

June 6, 2025

Chantal Carbonneau
Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

Dear Ms. Carbonneau:

Re: Report of the Independent Committee for the Selection of the Most Relevant Pre-1970 Decisions Rendered by the Supreme Court of Canada

We are pleased to share with you the report of the Independent Committee for the Selection of the Most Relevant Pre-1970 Decisions Rendered by the Supreme Court of Canada (the Committee). This report has two sections: the first describes the Committee's mandate, and the second lists twenty-four significant Supreme Court decisions that should, in the Committee's opinion, be given priority for translation.

1. Description of the Committee's Mandate

The Supreme Court of Canada (SCC) can be proud of its reputation as one of the world's most transparent and accessible apex courts. Bilingualism and bijuralism are at the very core of its identity. Canadians may present their arguments to the SCC in the official language of their choice. Since the *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.), came into effect in 1970, the SCC has rendered official versions of its decisions simultaneously in both official languages.

However, between 1877 and 1970, the SCC rendered approximately 6,000 decisions that were not translated. Some were in French, some were in English, and others were partly in French and partly in English. The fact that these decisions have not been translated has been the subject of public debate. On the occasion of the SCC's 150th anniversary, the Office of the Registrar decided to translate some of the SCC's most jurisprudentially relevant pre-1970 decisions, which will become available in both French and English on the SCC's website.

For this purpose, the SCC established an independent committee of legal experts to develop criteria and select decisions to be translated in the near term. The Committee consists of the following seven members:

1. The Honourable Marshall Rothstein, former justice of the SCC
2. The Honourable Clément Gascon, former justice of the SCC
3. Teresa Donnelly, President of the Federation of Law Societies of Canada and former Treasurer of the Law Society of Ontario
4. Catherine Claveau, Bâtonnière du Québec (until June 1, 2025)
5. Marie-Ève Sylvestre, Dean and Full Professor at the Civil Law Section of the University of Ottawa Faculty of Law
6. Yan Campagnolo, Vice-Dean and Full Professor at the Common Law Section of the University of Ottawa Faculty of Law
7. Francis Barragan, President and Chief Executive Officer of the Canadian Legal Information Institute (CanLII)

The Committee is chaired jointly by the Honourable Marshall Rothstein and the Honourable Clément Gascon. Teresa Donnelly serves as secretary of the Committee.

The Committee's mandate has three phases:

“Phase 1: Draw up a list of criteria for selecting the pre-1970 decisions rendered by the Supreme Court of Canada that are the most jurisprudentially relevant to the development of modern law;

Phase 2: Select, in order of importance, around twenty (20) pre-1970 decisions among all areas of law that meet these criteria; and

Phase 3: Submit a written report compiling the results of phases 1 and 2 to the Office of the Registrar no later than [June 6, 2025].”

The Committee commenced meeting on January 23, 2025, and subsequently met on January 30, March 6 and 20, April 14, May 5 and 15, and June 2. Each meeting lasted approximately one hour, and each member undertook to keep the deliberations confidential. The outcome of the Committee's meetings is summarized in the next section.

2. List of Most Jurisprudentially Relevant Pre-1970 Decisions

As mentioned above, the SCC rendered nearly 6,000 unilingual decisions before 1970. The terms of reference directed the Committee to first establish criteria to identify the decisions that are “the most jurisprudentially relevant to the development of modern law” and then to select about twenty decisions “among all areas of law that meet these

criteria”. The overarching goal was to identify which cases should be given priority for translation.

This was a challenging task. The Committee had to select the top 0.33% of pre-1970 SCC decisions in a short period of time while working on this project on a part-time basis. In this context, the Committee had to find an efficient, rigorous, and objective way to identify the most relevant decisions. The first step was therefore to agree on a quantitative approach that would enable the Committee to narrow the number of cases to be examined before proceeding to a qualitative assessment.

