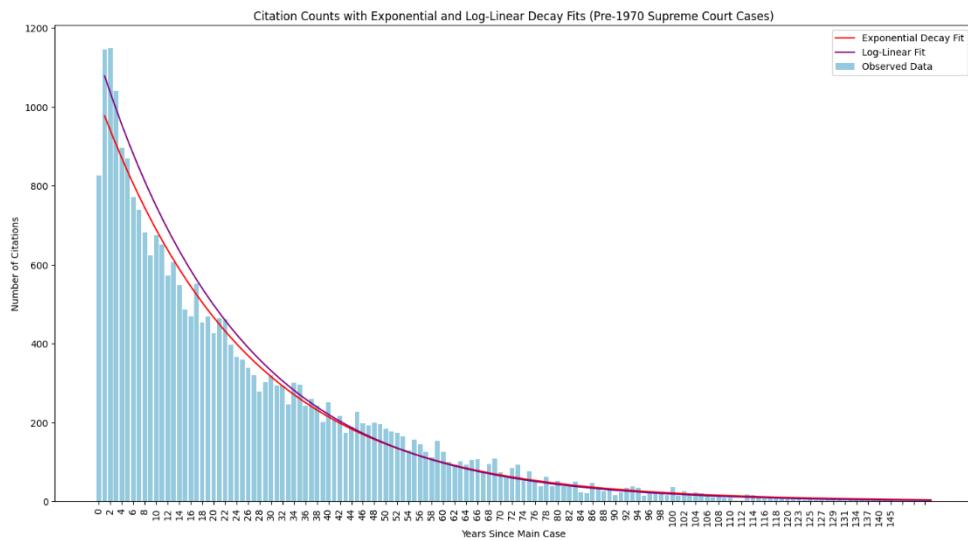
These decay analyses provide further quantitative evidence directly relevant to Chief Justice Wagner's assertion about the minimal contemporary relevance of pre-1970 decisions. They show, first, that, while all precedents experience declining citation rates over time, this decline occurs gradually rather than precipitously. Second, pre-1970 decisions actually show greater durability than the average Supreme Court precedent. Third, the difference between Supreme Court self-citation patterns (6.11% decay) and the broader judicial system's engagement with pre-1970 cases (4.45% decay) indicates that, while the Supreme Court may move somewhat more quickly to newer authorities, lower courts and tribunals maintain longer engagement with historical precedents.

CONCLUSION

This study began with a simple empirical question: Do pre-1970 Supreme Court decisions retain contemporary legal relevance? The answer, demonstrated through multiple converging lines of evidence, is an unequivocal yes. The data reveals not merely vestigial references to historical curiosities, but a pattern of sustained engagement with pre-1970 jurisprudence across all levels of the Canadian legal system.

The numbers tell a compelling story. Pre-1970 Supreme Court decisions appear in half of all Supreme Court judgments, one-quarter of all

factums, and thousands of lower court decisions annually. This breadth of citation—spanning over 2,100 distinct pre-1970 decisions—refutes any suggestion that relevance is confined to a handful of celebrated cases. When lawyers and judges invoke these precedents, they do so overwhelmingly as binding legal authority (77.6% of factum citations) rather than historical background. Even the decay analysis reveals that pre-1970 decisions demonstrate greater durability than the average Supreme Court precedent, with a half-life of 17.7 years compared to 11.3 years for all decisions.

Perhaps most striking is the irony embedded in the data: Chief Justice Wagner himself cites pre-1970 cases at a higher rate (7.49%) than most of his colleagues. And despite claiming that "no one today references a precedent from 1892," the chief justice and others have recently cited cases from that year.[63] His assertion that such decisions have minimal legal interest is thus contradicted not only by the empirical evidence but by his own judicial practice.

In light of these findings, the Supreme Court's recent decision to remove pre-1970 decisions from its website appears shortsighted. This action restricts access to decisions that remain integral to legal reasoning across diverse areas of law. Not only does it fail to improve access for French-speaking litigants and practitioners, it also diminishes the transparency and accessibility of justice for all. Closer to home, much of the data used for this study originated on the Supreme Court's website. Had the Supreme Court removed this information earlier, this study would not have been possible.[64]

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63   *Reference re Impact Assessment Act*, 2023 SCC 23 at para 111, Wagner CJC & Côté, Rowe, Martin & Kasirer JJ. Further, in *Canadian Imperial Bank of Commerce v Green*, Justice Côté cited a Supreme Court decision from 1892—*Couture v Bouchard* (see 2015 SCC 60 at para 90, Côté J, joined by McLachlin CJC & Rothstein J). More recently, in *References re Greenhouse Gas Pollution Pricing Act*, Justice Rowe cited a Privy Council decision from 1892—*Liquidators of the Maritime Bank of Canada v Receiver-General of New Brunswick* (see 2021 SCC 11 at para 464, Rowe J, dissenting). Two factums also cited Supreme Court decisions from 1892 (see *Co-operators Life Insurance Co v Gibbens*, 2009 SCC 59 (Factum, Respondent); *Canadian Imperial Bank of Commerce v Green*, 2015 SCC 60 (Factum, Appellant Imax Corporation)).

64   The Supreme Court of Canada Bulk Decisions Dataset is scraped from the SCC's website (see Rehaag, *supra* note 28). Although the decisions are still available on CanLII, the terms and conditions of use do not permit full text decisions to be scraped.

In the end, this study reveals a fundamental disconnect between judicial rhetoric and legal reality. While the chief justice speaks of rapid legal evolution rendering old precedents obsolete, the daily practice of Canadian law tells a different story. Lawyers and judges regularly reach back decades, even centuries, to find the principles that guide contemporary justice. The law may evolve, but it does so with deep roots firmly planted in its historical soil. To deny access to these roots is to impoverish our understanding of Canadian law.

APPENDIX

Table A1. Logistic Regression Predicting Citation to Pre-1970
Supreme Court Decisions

	Odds Ratio	P-Value	95% CI Lower	95% CI Upper
Intercept	0.077372	4.79E-55	0.056129	0.106656
Justice Abella	0.848306	0.40951	0.573803	1.254128
Justice Arbour	1.622844	0.022168	1.071782	2.457239
Justice Bastarache	1.386406	0.120275	0.918098	2.093592
Justice Beetz	6.758438	2.34E-08	3.45619	13.21585
Justice Binnie	1.935614	0.000376	1.34506	2.785454
Justice Brown	1.090813	0.641066	0.756914	1.572003
Justice Charron	0.879122	0.753055	0.393995	1.961588
Justice Chouinard	6.755209	5.71E-11	3.814435	11.9632
Justice Cory	2.371641	1.92E-06	1.662113	3.384054
Justice Cromwell	1.033115	0.889369	0.65282	1.634948
Justice Côté	1.160758	0.364667	0.840936	1.602214
Justice Deschamps	1.514066	0.045925	1.007534	2.275255
Chief Justice Dickson	4.815977	1.32E-13	3.176664	7.301257
Justice Estey	8.234881	2.74E-13	4.677655	14.49728
Justice Fish	1.545175	0.046676	1.006423	2.37233
Justice Gascon	0.867926	0.502685	0.573584	1.313312
Justice Gonthier	3.078177	2.18E-07	2.012059	4.709192
Justice Iacobucci	2.552264	5.34E-07	1.769509	3.681275
Justice Jamal	0.66846	0.073377	0.430124	1.038863
Justice Karakatsanis	0.695698	0.049808	0.484143	0.999696
Justice Kasirer	0.694964	0.149004	0.423951	1.139224
Justice L'Heureux-Dubé	2.43418	1.34E-05	1.630858	3.6332
Justice La Forest	3.347331	1.62E-10	2.311225	4.847917
Justice Lamer	3.023159	1.8E-09	2.108116	4.335383
Justice Le Dain	3.02338	0.000311	1.657096	5.516175
Justice Lebel	1.562411	0.017602	1.080915	2.25839
Justice Major	2.518422	2.44E-06	1.715234	3.697715
Justice Martin	0.560389	0.030571	0.331549	0.947179
Justice Mcintyre	5.714581	4.27E-13	3.566536	9.156347
Chief Justice McLachlin	1.792356	0.000633	1.282543	2.504821
Justice Moldaver	0.644858	0.051234	0.414865	1.002354