From the outset, the Committee recognized that SCC decisions are read, analyzed, applied, and quoted by different audiences for different purposes. The key audiences can be broadly organized into six groups: SCC judges; appellate and lower-court judges; administrative decision-makers; legal professionals; law professors and students; and other members of the public, including self-represented litigants. As a starting point, the Committee decided to inquire into which pre-1970 SCC decisions are most relevant to each group based on quantitative citation data. The Committee obtained the following six tables from various sources:

Table 1—Most-cited pre-1970 decisions by the SCC

Table 2—Most-cited pre-1970 decisions by appellate and lower courts

Table 3—Most-cited pre-1970 decisions by administrative decision-makers

Table 4—Most-cited pre-1970 decisions by lawyers

Table 5—Most relevant pre-1970 decisions for legal education

Table 6—Most-consulted pre-1970 decisions by members of the public

Tables 1, 2, and 3, were provided by CanLII. Tables 1 and 2 were compiled on March 11, 2025, and Table 3 was compiled on April 1, 2025. The three tables identify the top 100 most-cited pre-1970 cases of all time by the SCC, appellate and lower courts, and administrative decision-makers, respectively.¹ They provide valuable data on the precedential value of older SCC decisions.

Table 4 was provided by Professor Paul Warchuk of the University of New Brunswick Faculty of Law. It is based on data he collected for an article entitled “Do Pre-1970 Precedents Still Matter? An Empirical Analysis of Legal Submissions and Court Decisions”, which has been accepted for publication in volume 70 of the *McGill Law*

¹ The list of CanLII databases, along with information about their scope, is available online at the following address: <www.canlii.org/databases?noCache=en>.

Journal.² Table 4 lists the top 100 pre-1970 cases cited by lawyers in legal facta submitted to the SCC between April 2009 and September 2024. This list provides valuable information for determining which decisions are relevant to contemporary legal debates before the SCC.

Table 5 is based on a survey of law professors conducted by Dean Marie-Ève Sylvestre and Vice-Dean Yan Campagnolo of the University of Ottawa Faculty of Law. The survey was sent to professors at the University of Ottawa (Civil Law Section and Common Law Section) and the University of Moncton, and all members of the Association des professeurs-es de droit du Québec (i.e., law professors at the following institutions: Laval University, the University of Sherbrooke, the University of Montreal, the University of Quebec at Montreal, the University of Quebec in Outaouais, and McGill University).

The survey focused only on these eight law schools because of (1) time constraints and (2) the fact that most of the pre-1970 decisions were rendered in English and need to be translated into French. Hence, it was of great interest for the Committee to know which cases are most relevant to law faculties where courses are taught in French. The survey was sent to law professors and conducted online between March 20 and 28, 2025. The professors were asked to name up to five pre-1970 decisions rendered by the SCC that they use in their teaching and consider important in their research field. A total of twenty-five individual responses were collected and analyzed.³ These responses spanned various areas of expertise, from torts and extracontractual liability to contract, tax, family, constitutional, and criminal law. The survey yielded a preliminary list of 159 cases. The Committee then decided to eliminate the cases that had been flagged only once, given their low level of support. Twenty-three cases remained; these cases were included in Table 5. Despite the survey's limited sample, this list provides insight into some significant decisions that remain relevant in the context of legal education and are thus likely to be read by law students.

Table 6 was provided by CanLII/Lexum. It contains a list of the top 100 pre-1970 cases consulted by members of the public on the SCC website between October 2012 and December 31, 2024 (note, however, that the SCC removed its older decisions from its website on November 8, 2024). This list helped the Committee ascertain which cases have been popular online, which is a proxy for relevance to members of the public.

² This article, as well as an email dated March 18, 2025, from Professor Paul Warchuk, provides more detail on the methodology used to prepare Table 4. These documents are available upon request.

³ Twenty-eight responses were received, but three were discarded because they were blank.

Notably, the Committee did not gather data on citations of older SCC decisions in law reviews and books. While this information would have been useful, no comprehensive database offers reliable results in this regard. The CanLII database, for example, contains only some articles published by law reviews, but no books, which are typically subject to copyright. In addition, CanLII informed the Committee that it would be difficult to compile the information for technical reasons. Hence, the Committee was unable to properly investigate law reviews and books.

The results from the six tables described above were incorporated into one “consolidated” list of cases.⁴ Because many cases appeared in more than one table, the consolidated list contains a total of 373 cases, representing 6.22% of all pre-1970 cases. The Committee then cross-referenced the results obtained from the six tables to identify the cases that were listed in more than one table. The assumption underlying this approach is that a case listed in multiple tables is presumably more relevant, important, or influential than a case found in one table only. This approach enabled the Committee to create a list of fourteen core cases that appeared in four, five, or six tables. These fourteen cases were divided into the following three groups, in order of importance (a brief summary of the significance of each case is provided under the style of cause):

Group 1—Cases that appear in all six tables (in chronological order)

Reference re Alberta Statutes, [1938] S.C.R. 100
[English; Federal; Public Law] [Listed in tables 1 to 6]

- Considered argument that provincial laws cannot restrict fundamental freedoms such as freedom of the press and freedom of political expression (“implied bill of rights” case)

Saumur v. City of Quebec, [1953] 2 S.C.R. 299
[French/English; Quebec; Public Law] [Listed in tables 1 to 6]

- Considered argument that local and provincial laws cannot restrict fundamental freedoms such as freedom of religion and freedom of speech (“implied bill of rights” case)

Boucher v. The Queen, [1955] S.C.R. 16
[French/English; Quebec; Criminal Law] [Listed in tables 1 to 6]

⁴ Tables 1 to 6, as well as the Committee’s consolidated table, are available upon request.

- Articulated the responsibilities of Crown counsel in the course of criminal proceedings (i.e., they perform a public duty, they must act with dignity and fairness, and their role “excludes any notion of winning or losing” at 23-24)

Roncarelli v. Duplessis, [1959] S.C.R. 121

[French/English; Quebec; Public/Private Law] [Listed in tables 1 to 6]

- Established that public officials cannot exercise their discretionary powers arbitrarily or for an improper purpose; recognized as one of the most important SCC decisions on the rule of law (“implied bill of rights” case)

Group 2—Cases that appear in five tables (in chronological order)

Reference re Validity of Section 5 (a) Dairy Industry Act, [1949] S.C.R. 1

[French/English; Federal; Public Law] [Listed in tables 1, 2, 4, 5, 6]

- Established the classic definition of the scope of the criminal law (i.e., the law must create a prohibition with a penal sanction, for a criminal public purpose, such as public peace, order, security, health, or morality)

Switzman v. Elbling and A.G. of Quebec, [1957] S.C.R. 285

[French/English; Quebec; Public Law] [Listed in tables 1, 2, 4, 5, 6]

- Considered argument that provincial laws cannot restrict fundamental freedoms such as freedom of speech and freedom of political expression, as they are essential in a democratic state (“implied bill of rights” case)

Validity and Applicability of the Industrial Relations and Disputes Investigation Act, [1955] S.C.R. 529

[English; Federal; Public Law] [Listed in tables 1, 2, 3, 4, 6]

- Established that labour relations fall primarily within provincial jurisdiction, thereby limiting federal jurisdiction to federally regulated industries

Beaver v. The Queen, [1957] S.C.R. 531

[English; Ontario; Criminal Law] [Listed in tables 1, 2, 4, 5, 6]

- Held that, to prove possession, the Crown must establish physical control of the substance by the accused, and co-existing at the time of control, subjective knowledge that the substance was prohibited

Group 3—Cases that appear in four tables (in chronological order)

Spooner Oils Ltd. v. Turner Valley Gas Conservation, [1933] S.C.R. 629
[English; Alberta; Public Law] [Listed in tables 1 to 4]

- Established that legislation cannot retroactively affect vested rights without clear intent

Thomson v. Minister of National Revenue, [1946] S.C.R. 209
[English; Federal; Public Law] [Listed in tables 2, 3, 5, 6]

- Established that Canadian tax residency is determined by a flexible fact-specific analysis of the extent of an individual's social and economic ties, rather than by a strict day-count rule, and that an individual may be a resident in more than one country for taxation purposes

White v. The King, [1947] S.C.R. 268
[English; Ontario; Criminal Law] [Listed in tables 1 to 4]

- Established key principles on findings of credibility; recognized the importance of deferring to the trier of fact on matters of credibility; and stated the test on appeal for determining whether a verdict of acquittal should be set aside

Johannesson v. Municipality of West St. Paul, [1952] 1 S.C.R. 292
[English; Manitoba; Public Law] [Listed in tables 1, 3, 4, 6]