Justice Moreau	0.924686	0.809853	0.48865	1.74981
Justice O'Bonsawin	0.247818	0.022028	0.075086	0.817913
Justice Rothstein	1.499478	0.073563	0.962102	2.337001
Justice Rowe	1.07212	0.696716	0.755369	1.521695
Justice Sopinka	2.793279	1.84E-07	1.89861	4.109538
Justice Stevenson	2.468043	0.031924	1.0812	5.633774
The Court	3.610456	4.61E-06	2.08475	6.252736
Justice Wilson	4.753263	1.97E-18	3.353575	6.737142
Issue: Administrative and Regulatory	0.369329	1.11E-13	0.283956	0.480369
Issue: Civil Law	0.713026	0.007825	0.555712	0.914873
Issue: Constitutional	0.398818	4.4E-20	0.327731	0.485325
Issue: Criminal	0.562875	1.47E-07	0.454315	0.697377
Issue: Family Law	0.216819	1.85E-08	0.127285	0.369333
Issue: Legal Processes	0.47089	3.42E-11	0.376868	0.588369
Canadian appeal courts	1.025952	0.67733	0.909318	1.157547
Canadian trial courts	1.645364	5.21E-14	1.445257	1.873178
Foreign courts	12.01004	0	10.7828	13.37696

Model Statistics:

- N = 76,102 citations (citations in co-authored opinions are counted for each author)
- Number of clusters (cases) = 2,561
- Log-likelihood = -21,521.5
- Pseudo R^2 = 0.226
- AIC = 43,140.91
- BIC = 43,593.66
- ROC-AUC = 0.821

Notes:

- Standard errors were clustered at the case level because citations within a single case are likely correlated as they address the same legal issues. To address this risk, the standard error was calculated using a cluster-robust technique known as the Huber-White sandwich estimator. Without accounting for clustering, standard errors would be underestimated, potentially leading to false findings of statistical significance.
- The intercept/reference category represents Chief Justice Wagner writing in a corporate commercial case and citing a Supreme

Court of Canada decision. All odds ratios should be interpreted relative to this baseline.

Table A2. Most-Cited Pre-1970 SCC Decisions, as Cited by Factums
Submitted to the SCC, 2015–2024

Rank	Case	Citation Count
1	*Roncarelli v. Duplessis*, [1959] S.C.R. 121	76
2	*Boucher v. The Queen*, [1955] S.C.R. 16	40
3	*Johannesson v. Municipality of West St. Paul*, [1952] 1 S.C.R. 292	27
4	*Attorney General of Nova Scotia v. Attorney General of Canada*, [1951] S.C.R. 31	23
5	*Coughlin v. The Ontario Highway Transport Board*, [1968] S.C.R. 569	23
6	*O'Grady v. Sparling*, [1960] S.C.R. 804	22
7	*Murphy v. C.P.R.*, [1958] S.C.R. 626	20
8	*Munro v. National Capital Commission*, [1966] S.C.R. 663	19
9	*Reference re Validity of Section 5 (a) Dairy Industry Act*, [1949] S.C.R. 1	18
10	*Provincial Secretary of Prince Edward Island v. Egan*, [1941] S.C.R. 396	15
11	*Reference as to whether "Indians" includes in s. 91 (24) of the B.N.A. Act includes Eskimo in habitants of the Province of Quebec*, [1939] S.C.R. 104	14
11	*Gold Seal Ltd. v. Alberta (Attorney-General)*, 62 S.C.R. 424	14
13	*Reference Re Authority to Perform Functions Vested by Adoption Act, The Children of Unmarried Parents Act, The Deserted Wives' and Children's Maintenance Act of Ontario*, [1938] S.C.R. 398	13
13	*Saumur v. City of Quebec*, [1953] 2 S.C.R. 299	13
15	*Smith v. The Queen*, [1960] S.C.R. 776	12
16	*Mason v. Freedman*, [1943] S.C.R. 483	11
16	*P.E.I. Potato Marketing Board v. Willis*, [1952] 2 S.C.R. 392	11
18	*Vigneux v. Canadian Performing Right Society Ltd.*, [1943] S.C.R. 348	10
18	*Reference Re Alberta Statutes - The Bank Taxation Act; The Credit of Alberta Regulation Act; and the Accurate News and Information Act*, [1938] S.C.R. 100	10
20	*Switzman v. Elbling and A.G. of Quebec*, [1957] S.C.R. 285	9
20	*Commission du Salaire Minimum v. Bell Telephone Company of Canada*, [1966] S.C.R. 767	9