- Established that Parliament has exclusive jurisdiction to regulate the field of aviation (thus confirming that aeronautics is a matter of national concern), including the jurisdiction to determine the location of aerodromes

Alliance des professeurs catholiques de Montréal v. Quebec Labour Relations Board, [1953] 2 S.C.R. 140
[French/English; Quebec; Public Law] [Listed in tables 1, 2, 4, 6]

- Established that every quasi-judicial tribunal has a duty to act in accordance with the principles of natural justice, even if the statutory scheme is silent in this regard; there must be clear statutory language to deviate from this duty

O’Grady v. Sparling, [1960] S.C.R. 804

[English; Manitoba; Public/Private Law] [Listed in tables 1 to 4]

- Recognized that federal and provincial legislation can both be valid if they aim at different aspects of a matter (e.g., advertent/inadvertent negligence) and can overlap, provided that they have different constitutional purposes

These cases were reviewed to confirm that they had not been overruled by either the Judicial Committee of the Privy Council or the SCC and that they remain relevant to current legal debates. The Committee found no reason to exclude any of these fourteen cases and accordingly recommends that they be translated first (starting with the cases in Group 1, followed by the cases in Group 2, and then the cases in Group 3). The Committee understands that the SCC has already begun work to translate *Roncarelli v. Duplessis*, a landmark decision that is highly ranked in all six tables.

The Committee then determined which cases should be considered for inclusion in a fourth group. A decision was made to include the top five cases from Table 1 (most-cited decisions by the SCC), Table 2 (most-cited decisions by the appellate and lower courts), and Table 4 (most-cited decisions by lawyers) that were not already listed in groups 1 to 3, on the basis that these decisions have high precedential value (according to judges) or are relevant to current legal debates (according to lawyers). The assumption underlying the Committee’s approach in this regard is that a high citation count is a good indicator of a case’s importance. This approach enabled the Committee to identify seven additional cases for the list:

Group 4—Top five cases from tables 1, 2, and 4 not already listed in the previous groups (in chronological order)

Valin v. Langlois, (1879) 3 S.C.R. 1

[French/English; Quebec; Public Law] [No. 5 in Table 1]

- Established that the provincial superior courts have general jurisdiction over questions of federal and provincial law, and that Parliament can give such courts jurisdiction to apply federal laws (foundational case on the jurisdiction of provincial superior courts)

In re Provincial Fisheries, (1896) 26 S.C.R. 444

[English; Federal; Public Law] [No. 1 in Table 1; also listed in Table 2]

- Delineated the respective jurisdictions of Parliament and provincial legislatures over navigable waters and fisheries

Raymond v. Township of Bosanquet, (1919) 59 S.C.R. 452

[English; Ontario; Public/Private Law] [No. 1 in Table 2; also listed in Table 3]

- Applied the duty of care of townships with respect to the safety of roads and clarified key principles for weighing conflicting evidence in civil matters

Johnston v. Minister of National Revenue, [1948] S.C.R. 486

[English; Federal; Public Law] [No. 3 in Table 2; also listed in Table 3]

- Established that, in tax disputes, the Minister of National Revenue's assumptions are presumed true; the onus is thus on the taxpayer to "demolish" them (this is an exception to the usual burden of proof) (at 490)

Attorney General of Nova Scotia v. Attorney General of Canada, [1951] S.C.R. 31

[English; Nova Scotia; Public Law] [No. 3 in Table 4; also listed in tables 1 and 6]

- Established the prohibition against legislative inter-delegation (i.e., Parliament cannot delegate legislative powers to provincial legislatures and vice versa)

Wilson v. Swanson, [1956] S.C.R. 804

[English; British Columbia; Private Law] [No. 5 in Table 2]

- Established the standard of care for medical professionals: a specialist who holds themselves out as possessing a special degree of skill and knowledge must exercise the degree of skill of an average specialist in their field

Colpits v. The Queen, [1965] S.C.R. 739

[English; New Brunswick; Criminal Law] [No. 3 in Table 1; also listed in tables 2 and 4]