20	*Campbell-Bennett v. Comstock Midwestern Ltd.*, [1954] S.C.R. 207	9
20	*Daniels v. White*, [1968] S.C.R. 517	9
20	*Reference as to the Validity of the Regulations in Relation to Chemicals Enacted by Order in Council and of an Order of the Controller of Chemicals Made Pursuant Thereto*, [1943] S.C.R. 1	9
25	*Industrial Acceptance Corp. v. Lalonde*, [1952] 2 S.C.R. 109	8
25	*Ukrainian Greek Orthodox Church of Canada et al. v. The Trustees of Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress et al.*, [1940] S.C.R. 586	8
25	*In Re George Edwin Gray*, 57 S.C.R. 150	8
25	*Wexler v. The King*, [1939] S.C.R. 350	8
25	*Frey v. Fedoruk et al.*, [1950] S.C.R. 517	8
25	*A.G. for Ontario v. Scott*, [1956] S.C.R. 137	8

Table A3. **Most-cited Pre-1970 SCC Decisions, as Cited by Cases in CanLII Database, 2015–2024**

Case	Citation Count
Raymond v. Township of Bosanquet (1919), 59 S.C.R. 452	883
Wood v. Grand Valley R. Co. (1915), 51 S.C.R. 283	781
Parent v. Lapointe, [1952] 1 S.C.R. 376	664
White v. The King, [1947] S.C.R. 268	362
Roncarelli v. Duplessis, [1959] S.C.R. 121	286
The King v. Comba, [1938] S.C.R. 396	225
Boucher v. The Queen (1954), [1955] SCR 16	208
Komo Construction Inc. et al. c. Commission des Relations de Travail du Québec et al. (1967), [1968] R.C.S. 172	208
Beaver v. The Queen, [1957] S.C.R. 531	181
Pauze v. Gauvin (1953), [1954] S.C.R. 15	175
McMartin v. The Queen, [1964] S.C.R. 484	147
Workmen's Compensation Board v. Theed, [1940] S.C.R. 553	132
McIver v. The Queen, [1966] S.C.R. 254	132
Noranda Mines v. Minerals Separation Corp. (1949), [1950] S.C.R. 36	116
General Motors Corp. v. Bellows, [1949] S.C.R. 678	111
Wilson v. Swanson, [1956] S.C.R. 804	113
Thomson v. Minister of National Revenue, [1946] S.C.R. 209	102
Paper Machinery Ltd. et Al. v. J.O. Ross Engineering Corp. et Al., [1934] S.C.R. 186	101

Saint John Tug Boat Co. Ltd. v. Irving Refining Ltd., [1964] S.C.R. 614	100
Poje v. Attorney General for British Columbia, [1953] 1 S.C.R. 516	97
Workmen's Compensation Board v. C.P.R, [1952] 2 DLR 450, [1952] 2 S.C.R. 359	95
Walker v. Brownlee and Harmon, [1952] 2 D.L.R. 450	91
The Queen v. George, [1960] S.C.R. 871	90
The Queen v. King, [1962] S.C.R. 746	89
Lake Ontario Portland Cement Co. Ltd. v. Groner, [1961] S.C.R. 553	88
Boudreau v. The King, [1949] S.C.R. 262	88
Cote v. The King, [1942] 1 D.L.R. 336	88