- Established that on appeal the Crown bears the burden of satisfying the court that the *Criminal Code*'s curative proviso applies; to prevent a conviction from being overturned because of a legal error, the Crown must establish that "the verdict would necessarily have been the same if such error had not occurred" (at 744)

Lastly, the Committee requested a final table from CanLII to ensure that it did not miss any cases that are particularly relevant to current legal debates. On April 30, 2025, the Committee received a final table showing the cases listed in Table 1 (most-cited pre-

1970 decisions by the SCC) and Table 2 (most-cited decisions by the appellate and lower courts) that have been cited the most since 2010 (the results were compiled on the same date). Following a qualitative assessment of these cases, the Committee decided to place three cases in a fifth group based on their high relevance to current debates:

Group 5—Cases particularly relevant to current debates not already listed in the previous groups (in chronological order)

Boudreau v. The King, [1949] S.C.R. 262

[English; Quebec; Criminal Law] [Extensively debated by the SCC⁵ and listed in tables 1 and 2; also listed in Table 4]

- Established that statements made by an accused to a person in authority are admissible in court only if made voluntarily, free from coercion or inducement; the burden is on the Crown to prove that a statement was made voluntarily

Re the Farm Products Marketing Act, [1957] S.C.R. 198

[English; Federal; Public Law] [Extensively cited by the SCC⁶ and listed in Table 1; also listed in Table 4]

- Established a presumption of constitutionality in the context of division of powers disputes; illustrated the complexity of determining the constitutionality of economic activity that often has both national and local dimensions

Saint John Tug Boat Co. Ltd. v. Irving Refining Ltd., [1964] S.C.R. 614

[English; New Brunswick; Private Law] [Extensively cited by courts and listed in Table 2; also listed in tables 3 and 6]

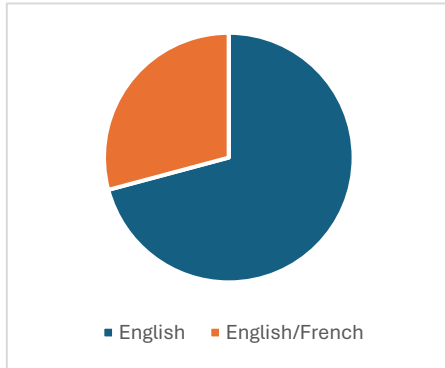
- Established that a contract can be implied from the parties' conduct when one knowingly accepts services and benefits without objection; the test is objective, and the court must consider "how each party's conduct would appear to a reasonable person in the position of the other party"⁷

⁵ Refer to *R. v. Tessier*, 2022 SCC 35; *R. v. Beaver*, 2022 SCC 54.

⁶ Refer to *Reference re Impact Assessment Act*, 2023 SCC 23; *Murray-Hall v. Quebec (Attorney General)*, 2023 SCC 10; *R. v. Kirkpatrick*, 2022 SCC 33; *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11; *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23; *Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21.

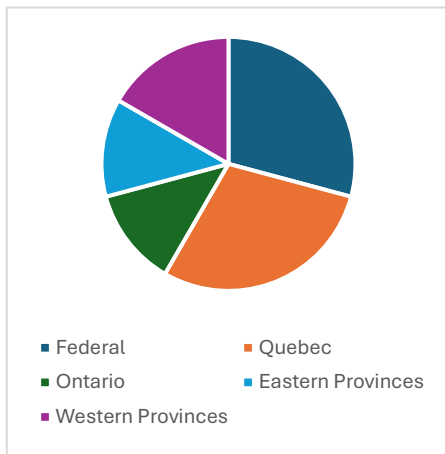
⁷ This is how the test was interpreted by the SCC in *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29 at para. 33.

Based on the foregoing, the Committee recommends that the SCC give priority to the twenty-four cases listed above (and reproduced in the Appendix) for translation. From a statistical perspective, in terms of language, jurisdiction, and subject matter, these cases can be categorized as follows:



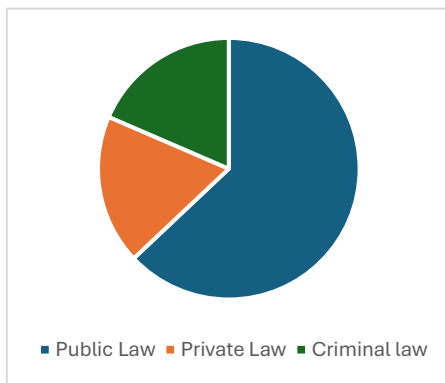
Language

70.83% were written in English only
 29.17% were written partly in English, partly in French
 None were written in French only



Jurisdiction

29.17% are from federal jurisdiction
 29.17% are from Quebec
 12.50% are from Ontario
 12.50% are from Eastern provinces (New Brunswick and Nova Scotia)
 16.66% are from Western provinces (British Columbia, Alberta, and Manitoba)



Subject matter⁸

62.96% are public law cases (constitutional, administrative, municipal, or tax law)
 18.52% are private law cases (torts and extracontractual liability or contract law)
 18.52% are criminal law cases

⁸ In categorizing the cases, the Committee elected to use the same categories as the SCC has in its annual reports since 2021: “Year in Review”, online: <scc-csc.ca/about-apropos/work-travail/review-retro/>.

In conclusion, the Committee has sought to identify some of the most relevant pre-1970 decisions rendered by the SCC for translation purposes. It recognizes, however, that a different group of people with different backgrounds and expertise might have reached a different conclusion as to which cases should be given priority. There are numerous ways of undertaking this type of endeavour. In the interests of efficiency, rigour, and objectivity, the Committee relied primarily on a quantitative analysis to reach its conclusion. In addition, the Committee conducted a qualitative analysis to confirm that the cases it recommends remain relevant today. At the core of our reasoning was the need to consider the diverse audiences who read, analyze, apply, and quote SCC decisions. Based on the work conducted and the methodology used, the Committee recognizes that many other pre-1970 decisions deserve attention and translation, but its mandate was limited to providing a short list of “around twenty” decisions to be translated in the context of the SCC’s 150th anniversary.

Yours sincerely,

Signed by:

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 The Hon. Marshall Rothstein

Signé par :

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 The Hon. Clément Gascon

Signed by:

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 Teresa Donnelly

Signé par :

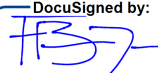
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 Francis Barragan

APPENDIX

List of Pre-1970 Decisions Recommended for Immediate Translation

Group 1 (in chronological order)

Reference re Alberta Statutes, [1938] S.C.R. 100

Saumur v. City of Quebec, [1953] 2 S.C.R. 299

Boucher v. The Queen, [1955] S.C.R. 16

Roncarelli v. Duplessis, [1959] S.C.R. 121

Group 2 (in chronological order)

Reference re Validity of Section 5 (a) Dairy Industry Act, [1949] S.C.R. 1

Switzman v. Elbling and A.G. of Quebec, [1957] S.C.R. 285

Validity and Applicability of the Industrial Relations and Disputes Investigation Act,
[1955] S.C.R. 529

Beaver v. The Queen, [1957] S.C.R. 531

Group 3 (in chronological order)

Spooner Oils Ltd. v. Turner Valley Gas Conservation, [1933] S.C.R. 629

Thomson v. Minister of National Revenue, [1946] S.C.R. 209

White v. The King, [1947] S.C.R. 268

Johannesson v. Municipality of West St. Paul, [1952] 1 S.C.R. 292

Alliance des professeurs catholiques de Montréal v. Quebec Labour Relations Board,
[1953] 2 S.C.R. 140

O'Grady v. Sparling, [1960] S.C.R. 804

Group 4 (in chronological order)

Valin v. Langlois, (1879) 3 S.C.R. 1

In re Provincial Fisheries, (1896) 26 S.C.R. 444

Raymond v. Township of Bosanquet, (1919) 59 S.C.R. 452

Johnston v. Minister of National Revenue, [1948] S.C.R. 486

Attorney General of Nova Scotia v. Attorney General of Canada, [1951] S.C.R. 31

Wilson v. Swanson, [1956] S.C.R. 804

Colpits v. The Queen, [1965] S.C.R. 739

Group 5 (in chronological order)

Boudreau v. The King, [1949] S.C.R. 262

Re the Farm Products Marketing Act, [1957] S.C.R. 198

Saint John Tug Boat Co. Ltd. v. Irving Refining Ltd., [1964] S.C.R. 614